BOOK REVIEWS

DOCTORS, LAWYERS, AND THE COURTS. By *James R. Richardson.*† Cincinnati: The W. H. Anderson Company, 1965. Pp. xiv, 606. $17.50.

As a practical matter there is great need for this book because of the distressing paucity of single-volume publications in the law-medicine field today. Professor Richardson has provided a handy digest which is excellently indexed and sufficiently scholarly to be a valuable research tool; but there is an added measure of worth to his book. Because it is complete in a single volume—a commendation in itself—it is feasible to read this book as a whole, and this attribute of "readability"—in contradistinction to what I might call "refer-ability"—is important.

Curran's *Law and Medicine* (1960)[1] began the march of contemporary medico-legal materials intended for consumption primarily by the legal profession. Curran's work is directed to the law student in the classroom; Richardson, on the other hand, has aimed his book at the practitioner who seeks a basic discussion of problems involving both law and medicine. While this division is, of course, not absolute, it has significance because members of the medical profession may be regarded as more than merely collateral beneficiaries of Professor Richardson's efforts.[2]

Perhaps this is the author's intention, for his organizational scheme and expository technique seem particularly suited to the development of a sensitivity to the legal problems arising out of the various activities in which a member of the medical profession may be engaged. In Part I of the book, entitled "Medico-Legal Relationships," Richardson examines with great insight the many and varied instances in which the law in one way or another impinges upon the practice of medicine.[3] He provides in simple terms in-depth analyses of specific cases, the crucial elements of which are present in situations that medical men may confront daily.

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[1] CURRAN, LAW AND MEDICINE, pp. xxvii, 829 (1960).

[2] See RICHARDSON, DOCTORS, LAWYERS, AND THE COURTS ch. 1 (1965).

[3] See Dawidoff, *The Malpractice of Psychiatrists,* 1966 DUKE L.J. 696, 714-16.

A unique chapter in the first Part of the volume is devoted to the police-physician relationship.[4] As police activity looms larger and larger in our over-urbanized technological society, greater contact between policeman and doctor is inevitable. This contact was further stimulated by the Supreme Court in the recent *Schmerber v. California*[5] decision, in which the defendant's conviction for driving while under the influence of alcohol was based in part upon a scientific analysis of blood extracted by a hospital physician at the request of the police over the accused's objections. In upholding the constitutionality of the conviction, the Court noted three medico-legal aspects of blood-test evidence: the physiological aspect of consumed alcohol—namely, the fact that the percentage of alcohol in the blood quickly diminished after drinking stops—which led the Court to conclude that the officer might reasonably request the doctor to procure a blood sample to prevent the threatened "destruction of evidence";[6] the method utilized in obtaining the sample—its everyday occurrence as well as the slight amount of blood required and the minimal "prick, trauma, or pain" involved;[7] and the competence of the medical practitioner, which eliminated "an unjustified element of personal risk of infection and pain" that might result if the test were administered by unqualified personnel.[8]

These factors catapult physicians and hospitals into the process of criminal justice. Constitutional approval of blood tests for determining the degree of intoxication has widespread implications for the police-physician relationship in a nation in which over one-third of the 5 million annual arrests involve consumption of alcohol.[9] For example, the possibility that physicians and hospitals may be held civilly liable to a protesting individual may require the enactment of immunity legislation. Doctors and hospital administrators are entitled to know where they stand, and Richardson's book derives a large measure of its worth from its treatment of such crucial questions.

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[4] RICHARDSON, *op. cit. supra* note 2, ch. 5.

[5] 384 U.S. 757 (1966).

[6] *Id.* at 770.

[7] *Id.* at 771.

[8] *Id.* at 771-72.

[9] UNIFORM CRIME REPORTS FOR THE UNITED STATES 114 (1965); Total arrests: 5,031,393. Drunkenness: 1,535,040. Driving under the influence: 241,511. If one adds disorderly conduct—571,122, and vagrancy—120,416—both of which are heavily weighted with intoxicated arrestees, nearly fifty per cent of all arrests involve individuals under the influence of alcohol.

To be contrasted with the above is Part II of the book—entitled "Methods and Elements of Medical Proof; Damages"—which deals with those situations in which the doctor may find himself thrust into the alien environment of the courtroom. Here there is a shift in technique. Richardson sets up a legal problem as it would arise in the course of a trial and proceeds to a discussion of the doctor's role in its resolution.

A crucial problem in this area is that of the expert medical witness. Here the author expresses strong opinions in support of the impartial medical expert concept.[10] Conflicting medical testimony is indeed a severe problem; but to this reviewer the inadequacy of knowledge in a surprisingly large segment of medical science presents the danger that what is really unanswerable scientifically will be answered dogmatically by the impartial expert rather than compromised by the lay jury. Middle-age maturity leads me to question the adjective "impartial." Schools of thought, medical experience, social and cultural background all dilute our reasoning, and impartiality may well be a dream or a wish, not substance or reality. As medical knowledge expands, larger areas of certainty will develop. Meanwhile, I would leave to the lay jury the resolution of apparently unsolvable issues, for in my opinion their decisions will hew closer to that absolute justice we strive to achieve.[11] To my mind, courts are not so much in need of *impartial* medical experts as they are in need of the *best* medical experts.

In any event, until the issue of expert medical testimony is resolved, Professor Richardson's suggestions for improving attorney-doctor relationships[12] and his support of the National Interprofessional Code for Physicians and Attorneys[13] offer giant steps toward fulfilling this need for the best medical witnesses. His highly effective writing on the mutual as well as the divergent objectives of the legal and medical professions, on the implications of malpractice suits to professional understanding and cooperation, and on the procedure followed when a medical expert is to testify will strengthen

[10] RICHARDSON, *op. cit. supra* note 2, at 103-05.

[11] See Schroeder, *The Cardiac: Industry's Medicolegal Problem* in 29 POSTGRADUATE MEDICINE A-40, A-48 (1960), wherein medical science is revealed to be in sharp conflict on such vital medico-legal issues as the causal relationship between stress and strain and the myocardial infarction and whether permanent disability results from myocardial infarction.

[12] RICHARDSON, *op. cit. supra* note 3, ch. 2.

[13] *Id.* at ix-xi.

the probability that medical practitioners who study this volume will testify not only more responsibly but more effectively as well.

As important as the book may be as a legal primer for its doctor readers and as useful as it may be as a tool of legal research, I submit that it has even greater value as a legal primer for lawyers. Medical science is creating new legal issues faster than they can be resolved; and while this may or may not be inevitable, there is reason to believe that technological advancement is proceeding at such a rapid rate that the principles upon which today's lawyers rely will soon be more than inadequate—they will become irrelevant. There is developing a paradox—although as yet it has neither crystallized nor completely polarized—regarding an accused's right to remain silent in the interrogating room[14] and his objections to the extraction of his blood at a hospital.[15] The continuing scientific triumph over illness and disease will create legal problems of overpopulation and birth control that are virtually incomprehensible today. Who among our citizenry should be entitled to benefit from a perfected science of human body transplants and artificial organs that will extend ever farther our longevity on this planet?

Lawyers traditionally have been responsible for keeping the legal machinery in working order to meet the changing needs of society. It is certain that these needs are changing, that new problems will continue to arise and that they will eventually be solved. As a colleague has observed:

> Lawyers still fly backwards and seek to answer today's problems with the solutions of yesteryear. But in fact the very existence of a problem means that the answers of yesteryear are suspect or in need of reexamination. The legal profession has no institutionalized method of self-analysis, which would enable it to determine whether it is adequately meeting the tasks presented by society. Chaos lies all about us: delay in the courts, politicization of the administrative process, breakdown of respect for law, rise in crime, to name but a few examples. The old order is changing and lawyers seem fated to be spectators rather than participants.[16]

But if, on the other hand, it is true that

> the older conception that the law was an almost changeless set of rules for the student to learn by rote has been replaced by the idea

[14] Miranda v. Arizona, 384 U.S. 436 (1966).
[15] Schmerber v. California, 384 U.S. 757 (1966).
[16] Miller, Book Review, 1966 DUKE L.J. 626 (1966).

> that the law is a natural growth of human society and changes to answer the varying conditions and tempers of the culture that sustains it,[17]

lawyers and law students who read Professor Richardson's book may expect to find their minds quickened to the realization that the law-medicine relationship is more than a courtroom experience. It is becoming an experience of societal import—of life itself.

OLIVER SCHROEDER, JR.*

MORALITY AND THE LAW. By *Samuel Enoch Stumpf*.† Nashville: Vanderbilt University Press, 1966. Pp. 247. $5.00.

This is a disappointing book. Its main theme is that although law and morality are not identical, they are nonetheless so interconnected that the law cannot be considered in isolation from morality. The author examines the relationship between law and morality in the decisions of the United States Supreme Court, in the Soviet concept of law, in the positivist theory of law, and in international law. He discusses Hobbes' notion of natural law and concludes with some general observations about the moral and legal orders. Professor Stumpf points out the obvious—that much of the law is not morally neutral and that moral considerations are relevant in legislating and in judicial decision-making—and a great portion of the book is devoted to re-establishing this rather uncontroversial conclusion. How relevant these moral considerations are, particularly in judicial decision-making, is never made quite clear, perhaps partly because Stumpf is not a lawyer by profession. Another point which the author makes and remakes is that morality invests human beings with certain rights; but he never really specifies what these rights are. The most he says in this regard is that "the law does not invest a human being with the qualities of worth and dignity and the other values which flow from these: these values are intrinsic to human nature when viewed from the standpoint of morality . . . ,"[1]

[17] DEVANE, HIGHER EDUCATION IN TWENTIETH CENTURY AMERICA 160 (1965).

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[1] STUMPF, MORALITY AND THE LAW 238 (1966).