NEW YORK LAW SCHOOL

NYLS Law Review

Volume 6 | Issue 1 Article 9

January 1960

Book Reviews

BOOK REVIEWS

RACE RELATIONS AND AMERICAN LAW. By Jack Greenberg. New York: Columbia University Press, 1959. Pp. viii, 481. $10.00.

There is more legal and political activity in the field of race relations than in any other sector of our national life. No other area reveals with greater clarity that American Law is not a homogeneous force but a fluctuating, divergent movement. Disputes on race relations almost invariably involve questions of federal concern, but no universal settlement has as yet been possible. Any attempt to solve the problem on a nation-wide scale, stirs up the transcendent issues of (a) law diversity; (b) federal-state relations; (c) enforcement. Throughout the country, legislative and judicial views on race relations have been as far apart as the points of the compass; the issue of "civil rights" has further inflamed the controversy over States rights. Enforcement, however, is not an exclusive federal—state problem. Mr. Greenberg reminds us that everywhere, not merely in the South, anti-discrimination laws may be rendered ineffective through lax administration or evasive tactics. Human relations, he points out, cannot be regulated by law alone. Law may shape people's conduct but not their attitudes. It must be assisted by education, which speaks in two directions: to alert the majority to their responsibilities; to train the minority in the proper use of their opportunities.

It seems hardly logical to detach the law from its sociological context, and the celebrated School Segregation cases of 1954[1] are a striking example of social science thoughts blending with legal precedent. The author demonstrates how the ground for the 1954 decisions was prepared by preceding cases which, in recognition of social changes, had already undermined the "separate but equal" doctrine. He provides an acceptable answer to those critics who feel that the Segregation cases had been decided in a legal vacuum. He stresses that sociological considerations have always been part of judicial deliberations, and that common law, by its essence and origin, is tied to sociology. Likewise, the economic impact on law developments cannot be overlooked. Adverse economic conditions, like job or housing shortage, easily become a cloak for discrimination, and a means to side step antibias laws. On the other hand, segregation rules can be defeated by economic counter measures, as evidenced by bus boycotts in several cities.

Race problems are most acute in the fields of education, employment, housing, travel, entertainment, public accommodations, elections. In criminal law administration, they may occur in a multiple way: differential penal treatment; exclusion of the minority race from jury duty; failure to prosecute for offenses against non-whites. Mr. Greenberg surveys in a penetrating, meticulous and comprehensive manner the immense complex of race relations and their legal implications. He displays an imposing array of statutes, decisions, documents, commentaries, bibliographies. Well known as Assistant Counsel to the NAACP Legal Defense Fund—he appeared on the brief in the School Segregation cases—his sympathies are no secret. But he presents a dispassionate, objective, thoughtful study which sketches the conflicting trends in our law, esp. in this particular field. His book reveals that no total distinction between North and South exists; there is relaxation in Southern, restrictiveness in Northern attitudes. Whatever else this implies, it does leave hope for a final, harmonious solution. For everyone who wants to work toward it, this book is an invaluable aid; it

[1] Brown v. Board of Education of Topeka, 347 U.S. 483; 98 L.Ed. 873 (1954).

is altogether on opulent source of information and explanation of one of the nation's most vivid problems.

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THE SUPREME COURT IN A FREE SOCIETY. By Alpheus T. Mason and William M. Beaney. Englewood Cliffs, N.J.: Prentice-Hall, 1959. Pp. v. 346. $6.50.

The authors—both on the faculty at Princeton University—are well known for frequent contributions to jurisprudence and constitutional research. Their joint treatise on American Constitutional Law (2d ed.) appeared almost simultaneously with the present book, and only the year before, Mr. Mason—biographer of Brandeis and Stone—had introduced his "Supreme Court from Taft to Warren". The current, and in many ways similar, study of the Supreme Court invites both plaudit and stricture.

Some readers may be jarred by the authors' habit of labeling "holdings" as "dicta" (p. 21: "Justice Stone's dictum that the only restraint. . . . is self restraint . . ."; p. 57: "Many dicta in the Curtiss-Wright case seem to justify inherent power"; p. 60: "the Court whittled down Justice Taft's sweeping dicta"). Others will be disturbed by the numerous quotations which are presented without identification of their source. Treatment of some topics is fragmentary and unconvincing. For instance, the authors state—correctly—that in Luther v. Borden[1] and in Pacific States Telephone & Telegraph Co. v. Oregon[2] the Court refused to review a political question. Yet they may have mentioned that in United States v. Cruikshank[3] and In re Duncan[4] the Court tackles the very same issue—the republican form of government—which it evades in Luther v. Borden and Pacific States v. Oregon.

To explain the conflict in Marshall's and Taney's views on the Constitution, the authors quote Marshall's theory of "a fundamental law intended to endure", while Taney thought of it as "speaking with the same meaning and intent with which it spoke when it came from the hands of the framers" (p. 82). Does this reveal a contrast? It seems to indicate agreement on the ageless character of the Constitution. Still, the authors could have proved their point if they had cited Marshall's statement in greater length: "a . . . law intended to endure . . . *and consequently to be adapted to the various crises of human affairs*" (*McCulloch v. Maryland*).[5]

One may puzzle over the arrangement of contents, noting that the Commerce Clause is treated in chapter V and again, repetitiously, in chapter VII; seeing "due process" discussed in chapters IX, X, XI, XIII, XV. The significance of such flaws should not be overrated yet they seem symptomatic for the book's real weakness: a lack of direction. The reader who is interested in history and performance of the Supreme Court, will find a plethora of information but little guidance; recurrent references to historical sources, esp. the Federalist papers, but little perspective on modern developments. Their is no dearth of case citations in the book but their meaning and message is buried under the weight of their numbers.

It does not seem too helpful either that quite often concurring and dissenting opinions are substituted for majority views. It would, however, be unfair and un-

[1] 7 How 1; 12 L.Ed. 581 (1849).
[2] 223 U.S. 118; 56 L.Ed. 377 (1912).
[3] 92 U.S. 542; 23 L.Ed. 588 (1875).
[4] 139 U.S. 449; 11 S. Ct. 573; 35 L.Ed. 219 (1891).
[5] Wheat 316; 413; 4 L.Ed. 579; 603 (1819).

realistic to dismiss the book as negligible; there is a brighter side to its defects. For readers who do not seek ready made opinions, but massive information, plenty of comfort is provided. The book accumulates a great variety of decisions, writings and documents on federalism, states rights, civil liberties, taxing and spending powers, constitutional amendments, and on the delicate position of the Supreme Court in the government hierarchy. The question, whether the Court exercises "judicial will", whether it is bound by the Constitution or identified with it, is ever present and causes dilemma and challenge. The history of the Supreme Court has alternated between "strong" and weak" Courts, just as the executive branch has known strong and weak Presidents, yet, unlike the Presidency, the Supreme Court is molded not by one but by nine personalities. Here is one of the meritorious features of the book: We are reminded that Supreme Court Judges are not figurines but living individuals, awake to the sounds and sights of their times. In a legal system which is dominated by the "doctrine", the personality factor becomes easily overlooked. Still, we all learned at some stage of our education that the real law is not synonymous with the text of a decision, that it lives in the minds of the judges. This book helps us remember it.

Another point in its favor is its writing style. The narrative, although bristling with quotes, manages to flow smoothly and offers easy reading. The book is not for those who look for quick summation and systematic presentation of issues, but people who like browsing through a vast store house of information, will become its friends.

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THE EAVESDROPPERS. By Samuel Dash, Robert E. Knowlton and Richard F. Schwartz. Rutgers University Press, New Jersey, 1959, pp. 848. $6.50.

The book is not limited to wiretapping but covers all the techniques of surreptitious fact finding and their impact on individual privacy. The material is arranged in three parts: (1) The Practice, (2) The Tools, and (3) The Law.

Part One: "The Practice," is the largest portion. It is written by Samuel Dash, a former prosecuting attorney, who directed a nationwide, factfinding study of wiretapping practices, laws, devices and techniques, under the sponsorship of the Pennsylvania Bar Association Endowment and a grant from the Fund for the Republic. Part Two: "The Tools," is by Richard F. Schwartz, an engineer who was in charge of the technical aspects of the project. Part Three: "The Law," is by Professor Robert E. Knowlton, of the Law School of Rutgers University.

Whether the authors were restricted, or voluntarily refrained from taking sides or setting forth their own views and conclusions is not clear. Whatever the reason, the result is that the book is a compilation of data arranged according to the jurisdictions studied and reads more like an interim report to the committee. The material is often repetitious and its impact is diffused.

The overall impression left with this reader was that, irrespective of whether wiretapping is legal or illegal or of doubtful legality, the police, prosecuting officials and private detectives indulge extensively in the practice in *all* jurisdictions, although they do not always admit it. Furthermore, resort to electronic "eavesdropping" by police is widespread not only in connection with the discovery and/or prosecution of heinous crimes but, more frequently, with respect to prostitution and gambling.

The use of "do it yourself" wire tap kits by policemen, it would appear, furnish a

supplemental income to many an underpaid police officer. What is more, wiretapping in and out of the police departments is used to exact "protection" money for permitting the *continuance* of telephone service, as often as to expose and prevent its use by gamblers and madames. The attitude of the police reflects the attitude of the public generally. In other words, where the public looks upon gambling and prostitution as they formerly looked upon prohibition, i.e., as a social problem rather than a criminal activity, the policeman who wiretaps feels little compunction in using his equipment to get a share of the "take" from gamblers and madames. He is, however, likely to draw the line at co-operating with narcotic peddlers or other criminals.

Whether any wiretapping is "legal" is doubtful in view of the Federal Communications Act, Sec. 605, even if done under order of a state court. Nor does the procurement of a court order make any real difference.

Applications for such orders are made to friendly judges. They are often not made until *after* wiretapping has already been done and produced incriminating evidence. Orders have been signed in blank by judges and filled in later by the prosecutor. Applications have also been made on the basis of cases which have already been closed.

It is interesting to note that one reason why prosecutors object to the requirement of court orders is the likelihood of a leak from the judge's chambers. One incident is related which furnishes a sad commentary upon the relationship which sometimes exists between politicians and the underworld which, in turn, affect the judiciary. It seems that an official who submitted an order to a judge to permit a wiretap was, at the same time, wiretapping the judge's own telephone and the judge's secretary was overheard notifying the person mentioned in the order that it was being submitted.

As has been said, the authors offer no conclusions. To this reader it would appear that the situation is such that every telephone user should *assume* that he is being overheard. To one who has used a party-line telephone, this does not appear to be too terrifying. The use of other diabolical electronic means which can and do invade the privacy of man and wife, lawyer and client, man and man (not to mention man and woman), presents a more obnoxious problem.

It seems ironic that in this modern world those who have cast off the restraining influence arising from the fear that there is One who sees and hears our most secret words and deeds, must now substitute the fear of a man-made electronic omnipresence.

It would seem that the practice can not be effectively stopped and therefore should be more carefully and uniformly regulated.

Further, it is time to re-evaluate the rule in some jurisdictions permitting such illegally obtained evidence to be used in our courts of law. It may be that this "dirty business" must be practiced by our law enforcing agencies in order to obtain leads. However, the fruit of lawlessness seems hardly suitable material upon which to base a solemn judgment.

The middle section "The Tools," dealing with the technical aspects of eavesdropping devices appears to this reader to be more technical than necessary for the comprehension of a layman and not technical enough for the needs of the technician.

The value of the third section, "The Law," is greatly impaired by an atrocious system of arrangement of annotations which is so difficult and time consuming to use that one soon gives up trying.

With all its shortcomings the book still makes most interesting and thought-provoking reading.

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DIARY OF A D.A. By Martin M. Frank. New York, N.Y.: Henry Holt and Co., 1960. Pp. 274. $3.95.

Martin M. Frank, Justice of the Appellate Division, Supreme Court, First Department, is the author of a new book, *Diary of a D.A.* This is a truthful and revealing work.

Few books have been written which serve as this one does, to bring the reader face to face with the realities of crime and the criminal underworld. Here you read, brilliantly narrated, the stories of typical criminal activities and the manner in which prosecutors and law enforcement agents deal with them.

Judge Frank presents a graphic line-up. You will see some crooked politicians in action and an equally crooked judge with whom Fate caught up; a fixer, a shyster lawyer, and a complete assortment of phonies on every level. You will also meet dedicated public servants, high-minded, impartial and learned judges and prosecutors, and police officials who exemplify the finest type of public service. The reader will extensively broaden such knowledge as he may possess of the governmental process and its various elements.

From the winsome opening which depicts the beginning of a young prosecutor's career to the last line in the book it will shock many a sentimentalist. The volume is a storehouse of exciting narrative and important information. For those who have the mistaken notion that police spend a great deal of their time beating innocent people who are charged with the commission of crimes into coerced and untrue confessions, the chapter entitled "The Third Degree" should have a highly stabilizing effect. The same goes for the comprehensive discussion of circumstantial evidence.

To those who are not interested in government, law enforcement or the war on crime, the chapter called "Manhunt" will bring an awakening. Erle Stanley Gardner calls it the "most fascinating crime story" he had ever read. For my part as a former prosecutor, let it be said that I have never encountered a more comprehensive portrayal of a criminal pattern than that which is contained in the chapter referred to. Furthermore, it rivals any fiction that literary skill has produced. Like the rest of the book the story told here is another exciting index to truth.

History is turned back some thirty years or more and the narration of crimes and events which come alive in these pages to haunt us with a warning of things to come, reveal the organized racketeer, gangster and hoodlum. This thought-provoking book is a lesson in how to deal with those who are subverting the morals, the character and the very concepts of our youth.

The inclination will be to read the book from cover to cover before putting it down in the early hours of the morning. But one should read it slowly and thoughtfully. The layman, eager for enlightenment, will find in these pages a wealth of knowledge. For the lawyer and the student of the law, Diary of a D.A. should be required reading.

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