Montana Law Review

Volume 18
Issue 2 *Spring 1957*

Article 15

January 1957

Books Reviewed

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BOOKS REVIEWED

Public Utility Regulatory Law. By EVERETT C. MCKEAGE. New York, N. Y.: Vantage Press, 1956. Pp. 107. $5.00.

This is a collection of seven articles on public utility regulatory law by Mr. McKeage. Some of these articles were delivered by the author before meetings of regulatory commisisoners in annual conventions assembled in various parts of the United States or prepared for publication in professional journals devoted to public utility interests. Like all such compilations the book should have been edited to eliminate redundancy.

These comments will not attempt to summarize each separate article. Rather, the book will be considered as a whole. The literature in this field of public utility law is surprisingly scarce. Few books have undertaken to describe, analyze and evaluate in a comparative manner this important subject. Professional propagandists screech criticisms. But it remained for this little book to emphasize the public trust which regulatory bodies and courts should exercise over public utilities in their quasi-sovereign and monopolistic capacities.

Mr. McKeage's experiences and qualifications in public utility regulatory proceedings as Chief Counsel of the California Public Utilities Commission for more than twelve years, his background of seventeen years as a general practitioner, his service on the bench as a judge of the Superior Court of California, coupled with his work as Chief Hearing Commissioner of the Federal Office of Administrative Hearing during World War II, all merge into a wealth of know-how which projects him as one of America's outstanding experts in a specialized field of law. But a reading of Mr. McKeage's book proves that he is an exception to Montana's former U. S. District Judge Bourquin's taunting comparison between a lawyer-expert and a general practitioner: "The expert claims to know a lot about nothing, while the general practitioner actually knows a little about everything."

Mr. McKeage need not confess that he is an unreconstructed rebel and a passionate believer in the Jeffersonian philosophy of State Right in the field of public utility regulatory law. His book is a shibboleth to that viewpoint. As an employee of the California Commission it is only human that he favors state over federal regulation. The correctness of his comprehensive statements to the effect that the Supreme Court of the United States long has recognized that the states are competent to regulate matters of interstate commerce of a local nature in the absence of federal occupation of that field, admits no argument, provided the state does not discriminate against such commerce. But Mr. McKeage's parenthetical explanations or interpretations of the decisions of the Supreme Court of the United States pertaining to state regulatory authority may appear to be prejudicial and unsound to those who favor federal rather than state regulation, such as air carriers who are engaged in intra- and interstate commerce. When he brands federal administrators with that unpopular term "bureaucrats," Mr. McKeage seems to forget that he is acting in that capacity for the State of California.

Aside from these comments, Mr. McKeage's book covers to advantage a neglected field of regulatory law that is not familiar to numerous members

of the bar. Government solicitors for administrative agencies, state attorneys for regulatory bodies, counsel for public utilities and consumer organizations, as well as law students, will find this book a handy reference. It will stimulate the interests of the lay reader who is seeking a knowledge of pubilc utility procedures. Someone has referred to this book as a "new basic primer" with the suggestion that it should be required reading for the regulator and the regulated. The primer reference certainly is not to a "first-book." Rather, it is complimentary of Mr. McKeage's clear and concise simplification of a complex and sometimes baffling subject matter. His treatment of the "Due Process Concept Under Administrative Law" is masterful. It should do much to educate critics of the administrative process, in particular those lawyers who are not schooled in its philosophies and functions for the public interests.

Mr. McKeage's concepts about ascertaining and determining the value of public utility property for rate making purposes should be adopted by our courts and regulatory bodies. They should indulge his conclusion that "no basic formula can be devised that will produce exact results and will exclude all uncertainty or exercise of judgment in arriving at valuation." In other words, Mr. McKeage tells us, when it comes to guessing the value of public utility property, there is no substitute for good judgment or "horse-sense" when considering and passing on the complete facts.

This practical approach to the problems discussed by Mr. McKeage is the keynote of his book. Its value to the expert, lay or legal, is in its wealth of appropriate legal citations and brief legal conclusions or statements. Its clearness of expression should simplify many of the complex legal problems and judicial pronouncements in the field of administrative law that are now severely criticized by lawyers who do not understand the needs and purposes of administrative bodies with investigative, executive and judicial powers.

While this little book may not be destined to become a classic in the field of public utility regulatory law, its comprehensiveness, clearness and interest make it worth while reading.

Report of Committee of New York City Bar Association on the Federal Loyalty Security Program. New York, N.Y.: Dodd, Mead & Co. 1956. $5.00.

A committee of nine lawyers representing the New York City Bar Association has compiled a mass of statistics, enactments, regulations and procedures which convinces this writer, after tedious reading, that under the name of democracy there has grown up in our country a system of espionage, unaccountable to the people or Congress and using methods condemned by the common and civil law, which, for the number of spies and persons specially watched, has not been equaled by any other nation now or in the past.

The fear and bias of the Committee is revealed by the positive statement of a debatable point: "The unremitting Communist attack on the internal security of other nations is so well recognized that it needs no demonstration

here." In spite of such bias the Committee has tried to appear honest and point out the extent and tyrannical un-American methods of our spy system as it applies to the 2,300,000 civilian servants of the government, the 3,000,000 servants of contractors with the United States, the 80,000 servants of the Atomic Energy Commission and the 800,000 seamen and longshoremen, totaling in all 6,180,000 persons. Such a scope is narrow. It tells nothing of these millions of Americans that are spied upon, dossiers made and filed by the F.B.I. and the C.I.A., and complaints made by undisclosed informers that are held sufficient to ruin workers' good names, casting them out of their present positions and blacklisting them from other jobs.

The report is sadly silent about the fear of deportation, authorized by the McCarran-Walter Act, spread among the fourteen million foreign born living here. It mentions none of the 110 persons convicted for political opinions under the Smith Act, all of whom should be pardoned according to a petition by many intellectuals headed by Mrs. Eleanor Roosevelt. It says nothing about surveillance by officialdom in income matters, or of F.B.I. dossiers on labor leaders, or of the three million military personnel.

The Committee has discovered that "to ignore or even to slight liberty would be to destroy our character as a people and as a nation."

The Committee smugly announces that it conferred with a large list of wise men. This list is comprised mostly of United States attorneys, F.B.I. officials, generals, admirals, C.I.A. officials and members of the Subversive Activities Control Boards. They apparently did not confer with any lawyer who has voluntarily defended Smith Act victims—nor with Mrs. Roosevelt, nor with any liberal senator or congressman.

One sees that the clever motive in pointing out defects in, and proposing amendments to the espionage process is to save the system. But any student of the Bill of Rights, after reading the report, will conclude that even in this timid report so many tyrannical defects are pointed out that the entire system should be wiped out; that the Loyalty Order should be revoked; and that the Smith Act, the McCarran Act and the Taft-Hartley Act should all be repealed.

The defects of the system announced by the Committee are (p. 6):

> (1) There is a lack of coordination and supervision of the various personnel security programs.
>
> (2) The scope of the personnel security programs is too broad in that positions are covered which have no substantial relationship to national security.
>
> (3) The standards and criteria do not sufficiently recognize the variety of elements to be considered, including the positive contribution which any employee may make to national security, and they do not readily permit a common sense judgment on the whole record.
>
> (4) The security procedures fail in various ways to protect as they could the interests of the government and of employees.

Some of the procedural failures are the following:

"There is no review board under the Federal Employees Program and the *final* determination is lodged in the heads of the seventy-odd separate

agencies." (p. 111). "Public Law 733 is interpreted as requiring the removal from his position of any employee against whom charges have been filed." (p. 105). The employee's pay is suspended until final decision and the average time of pendency "is probably around five months." The defendant may have counsel for his defense, but he must pay such counsel himself even if he wins. In this system the complainants are usually anonymous. The charged employee is not permitted to learn the name of the under-cover agent making the charge. No witnesses appear against the defendant to be cross-examined, and the defendant cannot subpoena witnesses in his behalf. When the hearing is ended, the prosecuting attorney goes into secret consultation with the three board members, all of whom are government officers. It is as if, when a jury retires to consider its verdict, the prosecuting attorney were permitted to enter the jury room and harangue the jurors. Even after an employee is cleared by one board he may be recharged before other boards any number of times.

Scientists examined by the Committee report that since the Soviet Union now has the atom bomb and the hydrogen bomb, failure to spread knowledge of processes among our own scientists retards progress and promotes insecurity rather than security.

The report recommends that the Attorney General's list of subversive organizations be abolished unless revised in many respects, and such revision appears to this writer to be impossible. The Court of Appeals for the Ninth Circuit said, in *Parker v. Lester,* 227 F.2d 703, 721 (9th Cir. 1955):

> Furthermore, in considering the public interest in the preservation of a system under which unidentified informers are encouraged to make unchallengeable statements about their neighbors, it is not amiss to bear in mind whether or not we must look forward to a day when substantially everyone must contemplate the possibility that his neighbors are being encouraged to make reports to the F.B.I. about what he says, what he reads, and what meetings he attends.

Careful reading of this book convinces the writer that what the court predicted is already here.

No wonder that, as the report says, "495,724 persons resigned from the federal service in the 25 months between May 28, 1953, and June 30, 1955." Yet this report says that such a system should not be abandoned, but patched up and retained. A careful reading of it will convince most lawyers, however, that this entire system should be abolished.

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Say It Safely: Legal Limits in Journalism and Broadcasting. By PAUL P. ASHLEY. Seattle, Washington: University of Washington Press 1956. Pp. 112. $2.25

What should be done when Senator Snarl departs from his script and unloads a withering aside about his opponent's ancestry upon the television audience?

This and similar ulcer-provoking situations are dealt with in Mr. Ashley's concise work on the perils of publishing and broadcasting. The ac-

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cent is on the practical and the author discusses the law of libel in terms of the everyday problems shouldered by editors, reporters, photographers and newscasters.

This is not a treatise for lawyers. No cases are cited. No fine hairs are split. The book is intended as a working tool for the newspaper trade and radio-TV personnel, a handy guide to the hazards of libel. The language is clear and simple; there are numerous illustrations of the libel potential lurking in reports of court proceedings, police work, politics and similar matters; there also is a convenient list of terms which are libelous per se in given situations.

Mr. Ashley, counsel for several newspapers and a broadcasting company, is realistic. He realizes there is some element of libel in most controversial stories and editors must often take "calculated risks." His book does not attempt to frighten publishers and broadcasters with the bogeyman of libel suits—it demonstrates how to recognize the "danger signals" of libel and how to avoid, or at least minimize, the risk of litigation. It is a dose of preventive medicine and could well be entitled, "When the Editor Should Telephone His Lawyer."

The author manages to touch all the important bases. The chief elements of libel, such as privilege, truth and consent, are discussed and there are chapters on retractions, photographs, political broadcasts and radio-television, as well as contempt of court and the right of privacy.

Lawyers with newspaper or radio clients can profit from the book. It could be recommended to the clients for reading, or the author's suggestions for avoiding libel, analyzed under local statutes and decisions, could be passed on to such clients. In either event, the lawyer will be getting more phone calls.

While in keeping with the writer's goal of conciseness, the limited treatment given to the right of privacy will be regretted by many readers. This relatively new doctrine deserves a fuller discussion, especially with the increased attention being focused upon the invasion of private lives by the current rash of scandal and exposé magazines. This retailing of gossip has convinced much of the public that such a thing as the right to privacy is entirely unknown to the press. Perhaps the time is ripe for another book, with emphasis not on how to say it safely, but rather on how to say it decently.

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