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Book Reviews

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dren of tender age. *Accord, Balser v. Young,* 72 Pa. Super. 502 (1919). Protruding nails in a lumber pile were the dangerous element in *Jackson v. Jones,* 224 La. 403, 69 So.2d 729 (1953). In *Frye v. Elrod,* 187 S.C. 233, 196 S.E. 884 (1938), the court avoided the problem and submitted the issue of attractive nuisance to the jury who found for the plaintiff. *Accord, Gimmestad v. Rose Bros. Co.,* 194 Minn. 531, 261 N.W. 194 (1935).

The RESTATEMENT, TORTS § 339 (1934) has apparently enlarged the attractive nuisane doctrine and thereby has created greater liability to the land owner. The rule proposed by § 339 has been discussed and at least partially applied in *Wolfe v. Rehbein,* 123 Conn. 110, 193 Atl. 608 (1937). See also, Prosser, *Torts* § 77 (1st ed. 1941) where this writer approves of the rule.

The non-applicability of the attractive nuisance doctrine in the principal case appears to be a sound "business" decision recognizing both the practical consequences in a commercial economy and the weight of authority on the subject.

If the attractive nuisance doctrine was indiscriminately applied in these cases the landowner would become an insurer for trespassing children. This burden is of no little importance as many landowners may never know the physical condition of their lands. Should they be forced to keep the condition of their property safe for trespassers, or protect themselves by purchasing indemnity insurance is the real issue. If the doctrine is accepted in its widest sense the landowner is an insurer of trespassing children, if totally rejected he is clothed with a full defense against children who may not recognize danger hidden or visible. Since some middle ground is needed, acceptance of an attractive nuisance doctrine with a delimiting factor of the "inherently dangerous object" is desired. Whether an object is inherently dangerous is now a categorical question of law in most jurisdictions and hence removed from the jury prejudiced by a child's injury.

J. Robert Geiman

BOOK REVIEWS

THE FEDERAL COURTS AND THE FEDERAL SYSTEM. By Henry M. Hart, Jr.[1] and Herbert Wechsler.[2] Brooklyn: The Foundation Press, Inc., 1953. Pp. xi, 1445. $11.00. The federal judicial system

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[2] Professor of Law, Columbia University Law School.

of the United States poses many problems which are non-existent in judicial systems of most other countries. In addition to a substantial body of law which has grown out of the relationship of the federal courts to the state courts in the exercise of jurisdiction, there are a vast number of cases which have been decided in federal courts in the administration of federal laws. These factors tend to make our federal court system both unique and complex. Messrs. Hart and Wechsler deal with the problems which arise under this system in their book.

The Federal Courts and the Federal System is a combination case-text-reference book. Its 1400 plus pages contain an excellent treatment of the pertinent judicial decisions, historical background on the development of the federal judicial system, and many thought provoking questions on the subject matter of each of its eleven chapters. However, the authors have chosen not to consider the Federal Rules of Civil Procedure in this book because they consider these as a topic for separate treatment.

The book begins with excerpts from the Constitution on the judicial power of the United States and from skillfully arranged portions of the history of the Constitutional Convention which throw considerable light on the framers' intent in drafting these articles. Farrand and Warren are among the widely known authorities whose works are quoted on this subject. Portions of the Federalist papers and a note on the organization and growth of the federal judicial system are also included in this chapter.

Chapter II, the Nature of the Federal Judicial Functions: Case and Controversies, highlights the celebrated case, *Marbury v. Madison*.[3] The note accompanying this case is an example of the extent to which the authors have gone in their presentation of a wealth of historical background. Direct quotations of Presidents F. D. Roosevelt, Jackson and Lincoln are presented for contrast and comparison in connection with a discussion on the effect of the *Marbury v. Madison*[4] decision. The academic value of the first two chapters far outweighs their practical value.

The original jurisdiction of the Supreme Court is treated in Chapter III. Although the paucity of the instances permitting original jurisdiction in the Supreme Court also tends to lessen the importance of this chapter to the average practitioner, it is nevertheless valuable to the student by rounding out his knowledge of the federal judicial system.

The next chapter deals with the Congressional control of the

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[3] 1 Cranch 137 (U.S. 1803).

[4] *Id.*

distribution of judicial power among federal and state courts in federal matters and how Congress exercises its powers. The relationships and comparisons of the judicial power under *Article III* and the legislative power under *Article I* are discussed. The authors observe, and this reviewer concurs, that although a co-extensiveness of the legislative and judicial powers was no doubt intended by the framers of the Constitution, in some respects, such as the diversity clause, the judicial power under *Article III* appears to be broader than the legislative power under *Article I*. This chapter also contains a lengthy but interesting exercise in dialectics, reminiscent of and as didactically effective as the dialogue between Socrates, Glaucon and Adeimantus in Plato's Republic.

Chapters V, VI and VII deal with issues and cases of federal cognizance. The subjects covered include a review of state court decisions by the Supreme Court, the law applied in civil actions in the district courts, and the federal question and diversity jurisdiction of the district courts, respectively. These chapters appear to offer the most practical knowledge for the student and practitioner alike.

The seventh chapter identifies the types of issues that form a basis for determining which cases should be brought originally in a federal court.

Process and venue, limitations on jurisdiction, jurisdictional amount, removal, and conflicts of jurisdiction, which are all general problems of district court jurisdiction, are thoroughly considered in Chapter VIII. This chapter is also of considerable value to both student and practitioner.

Chapter IX deals with federal government litigation, both criminal and civil, and actions against the government. A more detailed treatment of the substance of this chapter at the expense of curtailing that of earlier chapters would have been welcomed by this reviewer in view of its increasing importance in every day practice.

Chapter X covers the all important and often underemphasized federal habeas corpus remedy and its various ramifications, and the last chapter is on appellate review of federal decisions and the certiorari policy. A brief section on statutory development of appellate review and an interesting address to the American Bar Association by the late Chief Justice Vinson on the work of the federal courts supplements the problems of the Supreme Court in deciding cases as well as in determining which cases to decide.

In conclusion, Professors Hart and Wechsler have achieved in this work the aim of many authors by striking a desirable balance

in their treatment of case and text materials. Neither is overemphasized and because of this it should prove acceptable to teacher and student alike. Additionally, by exposing the areas in the federal judicial system that need improvement, the authors have accomplished a further service to the public and to their profession.

*George Norman**

IN THE CAUSE OF PEACE. By Trygve Lie.[1] New York: Macmillan, 1954. Pp. xxiv, 473. $6.00. Trygve Lie, Secretary-General of the United Nations during the first seven hectic years of its operation, has written a highly interesting account of his experiences. From his autobiographical viewpoint, he relates the story of international politics as it was played in the international arena at Lake Success. This generation has been nutured on a daily diet of crisis topped with tension, and it is in *In the Cause of Peace* that we are reminded just how much history has been crowded into the past seven years. Mr. Lie puts in focus all the major events which have engaged the interest and concern of the member state of the United Nations. He exposes to the reader in casual fashion the part that he played, the confidential conversations he had with world leaders, and his candid reaction to it all. Of all the leading characters, Mr. Truman fared best under Mr. Lie's critical pen. The international achievements of the Truman administration are laudably described although the Secretary-General deplored United State's action on occasions when it bypassed the United Nations to go-it-alone.

Trygve Lie was aware of the tremendous part that the first chief executive officer of any new organization has in establishing the power relationship and prestige of the position. He was confronted with the questions that must be answered by all appointed public administrators—What is the scope of power that goes with the position and what is the proper area of activity? Now we know the extent of power of a chief executive officer is often delimited by the officer himself according to his own interpretation of the controlling law for we are familiar with strong and weak presidents under the same Constitution. Lie read in the constitution of the United Nations a role for the Secretary-General that called for exercise of broad administrative and policy action. He assumed a much more active and vital role than his predecessors in the League of Nations, who had concentrated entirely on administra-

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1 Former Secretary-General of the United Nations.

tion. Mr. Lie became an international politician as well as an international administrator and he attempted to induce the U. N. members to follow certain political courses. In public service, longevity is a by-product of mere administration for it is usually only when the public servant figures prominently in policy-making that he becomes fair game for political snipers. Trygve Lie found that out for he was denounced by the West as a "Stalin agent" and by the East as an obsequious tool of the United States. It was his "political activity" role that incurred the wrath of the U.S.S.R. and forced Mr. Lie to leave his post under the siege of Soviet blasts.

As chief administrator of the United Nations, Mr. Lie had problems common to all public administrators but with an international twist. Such an ordinary administrative function as "personnel" was fraught with unique complications. Staffing the secretariat with international civil servants caused great concern to the Secretary-General. Hasty recruitment from employment markets all over the world was a formidable task. Although the U.N. employees were expected to be international in their job loyalty, Mr. Lie wanted to be certain that United States nationals were also loyal Americans. He called upon the United States government for help but it would not aid him in screening applicants for positions with the United Nations. According to Secretary of State James R. Byrnes, the U.S. government "did not wish to appear in any way to influence . . . selection of personnel or to invade the exclusive responsibilities of the Secretary-General under the Charter."[2] The U.N. did not have the machinery nor the funds to investigate adequately every applicant and some "Fifth Amendment" Americans found their way onto the payroll.

The reckless accusations concerning their national loyalty hurled at U.N. employees by crusading crucifiers caused Mr. Lie to reflect on the recent American phenomenon—a passion for security. In his chapter "The Communist Issue in the Secretariat", he joins other distinguished foreigners—de Tocqueville, Bryce, Myrdal—in analyzing the contemporary scene for tree-blinded Americans and points out the forest of fear which is sadly in need of thinning. In describing the local climate, the author wrote:

> The age of jet propulsion and the atomic bomb stripped away at one stroke the century-old security from physical attack. At the same moment the cold war involved the United States as the principal protagonist against the new imperalism of Soviet Russia, which used the Communist parties everywhere as instruments of its designs. So the American people were placed almost without warning in a position to which they were not accustomed, exposed to changes that most Europeans had long ago learned to accept as facts of life. Now almost any American city would be exposed to enemy attack in another war,

[2] Text at 387.

almost any home to enemy destruction.

> To Americans in this new and unaccustomed mood of insecurity, even the weak and futile Communist party assumed a new aspect. Small as it was, they looked upon its members as potential or actual agents of a hostile power that they knew was capable of inflicting terrible damage on the country if war should come. This is a state of mind that should be better understood by Europeans and Asians who are so shocked by what has happened. The obsession with internal security, and the accompanying hysteria, mark in a sense a last convulsive transition from the youthful, carefree America of the endless frontier and the happy isolation from 'other people's wars' to the full maturity of a great world power with all its cares and burdens.[3]

If peace—as understood by the Democracies—is to be maintained, there are two tasks which Mr. Lie feels must be vigorously performed. First, there is in the short run, a containment of the Soviet Union that must be continued by having sufficient reservoirs of power to checkmate aggressive moves. These should be developed by defense agreements among the democracies. Secondly, a long range peace program needs to pay increased attention to the underdeveloped economic areas of the world; for in the struggle there between Democracy and Communism for the undecided minds of men, Mr. Lie believes that Communism has an initial advantage. He is "inclined to feel that Communism, in its export version, has an even greater first-glance sales appeal to the perpetually hungry and under privileged in many of these areas than has the kind of democracy they have come to know over the year."[4]

In forecasting the future of the international organization which he headed, the former Secretary-General holds out a rather pessimistic hope. Although he calls for a constitutional convention to patch weak spots in the Charter, he does not feel that any significant structural or procedural changes will be forthcoming. He expects uneasy co-existence to prevail for he concludes:

> My own thoughts on Communism, both as a form of government and as a philosophy of life, do not admit the possibility of a merger with what we in the West have come to know as democracy. The basic precepts of the one defy those of the other. In the one, force media—police, prisons, concentration camps—have imposed a rule of conformity and have pegged the worth of the individual to his value to the state and the party. Their interests come first, last, and always. In the other, the individual—according to accepted philosophy, at least—is regarded less as a means than as an end unto himself.[5]

*John Gillespie**

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[3] *Id.* at 392.

[4] *Id.* at 441.

[5] *Id.* at 437.

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JOB PROPERTY RIGHTS. By Arthur R. Porter, Jr.[1] New York: King's Crown Press, 1954. Pp. vi, 110. $2.50. This slim volume is provocative. It is a study of the job control exercised by the International Typographical Union (I.T.U.). Because of the I.T.U.'s extensive authority over composing room jobs, the author believes it appropriate to think of these job rights as property rights.

The book is primarily a *description* of the job controls exercised by the I.T.U. The author's study is based upon official union interpretations of the I.T.U. general laws and decisions of the executive council of the I.T.U.; admittedly the "law in action" may vary somewhat from the "law in the books". The Union looks upon jobs in the composing rooms of the printing industry as theirs. It is up to the local chapel[2] to provide competent workmen for the newspaper, book publishing company or printing shops. The foreman of the composing room, always a union member, does the hiring, laying-off and firing. In hiring and laying-off the foreman must abide by priority and seniority lists, general laws and executive council decisions. In firing, the foreman must abide by I.T.U. general laws concerning bases for discharge. An aggrieved worker may appeal the foreman's action to the local chapel and eventually to the executive council of the I.T.U. Basic aspects of job control are out of the hands of the company and in the hands of the union.

Porter carefully avoids defining property. Instead he takes note of various definitions and descriptions of property and emphasizes that "the core of the concept of property is the system of relationships among men in regard to economic and social institutions".[3] This is important because it "explains how it is possible for intangible relationships not associated directly with material objects to be termed property".[4] Says the author:[5]

> The right to expect a future income is one of the characteristics of a property right. An employee with long years of service in a composing room has an expectation that his income will continue, barring unforeseen personal events. The situation becomes 'his' in a sense that is very similar to the ownership of a set of rights in the use of land which society designates by the term property. The 'owner' of the job even has the right to permit someone else to 'use' his job through the practice of engaging a substitute. The job is possessed to such a degree that a union member under certain conditions

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1 Hanover College, Hanover, Indiana.

2 Seldom used term for printing shop.

3 Text at 4.

4 *Ibid.*

5 Text at 63.

> may leave his situation for a period of time with the expectation of returning to it.

The author indicates that the printing industry is not the only industry in which there is such a thing as job property rights.[6] Unions in other industries have gained control over various aspects of job rights but few, if any, have the extensive control exercised by the powerful I.T.U.[7] The author is of the opinion that eventually there will probably be more legal control of job property rights as these rights become more generally recognized.[8] This study is very timely in view of current discussions about the guaranteed annual wage, in particular, and the over-all effort, in general, to put jobs on a more stable basis.

*Thomas Broden, Jr.**

LAW WRITERS AND THE COURTS: *The Influence of Thomas M. Cooley, Christopher G. Tiedeman, and John F. Dillon Upon American Constitutional Law.* By Clyde E. Jacobs. Berkeley: University of California Press, 1954. Pp. vii, 223. $3.50. This small book is one of the best studies in the field of American constitutional history and law to appear in recent years. Approximately five hundred state and federal court cases were analyzed by the writer in gathering evidence to support his thesis developed in only 167 pages of text. These cases, for the most part, fall in the period from 1870 to 1910. Unfortunately, as is true of so many publications today, considerations of economy by the publisher have placed all the notes in a body at the end of the book. This deplorable practice is always an anguishing experience to the careful reader and scholar who is almost as interested in the sources cited and comments contained in the notes as in the text. There are included an extensive bibliography, a table of cases cited, and an index which enhances the usability of the book.

The writer's thesis is that one of the most important (he does not claim exclusive) influences upon the development of constitutional law in the post-Civil War period was the writings of constitutional publicists. The writers mainly responsible for

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6 *Id.* at 12 and 69-74.

7 *Id.* at 69.

8 *Id.* at 78.

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the popularizing of new legal principles among the members of bar and bench were Cooley, Tiedeman, and Dillon. Their chief contributions were the establishment of these principles: (1) liberty of contract as a limitation upon the police power of the states and the power of the national government to regulate commerce; and (2) public purpose as a requirement for valid exercises of the taxing, spending, and eminent domain powers. These, together with other judicial rationalizations concerning due process, economic liberty, freedom of contract, equality in the apportionment of taxes, and just compensation formulated by jurists, were the doctrines that gave judicial sanctity to a laissez-faire economic order demanded by the conservative, privileged groups of the new industrial age.

Many other writers have shown various influences on American constitutional development beyond pure legal doctrines and judicial decisions. Our understanding of this intricate field has been enhanced by studies showing the influences on constitutional growth of public opinion, of vested interest groups which have developed techniques of political influence, and the positive and negative acts and decisions of legislative bodies and executives, as well as court decisions themselves. Mr. Jacobs has filled in another void by proving conclusively that the above named publicists were extremely important in formulating the new doctrines that replaced the earlier traditional reliance on natural law, common-law principles, and the contract clause as guaranties of property rights.

It appears to the reviewer that the evidence cited better supports the case for the publicists' influence on the state courts than upon the national Supreme Court. The author does note, however, that the federal court appeared to lag all along the line—adopting the new doctrines long after the state courts, and continuing to rely upon them long after the latter had abandoned them. Perhaps this suggests the more insulated position of the highest court in the land and its greater ability to resist public pressure, or perhaps to ignore social and economic realities. At any rate it does appear that the influence of the publicists at least indirectly filtered up to the Supreme Court by the late nineteenth century, and, except for dissents by Holmes and later by Brandeis, and a few deviations, continued under the dominance of laissez-faire philosophy until 1937.

The meat of the book is contained in three middle chapters which develop in great detail the genesis, development and application of liberty of contract, due process, economic liberty, and the public purpose maxims. The first chapter on conservative

principles and liberal reforms before the Civil War appears a little flimsier because of the complete neglect of Jeffersonian influence and the glossing over of Hamilton's contributions. The author's central theme, however, is not lost sight of; and he merely reviews how "higher law" and natural rights doctrines were used to protect propertied interests, aided and abetted by the contract clause of the constitution, as well as by the systemization of the common law. In better historical perspective is shown the challenge to the old order by Jacksonian democracy in its attacks on all vested interests, particularly corporations. Another minor shortcoming in the book is the failure to mention the watering down of the public interest to the public use doctrine by Justice Field in 1888 as one of the steps in the establishment of a laissez-faire constitutional order,[1] and the further weakening of legislative regulatory authority by the Minnesota Rate Case which asserted the right of the judiciary to determine reasonableness of rates by the mumble-jumble of the "fair return on a fair value doctrine."[2]

Mr. Jacobs has made a distinct contribution to the study of constitutional development. Within the limitations imposed upon himself he has done an admirable job of assembling the evidence. One might wish that he had gone further and explained why these publicists wrote as they did and why their doctrines were so warmly received by the bar and bench. Was it because of cumulative effects of the gospel of wealth, the worship of the success of the great entrepreneurs, the importance of the "cult of respectability", the association of lawyers with the same social, economic, and political circles as the industrialists, or evidence of a blind spot in legal training of that day which made nearly all jurists illiterate in economic and social realities brought on by the industrial age and completely devoid of a social consciousness? Certainly the judiciary was more insulated from the pressures of vested interests than were legislative bodies whose wisdom was constantly questioned by publicists and courts. In all fairness it must be said that the writer leaves no doubt as to what he thinks about the various judicial rationalizations devised to justify a laissez-faire order which completely ignored realities and frequently social justice as well. When a writer has given us so much, should a reviewer be picayunish and ask for more?

*John L. Harr**

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[1] Georgia R. R. & Banking Co. v. Smith, 128 U.S. 174, 179-80 (1888).

[2] Chicago, Minneapolis & St. Paul R.R. v. Minnesota, 134 U.S. 418, 457 (1890).

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MILITARY LAW. By Daniel Walker.[1] New York: Prentice-Hall, 1954. Pp. xiv, 748. $9.75.—For many years military law and military justice have been considered something quite different from other social expressions of the law. The fact that military law has always been practiced in the relative segregation of military communities and that quite naturally only its most sensational cases have come to the attention of the general public, has brought about an attitude toward military law which would make it appear a mysterious and unwholesome system. Lack of knowledge has led to misunderstanding.

It was not until millions of civilians put on uniforms in World War II that enough interest was created concerning military law to make a book on the subject much more than a dust catcher.

More than ten million soldiers and sailors returned to civilian pursuits following their World War II service. They took with them an account of the high-lights of life under military discipline. Most outstanding in the minds of many were their encounters with military justice procedures. As a consequence stories concerning courts-martial were most vivid and memorable. As might be expected, these stories did not suffer in the telling. In addition to this, many communities had received back some of their young men as "legal casualties"—those discharged as the result of being convicted of offenses against the military legal code. People in general were made more aware of military law. Eventually, some of the ex-soldiers and ex-sailors, especially the lawyers among their ranks, found themselves elected to public office or occupying positions wherein their influence resulted in changes to the military legal system.

In the meantime, the standing military force remained relatively large by pre-war standards. Peacetime conscription made military service probable for most young men. As a consequence, interest in the why and how of the military legal system continued to grow.

The broadening of interest and intelligence concerning the legal system of the military establishment is the most significant and noteworthy aspect of the latest developments in military law. Changes which would have transpired only after a passage of many years have been remarkably accelerated. Thus in the space of the last six years we have experienced two major revisions of the military code.

For the student involved in a course of military law it will be helpful to examine the beginnings of military social controls in

[1] Former Commissioner, United States Court of Military Appeals.

order to achieve something of a basic understanding and perspective of means and purposes. This book by Mr. Walker, *Military Law,* begins logically with Nature and Sources of Military Law. The selection of cases is excellent in this chapter. However, it would have been preferable to have abbreviated and edited these cases to a considerable extent and to have supplied more original text by the author. The text which he has contributed is good. The teacher using this book can meet the objection to the length of the first chapter by being selective in his assignments. There is in this chapter and in Chapter 2, The Armed Forces, and Chapter 3, Military Criminal Law: Nature, History and Sources, far too much material for use or absorption in any but the most protracted course of study.

It is my opinion that the core of this book is to be found in Chapters 4 through 10, and that it is with these chapters that professor and student must spend the bulk of their time. Only in its particulars, only in its details, its procedures and customs does military law differ from the more generally known civilian systems.[2]

So it is with the *practical* points of military law that the law student and lawyer need be concerned. As to basic principles they will be on familiar ground. There is no fundamental difference in this day and age between the administration of the Uniform Code of Military Justice in the military community and the administration of law in the state and federal jurisdictions. The quality of American legal systems is always equal to and never better than its judges and advocates.

Mr. Walker's book is not a practice book; it is a case book, but

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2 " . . . we believe Congress intended, in so far as reasonably possible, to place military justice on the same plane as civilian justice, and to free those accused by the military from certain vices which infested the old system. Believing this, we are required to announce principles consistent therewith.

A cursory inspection of the Uniform Code of Military Justice, *supra,* discloses that Congress granted to an accused the following rights which parallel those accorded to defendants in civilian courts: To be informed of the charges against him; to cross-examine witnesses for the government; to challenge members of the court for cause or peremptorily; to have a specified number of members compose general and special courts-martial; to be represented by counsel; not to be compelled to incriminate himself; to have involuntary confessions excluded from consideration; to have the court instructed on the elements of the offense, the presumption of innocence, and the burden of proof; to be found guilty of an offense only when a designated number of members concur in a finding to that effect; to be sentenced only when a certain number of members vote in the affirmative; and to have an appellate review." *United States v. Clay* [No. 49], 1 USCMA 74, 1 CMR 74, 77-78 (1951).

as a case book it has value. With the *Manual for Courts-Martial, United States, 1951,* as a companion volume, *Military Law* should fill a need which has been most pronounced in the past. The student going through the *Manual for Courts-Martial, United States, 1951,* will not find its terse terms readily understandable, since it is written with a primary view towards supplying the active judge advocate with a compilation of practice directives based mainly on the Uniform Code.[3] It has within it only the most succinct explanations and illustrations. It goes without saying that military law under the Uniform Code of Military Justice, like any other law, does not stand still. It has developed. It is, in its formative years, extremely dynamic and changing. The reported cases of the United States Court of Military Appeals and the Boards of Review, those intermediate appellate agencies (which are the equivalent of the intermediate appellate courts in a civilian jurisdiction) provided for by the basic law,[4] constantly and steadily interpret the provisions of the Statute (the Uniform Code) and Executive Order (the *Manual*). The student or practitioner who fails to keep constantly abreast of these developments is left in much the same position as a person who provides himself with the Constitution of the United States but neglects to examine the untold number of judicial decisions interpreting it. For this reason a case book to be used in combination with the *Manual for Courts-Martial, United States, 1951,* is extremely helpful. Mr. Walker's contribution is in this area. Following roughly the same scheme of organization as is found in the *Manual for Courts-Martial, United States, 1951,* the author has gathered together and presented in these middle chapters cases from federal jurisdictions, from the United States Court of Military Appeals and from the Boards of Review of the different services. This is no small undertaking, and as of the date of the completion of such compilation the student would have been provided with a completely adequate case book. However, because of the rapid flow of case law coming from the appellate levels in the military legal system, it will be necessary either for supplements to be published to this book up-dating the cases it contains or for the user to keep himself current by securing, as they are published, the new decisions of the military appellate tribunals. An attempt has been made in the Air Force in this direction by the publication of an annual supplement[5] intended to keep, within yearly limits, comparatively recent information

[3] 64 STAT. 108 (1950), 50 U.S.C. §§ 551-741 (1952).

[4] Article 66, Uniform Code of Military Justice.

[5] Annotation to Manual for Courts-Martial, United States, 1951, United States Air Force Annual Pocket Part, 1953.

available to the users of the *Manual.* Even on a yearly basis this does not provide a satisfactory body of case law for the judge advocate or civilian lawyer actively occupied with the trial or appeal of courts-martial. It is necessary for these lawyers to resort to the advance sheets containing the latest reported decisions of the United States Court of Military Appeals and the several Boards of Review.

For teaching purposes, I consider this book to be a worthwhile contribution. Beyond that, the material found in the first three chapters, reference to which has been made, as well as the material contained in Chapters 12 through 19, is an excellent body of source material. Especially in the latter chapters is found material which has been relatively unavailable to the researcher and has not often been placed in such understandable context as that employed by Mr. Walker in this book. It is unlikely that this material can be much more than touched upon by the average professor and student in a course in military law, and it would be my advice to use it merely as a supplement to the *Manual for Courts-Martial* and devote more time to the procedures involved in courts-martial, their trial, review and appeal.

With these cautions in mind, I recommend *Military Law* to teachers and students of law as an ambitious work of scholarship, and I note with regret that Mr. Walker's textual contributions are much too brief since those which I have examined have been found to be really valuable. Perhaps if Mr. Walker ventures again in the field of military legal publications he will find it possible to include more of his original text.

*Reginald C. Harmon**

SUPREME COURT PRACTICE SECOND EDITION—1954 RULES. By Robert L. Stern[1] and Eugene Gressman[2]. Washington, D.C.: The Bureau of National Affairs, Inc., 1954 Pp. xv, 585. $10.50. On April 12, 1954, the Supreme Court of the United States promulgated the Revised Rules effective July 1, 1954. The second edition of *Supreme Court Practice,* first published in 1950, was ready shortly thereafter. This edition reflects the changes in the

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* Major General, U.S.A.F. The Judge Advocate General, United States Air Force.

[1] Formerly Acting Solicitor General of the United States.

[2] Formerly Law Clerk, Supreme Court of the United States.

Rules and includes pertinent cases and other materials since 1950.

The first edition of the book was widely acclaimed.[3] The second edition calls for a repeat performance. For, here is a work that is both scholarly and eminently practical. It spells out in detail the steps involved in handling a case before the highest tribunal of the land, and furnishes leading and recent authorities on the subject of the Court's jurisdiction and procedure. The book is intended for the legal profession, but it is so readable that a non-lawyer would find it enjoyable (and lawyers would, contrary to custom, probably read it from cover to cover). The experienced practitioner before the Supreme Court will find it useful; the lawyer new to the Court should deem it indispensable.

The first chapter is entitled "Introduction to the Supreme Court", and it is just that. The reader is told where the Court is, what it consists of, when the term begins, etc. He is then acquainted with the various facilities of the Court, such as the Library, which contains 173,000 volumes and transcripts of records to all Supreme Court cases since 1832 and all briefs since 1854; the Clerk's Office, which "is the unfailingly courteous and helpful source of information as to all questions of Supreme Court procedure";[4] the Marshall's Office, where arrangements can be made for the sitting of counsel's wife or relatives in special and preferable locations on the day when counsel argues in Court; and the facilities furnished by the Reporter of Decisions and Opinions. In this chapter the authors also note the Constitutional basis for the Court's jurisdiction and briefly explain the "sifting process" whereby every case coming to the Supreme Court is subjected to a preliminary scrutiny to determine whether any further action by the Court is warranted.[5]

The next two chapters are devoted to the Court's jurisdiction to review decisions of Federal courts and its jurisdiction to review the decisions of State courts. Then the authors set out in helpful detail the procedures involved in the two principal methods of bringing cases to the Supreme Court—certiorari and appeal. The importance of the chapters dealing with certiorari[6] cannot be overestimated. Each year 80-90 per cent of petitions for certiorari are denied by the Court.[7] This fact alone would prompt a careful reading of the section of the book devoted

[3] No less than eighteen law journals contained a review of the book.

[4] Text at 6.

[5] *Id.* at 11.

[6] Chs. IV and V.

[7] Text at 106.

to the factors motivating the granting of certiorari.[8] In connection with their discussion of the certiorari procedure, the authors stress the point that the petitions for certiorari should be short.[9] The draughtsman of a petition should bear this in mind, for on several occasions the Court has denied petitions because they were too long.[10]

As to the appeal procedure under the new Rules, the authors state that it conforms closely to the certiorari procedure, and that the "result has been to eliminate a good deal of the mystery from Supreme Court practice."[11] Prior to the new Rules the procedure governing appeals followed an archaic pattern. Numerous documents were required to be filled with the lower court from which the appeal was taken. Now all the appellant need file are two documents, namely, (1) a notice of appeal, including a designation of the portions of the record to be certified and the questions presented, and (2) a jurisdictional statement akin to a petition for certiorari.

The book is also concerned with the procedures in cases coming before the Supreme Court by certificate, those arising under the Court's original jurisdiction, and in cases involving extraordinary writs. There are also chapters on briefs, oral argument, petitions for rehearing, motions, loss of jurisdiction by mootness or abatement, and admission to the Bar and disbarment. All of these chapters are informative and reflect sound scholarship and practical knowledge which characterize the whole book. The authors' insistence that the oral argument "should attempt to convince the court as a matter of reason and principle"[12] is laudable. As they point out, the Court considers that the argument is an "oral discussion".[13] The suggestions made in respect to briefs are helpful, and the emphasis there is also on arguing "reason and principles" in the argument portion of the brief.[14]

Fully 70 pages of the book are devoted to forms used in the practice before the Court. These are very useful, particularly to the inexperienced attorneys. The full text of the 1954 Rules is included in the back of the book, and these Rules are indexed by subject matter for speedy reference. The Table of Cases is another salutary feature of the volume, providing a ready means

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8 *Id.* at 106-141.

9 *Id.* at 204.

10 *Id.*

11 *Id.* at 226.

12 *Id.* at 334.

13 *Id.* at 340, quoting Chief Justice Hughes.

14 *Id.* at 308.

of finding the many cases cited in the text.

The valuable legal materials and the experienced "know-how" which are to be found within the covers of this book should do much more than "keep most lawyers out of trouble," as the authors modestly note.[15] The knowledge gained from a careful reading of *Supreme Court Practice* should go a long way toward helping lawyers achieve success in their practice before the Supreme Court.

*Louis C. Kaplan**

[15] *Id.* at 1.

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BOOKS RECEIVED

AN ALMANAC OF LIBERTY. By William O. Douglas. Garden City, N.Y.: Doubleday & Company, Inc., 1954. Pp. 409. $5.50.

BILL OF RIGHTS READER; Leading Constitutional Cases. By Milton R. Konvitz. Ithaca: Cornell University Press, 1954. Pp. xi, 591. $6.50.

CONFUSION TWICE CONFOUNDED; The First Amendment and the Supreme Court. By Joseph H. Brady. South Orange: Seton Hall University Press, 1954. Pp. 192. $3.50.

CONSTITUTIONAL LAW — CASES AND MATERIALS. By Paul G. Kauper. New York: Prentice-Hall, Inc., 1954. Pp. xv, 1118. $9.50.

*FEDERAL COURTS AND THE FEDERAL SYSTEM, THE. By Henry M. Hart, Jr. and Herbert Wechsler. Brooklyn: The Foundation Press, Inc., 1953. Pp. xi, 1445. $11.00.

HOW TO PROVE A PRIMA FACIE CASE, *3rd edition.* By Howard Hilton Spellman. New York: Prentice-Hall, Inc., 1954. Pp. 701. $8.50.

HUGH ROY CULLEN. By Ed Kilman and Theon Wright. New York: Prentice-Hall, Inc., 1954. Pp. 376. $4.00.

*IN THE CAUSE OF PEACE. By Trygve Lie. New York: The Macmillan Co., 1954. Pp. xxiv, 473.

*JOB PROPERTY RIGHTS. By Arthur R. Porter, Jr. New York: Columbia University Press, 1954. Pp. v, 110. $2.50.

*LAW WRITERS AND THE COURTS. By Clyde E. Jacobs. Berkeley: University of California Press, 1954. Pp. 223. $3.50.

*MILITARY LAW. By Daniel Walker. Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1954. Pp. xiv, 748. $9.75.

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RIGHT TO COUNSEL IN AMERICAN COURTS, THE. By William M. Beaney. Ann Arbor: University of Michigan Press, 1954. Pp. vii, 268. $4.50.

*SUPREME COURT PRACTICE—1954 RULES. By Robert L. Stern and Eugene Gressman. Washington, D.C.: Bureau of National Affairs, Inc., 1954. Pp. xviii, 585. $10.50.

THE AMERICAN LAWYER—A SUMMARY OF THE LEGAL PROFESSION. By Albert P. Blaustein and Charles O. Porter. Chicago: The University of Chicago Press, 1954. Pp. ix, 360. $5.50.

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* Reviewed in this issue.