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Book Reviews

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BOOK REVIEWS

THE LAW OF CIVIL RIGHTS AND CIVIL LIBERTIES. By Edwin S. Newman.* Oceana Publications, New York, 1949. Pp. 104. \$2.00.

This is a compact and readable summary of the subjects embraced in its title. Despite its brevity, the book gives a thorough historical briefing, together with a comprehensive survey of the current statutes of the various states, and the decisions interpreting constitutional and statutory provisions.

An unusual feature is the "Civil Rights Map of America," on which North Dakota appears as one of the twelve states which have neither "civil rights" nor "segregation" legislation — as the author defines them. These, the author says, are:

"The states with fairly homogenous populations where the so-called 'minorities problem' does not exist."¹

This is a field of law wherein it is sometimes difficult to see a consistent pattern in the chain of decisions, either of the United States Supreme Court, or of the various state appellate courts of last resort.

Even a cursory review of, for instance, the habeas corpus decisions in cases involving alleged deprivation of constitutional rights, will lead one to wonder exactly what fixed standards if any, courts follow in such matters. The answer probably lies in the fact that courts do follow the change of events and of public temper, and that different sets of facts can be used as justification for the variances. The law is more human, perhaps, than attorneys and judges admit it to be.

The subject of a book such as this is inseparable from the whole panorama of past American (and of course British) history. The so-called Bill of Rights amendments were added essentially to quiet the fears of uneasy elements among the framers of the Constitution. That document did not fall full-grown from heaven, but was essentially a great and skillful compromise.

Likewise, the courts, in interpreting constitutional provisions involving rights and liberties, have had to compromise.

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¹ As pointed out in a recent article in the American Mercury Magazine, however, North Dakota is distinguished by having one of the nation's most severe penalties for miscegenation: ten years imprisonment and/or \$2,000.00 fine. N.D. Rev. Code §14-0304 (1943). See also §§14-0305 and 14-0327, N.D. Rev. Code (1943).

No right is absolute.² For example, many attorneys, after reading the celebrated *Terminiello* decision of the Supreme Court³ probably wonder, in the language of Justice Jackson's dissent, if the majority of the Court did not:

"Fix . . . its eyes on a conception of freedom of society so rigid as to tolerate no concession to society's need for public order."

Some of the rights possessed by Americans are not commonly thought about. For instance, this book mentions what it calls:

"The Right to Come and Go."

Yet, there have been attempts to interfere with citizens moving from state to state — founded upon economic pressure from overpopulated states facing an influx of population. Current migration to certain Pacific states may eventually bring about further state attempts to interfere with such movement. The right to keep and bear arms is protected by the Second Amendment. Where the increase of armed crime has alarmed the public, this right has had to give way to public safety, especially in larger communities. National registration of firearms has even been proposed at various times, meeting distinct opposition from sportsmen's groups and others.⁴

Racial segregation in the armed forces is mentioned in the book. In such an instance, no legal remedy, of course is available.⁵

In recent years, a number of states have tried by statute to provide equality of opportunity for all, regardless of race or religion, in employment, social services, and otherwise. New York State has probably gone the farthest, with its "civil rights code," although as this book points out, 17 other states have some form of "civil rights" legislation. In general, it

² "The everlasting enigma in law and life: When is far too far?" Frankfurter and Corcoran, *Petty Offenses and Trial by Jury*, 39 Harv. L. Rev. 917, 981 (1926).

³ *Terminiello v. City of Chicago*, 69 Sup. Ct. 894 (1949), noted 26 N.D. Bar Briefs 55 (1950).

⁴ It has been suggested that small-arms registration in European countries prior to World War II eventually worked to the detriment of national defense. After the German occupation of Norway in 1940, it is said the arms lists seized from local authorities were used by the Nazi army of occupation to disarm the populace and thus stifle opposition.

⁵ Segregation in the New Jersey National Guard was ended by executive order shortly after World War II. Our only neighboring state having a significant Negro population, Minnesota, no longer has National Guard racial segregation by virtue of Governor Youngdahl's order in 1949. Of the national services, apparently only the Air Force has made any concrete compliance with the post-war directive to abolish segregation.

will be noted that these are large Northern industrial states with a heterogeneous population. Unquestionably, many attorneys, sociologists, and others sincerely doubt if equality of job opportunity or otherwise, can really be enforced by legislative fiat.

Sixteen states, all Southern or quasi-Southern, enforce racial segregation in varying degrees by state law. The author states:

"In those Southern states where segregation is not required by law, it is generally required by custom and usage."

Most persons even roughly familiar with the South probably believe that "custom and usage" is the real force which backs up segregated accommodations. Probably the actual penal statutes are seldom invoked or found necessary. For this reason, enforcement of proposed federal legislation on the subject might find barriers difficult to overcome.

Discrimination, and laws enforcing or forbidding discrimination between races, are not exclusively Southern. The Pacific Coast has an Oriental "problem" and in the Southwest it is Mexican-Americans who are involved in segregation or discrimination issues. In the industrial and commercial Northeast, FEPC and similar statutes are quite largely aimed at alleged anti-Semitic tendencies.

All of these are sore spots which have involved our legislatures and our courts in attempts to remedy them.

If a graph were drawn covering the period of American history, it would probably show a rise in legislation involving civil rights and liberties after each major war. Following the Revolution came a period of tension involving both France and England with the new-born nation. The Alien and Sedition Acts were the result. Following the Civil War, three Amendments were added to the Constitution, to enforce the freedom, citizenship and franchise of the Negro. Following World War I came a rash of Federal and State legislation dealing with "radical organizations"; Socialists, Anarchists, IWW's, et cetera. During this period, so-called "Red Flag Laws" were passed in 30 states, among them North Dakota.⁶

⁶ Section 12-0708, N.D. Rev. Code (1943), was passed in 1920 and provides in part: "No red or black flag, . . . shall be carried or displayed in any parade on any public street or highway in the State of North Dakota; or . . . exhibited in any hall or public place or upon any vehicle or any building or premises or in any other manner in public within the state."

(Since a literal interpretation of this statute would embarrass road contractors, the State Highway department and others employing the universal danger signal, it is possible this statute is a proper subject for qualification or amendment at some future legislative session.)

Following World War II, legislative enactments were far more temperate and rational. Probably the conduct of some Congressional investigations give rise to more real civil rights issues than did legislation. Generally, as the book points out, such inquiries are supposed to be limited to some specific objective towards which the Congress has power to legislate. Probably, as the author implies, the most undesirable feature of some of such inquiries, to a lawyer or judge observing them, is the tendency to think in terms of achieving publicity rather than unearthing facts. These committees ostensibly conduct themselves in a judicial manner, asking the sworn testimony of witnesses, and therefore have some degree of responsibility which they owe to the public.

Although as initially stated, North Dakota courts are not nearly as plagued with civil rights-liberties issues as in other jurisdictions, there are many interesting decisions by our Supreme Court involving the rights of defendants in criminal cases. A recent one involving competency of waiver of counsel as constituting denial of due process is the case of *State v. Magrum*,⁷ which attracted considerable attention in 1949.

This book is of great interest to any attorney for off-hours reading. In the interests of brevity and, apparently to make it more palatable to laymen, no citations or footnotes are given. This decreases its value immeasurably as a work of reference.

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THE SOLDIER AND THE LAW. By Lt. Col. Morris O. Edwards and Lt. Col. Charles L. Decker. Military Service Publishing Company, Harrisburg, Pennsylvania. Fifth Edition, 1949. Pp. xvi, 365. \$2.75, \$3.50.

THE ARTICLES OF WAR ANNOTATED. By Col. Lee S. Tillotson, U. S. Army, Retired. Military Service Publishing Company, Harrisburg, Pennsylvania. Fifth Edition, 1949. Pp. xxii, 408. \$3.00.

The Soldier and the Law was written to provide a simple text on proper administration of discipline; stressing first, preventive discipline by good leadership, and second, simple,

⁷ 38 N.W.2d 358 (N.D. 1949), noted, this issue, P. 193. For an exhaustive study of the similar question of an indigent person's right to counsel, see Note, 97 U. Pa. L. Rev. 855 (1949).

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practical procedure in the administration of military justice when resort to trial becomes necessary. The co-authors represent two branches of the service, Infantry and Judge Advocate General, and both have had extensive combined experience in the fields of troop leadership and command and in the administration of military justice. Because of its authorship and content, the book is primarily for members of the armed forces, but it is also directed to those who desire a current picture of the aims and functions of military justice. This fifth edition, enhanced by illustrations and charts, is a completely rewritten text which reflects the word and spirit of the Articles of War as they were amended in 1948.

The first part of the book, entitled Trial Prevention, constitutes almost one half of the reading material, and deals with such topics as adjustment to military life, relationship of enlisted persons to each other and to superiors, troop leadership, and methods of securing discipline. This section gives advice to the enlisted man and to the officer to aid him in becoming adjusted to his position and in performing his job — but there is very little material of legal interest in this section.

A complete and detailed description of the military courts-martial system is given in the second part. General, special, and summary courts-martials are covered as to jurisdiction, appointing authority, qualifications of members, and other points. Also discussed in detail are the rules for drafting charges and specifications, the investigation of courts-martial charges, and the duties of the trial judge advocate and the defense counsel.

The remainder of the book is devoted to an explanation of the operation of boards of officers and also to a section containing a number of problems on military judicial procedure.

The Articles of War were originally enacted as a part of the National Defense Act of June 4, 1920, and constitute Chapter 36, Title 10 of the Code of Laws of the United States of America, 1940 Edition. However, various Articles have been amended from time to time and substantial changes were enacted in the Selective Service Act of 1948. *The Articles of War Annotated*, fifth edition, contains all the Articles of War as amended up to February 1, 1949. To each Article has been added an annotation by the author which facilitates interpretation of the Article by quoting material from the Manual For Courts-Martial, Digest of Opinions of The Judge Advocate

General of the Army, and the Military Laws of the United States. The book represents considerable research, is well organized, and provides a handy and complete reference to the laws which govern the Army and the Air Force of the United States.

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BOOKS RECEIVED

- Articles of War Annotated. By Lee S. Tillotson. Harrisburg, Pennsylvania: The Military Service Publishing Company, 1949. Pp. xxii, 408. \$3.00. (Review in this issue).
- Commentary on the U. S. Judicial Code. By James Wm. Moore. Albany, New York: Matthew Bender & Company, 1949. Pp. 684. \$12.00.
- Law Tactics in Jury Trials. By Francis X. Busch. Indianapolis, Indiana: Bobbs-Merrill Company, Inc., 1949. Pp. xxvii, 1145. \$17.50.
- Practical Parliamentary Procedure. By Rose Cruzan. Bloomington, Illinois: McKnight & McKnight, 1947. Pp. 202. \$2.50.
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