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## Book Reviews

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## BOOK REVIEWS

COURTS, JUDGES, AND POLITICS. By Walter F. Murphy and C. Herman Pritchett, Editors. New York: Random House, 1961. Pp. XVIII, 707. \$4.95.

Until very recent years, almost any political scientist writing or teaching in the area of public law could be expected to approach his subject in much the same way as his law school colleague. The casebook would form the basis for classroom work while the goal of both teaching and research was the illumination of some particular facet of substantive (usually constitutional or administrative) law. Most courses, indeed, are still organized in this way; there has been underway for some time, however, a shift in the direction of lessened attention to questions of legal substance and of increased concern with the role and function of courts within the political context of which they are inescapably a part. Such an approach suggests that instruction and research in legal materials are somehow incomplete unless they take notice of the complex of institutional, situational or psychological variables within which judicial activity takes place, with which it may interact and upon which it may have significant impact.

It is just such an orientation that Professors Murphy (Associate Professor of Politics at Princeton University) and Pritchett (Professor and Chairman of the Department of Political Science, University of Chicago) follow in this work. Dating in its earliest stages at least from the 1937 "switch in time that saved nine," receiving considerable impetus from Professor Pritchett's bloc analyses of the Roosevelt and Vinson courts, and continuing to mature perhaps most prominently in the works of Glendon A. Schubert, this orientation has produced a considerable body of meaningful research. It is this volume of material—or at least a careful sampling of it—that the editors now make available in readily accessible form to the student of judicial institutions.

There is here, for example, an instance of Vose's studies of the relationship of pressure groups and courts, an illustration of the applicability of mathematical research techniques from the works of Pritchett, Schubert and S. Sidney Ulmer, as well as Gordon Patric's examination of the social and political impact of *McCollum v. Board of Education*.<sup>1</sup> Ci-

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1. 333 U.S. 203 (1948).

tation of these materials, however, should not be taken to mean that the editors have in any sense neglected the more traditional observations, descriptions and evaluations of the judicial process. Holmes' "Path of the Law" is reproduced as are carefully chosen selections of Cardozo's lectures in the nature of the judicial process; indeed, virtually every major contemporary or near-contemporary legal light is represented here by one or more works.

Cases selected are employed for the most part as illustrations of judicial or judicially-related behavior and only seldom for the presentation of one segment or another of a jurisprudential argument or for whatever light they may shed on substantive areas of the law. *Caminetti v. United States*<sup>2</sup> and *United States v. Harriss*,<sup>3</sup> for example, are placed in close juxtaposition—not for their relevance, respectively, to the Mann Act or the Federal Regulation of Lobbying Act, but as illustrations of the process of statutory interpretation. Relevant cases have also been selected to depict the ways in which the operation of judicial bureaucracy may inhibit the powers of certain of its components; in a section titled "Virgil Hawkins Goes to Law" the editors have reproduced the opinions delivered by the Florida Supreme Court and by each level of the federal court system in the attempts by one Virgil Hawkins, a Negro, supported eventually by the United States Supreme Court, to lower the racist barriers of Hawkins' enrollment in the University of Florida Law School.

To provide a general setting for such materials, the editors have organized their work in terms of eight separate points of focus; the judicial role and its organization, judicial selection and the bar, the sources and instruments of judicial power, avenues of access to the courts and to whom they are open, judicial reasoning, the decisional process, limits of judicial decision-making, and the role of the judiciary in a democratic social order. Each of these topics is dealt with in a separate major division, subdivided, in turn, into relevant chapters.

It is, of course, of considerable value not to say convenience to have collected in one place the materials contained here. It

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2. 242 U.S. 470 (1917).

3. 347 U.S. 612 (1954).

could well be that without more the editors' contribution would have been sufficient. But there is more—and therein lies what this reviewer feels is the major value of this work. Most editors of collections of readings provide something in the way of transitional materials before or at least at regular intervals among their selections. Professors Murphy and Pritchett have gone beyond what is too often only a cursory level of explanation or comment and have written detailed, often searching essays to introduce each of the seventeen chapters. One suspects that with a minimum of editing, these essays could well stand by themselves as contributions to the literature. The editors have supplemented each of these introductions, moreover, with well chosen bibliographies and, where necessary, with explanatory comments in preface of individual selections.

One could quarrel with particulars in this work (*e.g.*, the lack of specific reference of some of the selections to the introductory discussions, what this reviewer felt to be a too heavy reliance on the writings of Justice Frankfurter, and the like), but little would be gained. Viewed as a whole, weighed in terms of its largest implications, this book, though designed for use in university courses in public law, is deserving of a wide readership. It will serve well any who seek a reasoned understanding of our judicial system.

JAMES HERNDON\*

PSYCHOLOGY AND THE LAW. By Dwight G. McCarty. Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1960. Pp. XII, 463. \$10.00

The paper cover of McCarty's book proclaims it as "a new legal psychological approach to understanding human behavior." Certainly few lawyers or psychologists can afford to ignore such a promise. The remainder of the dust jacket - "Reveals what REALLY makes clients, witnesses, the judge and jury—even opposing attorneys—tick. Tells WHY they react as they do, and HOW you can win them over—or beat them—in every day legal encounters as well as the most complicated aspects of a trial." — tends to raise a good deal of skept-

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ticism before opening the covers of this rather large book.

If five years of graduate education and nine years of professional experience have done nothing else for this reviewer, they have made him increasingly wary of quick and easy formulas for understanding what REALLY makes people tick. However, publishers are in the business to sell books and dust jacket statements are generally designed to attract attention and do not necessarily represent the point of view of the author. With this thought the next step was to read the author's preface. This certainly served to allay many apprehensions since the author identified himself "As an attorney long in active practice . . ." and went on to describe some of the areas to be covered; for example the ". . . McNaughten right and wrong rule in criminal responsibility, with the new impact of the Durham case, together with the legal implications of the psychiatric examination of prisoners."

The first six chapters are designed to give the reader a brief overview of the basic concepts in psychology, treating such topics as heredity and environment, motives, habits, etc. The author quotes from a wide variety of very excellent and standard works in the field of Psychology and presents a rather comprehensive survey of these concepts. At this point your reviewer began to suffer some rather serious reservations about his commitment to the editors of the Law Review. Obviously the book was written for lawyers and one very pertinent question concerned the level of knowledge of psychology possessed by the average practicing attorney. To this the reviewer must confess absolute ignorance; thus the evaluation which follows is based on two suppositions: (1) that the author who is a practicing attorney has a reasonably good idea concerning his potential readers and (2) that the author has hit his mark in his estimate concerning the amount of knowledge of psychology possessed by his readers.

With the above ideas in mind, the first six chapters can be summarized very briefly. While most of the material is not factually incorrect,<sup>1</sup> so many new concepts (presumably) are presented with a minimum of explanation that some question is raised as to how much can be learned from this broad scale, superficial approach.

The middle section of this book deals with general applica-

tion of principles to areas of interest to the attorney. Here again superficiality and oversimplification seem to be the keynote. Much of this will undoubtedly lead to erroneous conclusions concerning the ideas that were presented. In the chapter on "Psychiatric Examination of Prisoners," the author seems to take the extreme position that criminal behavior and psychotic behavior is due to defects in the "lower" part of the brain. The general approach in this chapter and the next chapter on "Disordered Personalities" has a very heavy organic and genetic orientation which certainly cannot be supported by the information currently available.

The last portion deals with the "Client, the Judge, the Jury, and Strategy in the Lawsuit." Most of the discussions centered on rather obvious common sense observations and this reviewer found little that preceptive individuals have not utilized for years.

A topic such as "Psychology and the Law" is one in which all lawyers should have some interest and knowledge. It is this reviewer's opinion that McCarty does not come close to meeting the requirements he sets forth in his preface. The book is more like a large collection of different ideas, few developed adequately and most superficial or oversimplified to the point of becoming trite.

RALPH H. KOLSTOE\*

1. One rather glaring exception occurs on page 50. In discussing I.Q. tests the author states: "In the test 100 to 120 is considered normal." Most so called I.Q. tests are constructed so that the average score will be 100, thus any "normal" range will extend as far below 100 as above. Depending on statistical characteristics, the "normal" range of scores will vary somewhat from test to test however 90-110 would be a more accurate description of a general range of "normal."

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**PRODUCTS LIABILITY.** By Louis R. Frumer and Melvin I. Friedman. New York: Matthew Bender and Co., Inc., 1960. Two Volumes: \$45.00.

Since my review of Volume I of this work Volume II has been released.<sup>1</sup>

This volume begins with allergies and the peculiar susceptibility of the individual to a product. After discussing the medi-

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1. Volume I reviewed in 37 N.D.L. Rev. 136 (1961).

cal aspects of allergic reactions there is a list of points a plaintiff should try to show in a case involving allergy or irritation allegedly caused by some commercial product. The first of these is that not only the plaintiff but others were similarly affected. This very simply points out what I would consider the central problem of an allergy or irritation resulting from the use of a product — that is the problem of the plaintiff's sensitivity to this type of product. As the authors point out, allergy liability is quite different from *MacPherson's* measurable world of defective wheels and contaminated preparations. Assume that the product is properly prepared before it is sold to the plaintiff. Yet there may be many persons whose system would react to this product. Without having knowledge of the susceptibility of some persons to a product there would appear to be no duty on the part of the manufacturer to warn prospective users. The question then becomes whether defendant sufficiently tested the product before releasing it on the market.

The proof of peculiar sensitivity of a plaintiff or a selective group of persons will not be sufficient if the courts hold that a warranty extends only in favor of "normal" persons and allergic persons are not considered normal. The majority of cases, according to the authors, hold or recognize that if a product can be used by a "normal" person without injury, there is no breach of an implied warranty of fitness or merchantability.

Inflammable substances particularly as applied to clothing are also discussed in this volume. It is pointed out that inflammable substance cases contain a large number of the duty to warn cases. Even before *MacPherson v. Buick Motor Co.*<sup>2</sup> liability was imposed for failure to warn of inflammable substances as an exception to the privity requirement. Since then liability has been sustained against both manufacturers and retailers where the injury resulted from a foreseeable use of the product — as clothing made of a dangerously inflammable fabric — both on a negligence and warranty theory.

Pleading and practice as well as discovery and demonstrative evidence as applied to products liability cases are thoroughly discussed. None of this material can be said to

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2. 217 N.Y. 382, 111 N.E. 1050 (1916).

contain anything new, but will serve as a useful check list in preparing an action.

A chapter is devoted to drugs and druggists. Of course, in the case of a druggist who in filling a prescription substitutes, or mixes the wrong dosage there is a fairly clear case of liability on the theory that the duty of care is commensurate with the superior knowledge of the druggists. However, in the sale of a patent or proprietary medicine the druggist as a general rule is not liable for negligence but may be liable on a warranty theory just as the seller of any other article.

The second half of Volume II contains an index of cases by product. This is an extremely effective short cut method of research which I have already used several times.

Products Liability appears to be extremely well researched and complete. The material is presented in an extremely usable manner and will be beneficial to the practitioner.

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