Vanderbilt Law Review

Volume 16
Issue 4 *Issue 4 - October 1963*

Article 13

10-1963

Book Reviews

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BOOK REVIEWS

ENCYCLOPEDIA OF TRIAL STRATEGY AND TACTICS. By Simon N. Gazan. Englewood Cliffs, N.J.; Prentice Hall, Inc.: 1962. Three volumes. Pp. xix, 1059. $39.95.

It is refreshing to find among the myriad of volumes on trial practice published in recent years one which neither assumes that cases are tried in an emotional vacuum, where nothing but concrete facts and abstract propositions of law can influence the jury, nor deteriorates into a personal reminiscence on the part of the author of past courtroom victories with the simple instruction to the reader to go and do likewise. Obviously a widely experienced courtroom practitioner, Mr. Gazan seldom utilizes that background directly for purposes of illustration; rather he draws from it general propositions applicable to courtroom procedure, which he then buttresses where necessary with citations to reported decisions. And to this he adds another ingredient found all too seldom in books of this type—a simple, straightforward, readable style which is easily understood and easily remembered.

Mr. Gazan's book begins, as it should, with the lawyer himself. "The appearance and demeanor of trial counsel are just as much a part of the successful presentation of a case as are fact witnesses," he pertinently notes. He then proceeds to characterize the various types of trial counsel as "the stutterer" ("who cannot phrase a simple question without a string of er's and ah's"), "the stargazer" ("who has no preconceived idea of what he wants to develop from the witness"), "the eruditear" ("who never uses a one syllable word where a four syllable word will do"), "the fumbler" ("whose file is in complete disarray"), "the chronic objector" ("who feels it necessary to object to everything except the witness' name and address"), "the bulldog" ("who is so self-important and so superior that he neglects the little civilities that are the hallmark of a gentleman"), and "the trickster" ("who engages in smart-aleckism and trickery"). Over against this indictment of our profession Mr. Gazan places his ideal trial counsel, who ignores stage fright, is versatile, has legal and medical knowledge always at his finger tips, and presents his case in a cool, carefully planned, and effective manner. Surely this is an ideal to strive for; but whether attainment can come from reading even the best of books or only after years of practice in the courtroom is at best problematical.

The next section of Mr. Gazan's book is devoted to the conduct of the trial itself, beginning with pleadings and extending to such matters

as planning the contest, general defense strategy, jury selection, opening and closing statements, cross-examination, and expert and opinion evidence, including the hypothetical question. The majority of the material in this section is presented from the defense lawyer's point of view, which again is unusual in this day of increasing emphasis upon the more-than-adequate award.

The balance of volume one is devoted to a consideration of various relationships which may have some bearing upon litigation (*e.g.*, master and servant, parent and child, and employer and employee, especially under FELA); to claims for death by wrongful act; and to injuries resulting from airplane accidents, the latter opening rather surprisingly with quotations from Erasmus, Darwin, and Alfred Lord Tennyson. Volume two begins more prosaically with automobile accidents (including guest statutes and whiplash injuries) and proceeds to a general discussion of negligence and contributory negligence and joint and several tort feasors. The author then turns to various types of liability, such as malpractice, products and occupier's liability, invasions of the right of privacy, maritime torts, the legal responsibility of municipalities, and the Federal Tort Claims Act. Next, two sections are devoted to the legal principles of *res gestae* and *res ipsa loquitur* and four to such consequences of physical injuries as disfigurement, aggravation of existing conditions, fear and fright, and traumatic neurosis. All of this appears rather haphazard and is not enhanced by the author's habit of reprinting in full, whenever it strikes his fancy, his favorite law review articles and speeches on these subjects, even though largely out of context and serving no real purpose except to fill out the text to volume length. It is therefore with something of a sense of relief that the reader is returned to the courtroom at the end of volume two with a discussion of trial evidence, which the author says is designed "for ready and practical use in finding authority for the reception or exclusion of testimony to be offered on the trial" and "to arm counsel with a ready-reference collection of practical cases on trial evidence," functions which to a large extent it succeeds in fulfilling.

The third and final volume, after discussing the use of maps, photographs, and blackboards in the trial, the effect of liability insurance, and the principles of contribution and indemnity, takes up a number of special types of litigation, such as disputes involving aliens; copyright, plagiarism, and unfair competition cases; annulment, divorce, and separation proceedings; and obscenity hearings. The author then considers the subject of settlements and releases and the requirement of notice in certain types of cases. Forty-five pages are devoted to discovery procedures under the Federal Rules of Civil Procedure. The

next section, which is headed "Damage Verdicts," consists almost exclusively of a table giving the nature of the injuries and the amount of the award in 136 reported cases. The final section deals briefly with appeals, perhaps on the assumption that anyone who has followed the precepts of the treatise that far will have little need of such information. The volume is rounded out with a glossary of medical terms, an appendix of some twenty-five forms (some of which appear to duplicate in substance those given in the section on the Federal Rules), and the usual table of cases and index.

Mr. Gazan has avoided many of the pitfalls inherent in this type of work, but one was too attractive and proved his downfall. He calls his work an "encyclopedia" and it is exactly that. It gives a little bit of information upon a great variety of subjects, some of doubtful relationship to his main theme of "trial strategy and tactics." From his excellent presentation when he confines himself to his chosen field, one might wish that his book had been less encyclopedic and more selective.

WALTER P. ARMSTRONG, JR.*

SYMPOSIUM ON LABOR RELATIONS LAW. Ralph Slovenko, ed. Baton Rouge: Claitor's Bookstore, 1961. Pp. xl, 795. $20.00.

This is a broad ranging book. Within its pages more than eighty writers consider problems that continue to trouble those involved in labor-management relations. The title of the work may be a trifle misleading. This is not a book devoted entirely to technical discussions of the statutes and decisions in the labor law field. Some of the essays are historical in nature; some enunciate a basic labor relations philosophy; some are almost reminiscences. Frankly, it is not the kind of practice book which every attorney will want close at hand for ready reference whenever faced with a labor law problem. This is not to say, however, that this is a bad book, or an uninteresting book, or an unimportant book, or even a non-practical book. It is an intensely practical book, for it helps to provide the reader with an understanding of the day-to-day problems of labor relations as seen by management and labor representatives, arbitrators, attorneys, and government officials. It contains articles which reveal starkly the prejudices, biases, and basic philosophies of the people who must together work out the problems. What could be more practical?

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The work is organized along the lines of another book by the same editor. The basic divisions are topical. Within each part there are from one to three fairly lengthy major essays. Following most of the essays are comments running ordinarily from three to seven pages. In these comments writers agree or disagree with the major essay, draw attention to some of its points, expand what the principal writer has said, or search for the long-range consequences of the major writer's suggestions. These comments often come from persons on the opposite side of the bargaining table, and the reader will find the differences in attitude between the various essays notably instructive. There is an excellent bibliography.

That this type of organization would reveal disagreement one would expect. What one might not expect, however, is the extent of the disagreement. When management is described as a "well-heeled, autocratic, single-minded, and single-purposed adversary"[1] and union leaders are accused of frequently making unrealistic promises to get elected, then calling strikes for essentially political reasons, one realizes the intensity of distrust that continues to exist between labor and management in many areas. One cannot, of course, expect all to be good fellowship in labor relations this year, next year, or ever. It is undeniably true that the interests of the two do not always coincide, that personality clashes, wild charges and countercharges, strikes, lockouts, and the other attendant crises of labor relations will continue to dog us. But it is disappointing to have to agree with NLRB member Boyd Leedom that:

> the haze that hovers over the summit of our horizon is deep purple. Union leaders who have won for their members the great benefits they enjoy, through the strike and aggressive attacks on employers who either assumed or were given the roles of entrenched enemies, now naturally look backward to old methods and, looking back, may not, because of their sense of victory, get the full view ahead. Similarly some industrial leaders, reared in the tradition of fighting unions and perhaps defeating them and loving it, who even two years ago showed signs of real cooperation, now appear to many to have fallen back into the old rut, as if unionism could and should be eliminated from the American scene. And who can change the heart of man? Unfortunately, not Congress. This is the core of our problem.[2]

Why must the prospect seem dim? The reasons are many. There is inertia: Why bother with new ideas and new techniques when strikes and lockouts have "worked" in the past? There is economics: When wages and prices spiral, can one group afford not to take the strongest steps available to try to stay on top? There is politics: Are not both stockholders and union members likely to be distracted from un-

1. SYMPOSIUM ON LABOR RELATIONS LAW 446 (Slovenko ed. 1961).
2. *Id.* at 698.

pleasant realities when the other side is decried as the cause of all the trouble? And, to some extent, at least, there is fear: What can be done about automation and its stepchild feather-bedding without wrecking the company, the workers, and, in the final analysis, the national economy?

The remedy? It is patently obvious that there can be no one remedy. The convictions, the desires, the ideals of neither management nor labor can be changed overnight. The same is true of the anger, mistrust, and unreasoned biases of each group; quite possibly they cannot be altered because the members of neither group feel they are angry, mistrustful, or biased—they are instead righteously indignant, alert for the treachery of the other, and devoted to the representation of their members or stockholders. Like it or not, this is human nature at work and, as Leedom has said, Congress cannot change the heart of man. Therefore, we must treat the symptoms, hoping eventually that the disease will begin to wither.

The writers in this symposium propose a number of treatments for the symptoms of industrial labor malaise. There are suggestions about strike legislation, grievance procedures, arbitration, social legislation, collective bargaining, and many of the other processes and problems of industrial relations. Some struck the reviewer as logical and desirable, some did not; these impressions were doubtless the result of his own angers, mistrust, and unreasoned biases. All of them reveal careful, serious, sincere thought. And, who knows, some might even do some good. We should be glad this *Symposium* has given them a chance to be heard.

ROBERT N. COVINGTON*

OPEN OCCUPANCY VS. FORCED HOUSING UNDER THE FOURTEENTH AMENDMENT: A SYMPOSIUM ON ANTI-DISCRIMINATION LEGISLATION, FREEDOM OF CHOICE AND PROPERTY RIGHTS IN HOUSING. Alfred Avins, General Editor. New York: The Bookmailer, Inc., 1963. Pp. 316. $6.00.

A symposium is often only a collection of irrelevant and disorganized articles on a general subject. In order to obtain the requisite variation in point of view, the editor is frequently compelled to compromise the character of the writing. The maintenance of even mini-

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mal standards of quality is sometimes sacrificed to preserve the coveted diversity of opinion and subject matter. Therefore, when a symposium appears which combines a uniformly high standard of writing with a variety of authors, the result, quite properly, reflects high credit upon its editor.

The symposium on housing now under review attains this objective. Professor Alfred Avins, an experienced law review writer, has published a conscientious, frank symposium, which succeeds in maintaining a professional standard of quality throughout each article. It is evident that Professor Avins has exercised a firm editorial hand to assure that each of the articles adheres to the most exacting law review standards. Indeed, the symposium was originally intended for publication as an issue of the *Chicago-Kent Law Review*. However, as appears in the introduction, the board of trustees of that school decided against publishing it.

This symposium is a deliberate and necessary approach to an increasingly vital problem of modern jurisprudence. Professor Avins' position on this problem has been set out in no uncertain terms in a prior article.[1] His article in this symposium reiterates his stand with increased vigor, better organization, and more footnote references. He does not rely alone on case authorities, but refers to newspaper articles, among other lay sources, to combine the law and the facts in a completed documentation for his position.

Professor Avins lays particular stress upon the prevailing questions of under which circumstances an individual should be limited in his freedom of choice and of the attendant restraint to be imposed upon the exercise of his dominion over his private life and personal property. He argues that certain legislative abuses often result in a denial of freedom of choice of tenants.[2]

It is also Professor Avins' contention that anti-discrimination legislation in housing is unnecessary and unconstitutional. While he is a conservative on the question of property rights, he is not disposed toward an espousal of nineteenth century slogans without an awareness of

1. Avins, *Anti-Discrimination Legislation as an Infringement on Freedom of Choice*, 6 N.Y.L.F. 13 (1960).

2. See New York State Comm'n Against Diserimination v. Pelham Hall Apartments, 10 Misc. 2d 346, 171 N.Y.S.2d 558 (1958), where three tenants sought to intervene in a proceeding to enforce an anti-discrimination order with respect to leasing apartments in their apartment dwelling. The court denied their application to intervene on the ground that they were not "aggrieved" by the order since their property or other legal rights were not affected.

The only more recent case in which this issue was raised, Massachusetts Comm'n Against Discrimination v. Colangelo, 182 N.E.2d 595 (Mass. 1962), avoids the issue by reasoning that the landlord does not have the standing to raise this argument on behalf of his tenants. The issue, therefore, still remains unresolved as far as the courts are concerned.

their social implications. He devotes considerable space to Negro housing needs, the prime reason asserted for the enactment of anti-discrimination legislation, and, in so doing, analyzes a mass of data on this problem. His conclusion follows: "The short of the matter is that anti-discrimination legislation in practice is a grave infringement on property rights, subject in administration to incurable abuses, and, most important, helps only the Negroes who do not need it."[3]

Regardless of any reservation concerning Professor Avins' conclusions, his article may still be recommended. It would appear that a necessary antidote to the current miasma of exhortations upon this delicate subject is a treatise which combines an acute dissection of current problems without equivocating upon the author's conclusions. Professor Avins has accomplished this purpose.

The other articles are also valuable. They cover a variety of problems, including the history of the fourteenth amendment, racially restrictive covenants, the President's executive order barring discrimination in federally-assisted housing, social science issues, and the Negro housing market. This book is enthusiastically recommended to both lawyers and lay people involved in the variant problems of anti-discrimination legislation in housing. It is an intelligent appreciation of this increasingly complex and immediate problem of urban society.

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3. OPEN OCCUPANCY VS. FORCED HOUSING UNDER THE FOURTEENTH AMENDMENT: A SYMPOSIUM ON ANTI-DISCRIMINATION LEGISLATION, FREEDOM OF CHOICE AND PROPERTY RIGHTS IN HOUSING 26 (Avins ed. 1963).

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