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## Book Reviews

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jurisdiction of the United States. Waterways which are within the federal admiralty and maritime jurisdiction of the United States when outside the jurisdiction of a particular state are the following: (1) Arms of the seas such as Long Island Sound, Chesapeake Bay, and Puget Sound,<sup>26</sup> (2) waterways which are highways of commerce such as the Mississippi River,<sup>27</sup> and (3) canals, even when artificially made, as long as they are navigable (even when located wholly within the sovereignty of one state).<sup>28</sup>

<sup>26</sup> *The J. Duffy*, 14 F. 2d 426 (D. Conn. 1926). The offense occurred while the vessel was on Long Island Sound. See also 1 *BENEDICT, ADMIRALTY*, §42 (6th ed. 1940).

<sup>27</sup> *Rossiter v. Chester*, 1 Doug. 154 (Mich. 1845). See also 1 *BENEDICT, ADMIRALTY* §§43 & 44 (6th ed. 1940).

<sup>28</sup> *Ex parte Boyer*, 190 U.S. 629 (1884). The collision between the vessels occurred on the Illinois-Michigan canal, wholly within the Illinois River and the Mississippi River. The court held that the case was within the admiralty jurisdiction because the waterway was navigable but it expressly reserved the question

The federal courts, as indicated by the decision in *Hoopengartner v. United States*, have been extending their criminal jurisdiction over crimes committed on the Great Lakes and the waters connecting them. The decision in *Hoopengartner* signifies that the federal courts will take jurisdiction of such offenses regardless of state jurisdiction and even if a state court has already prosecuted the offender. When a crime is committed on a tributary of the Great Lakes, the federal court will have jurisdiction only if the state court does not. The problem of jurisdiction over maritime offenses is one of determining the location or the status of the vessel involved in the crime. Thus, the problem has shifted from a determination of whether any court, federal or state, will be able to try the accused to a determination of in which court the accused will be tried.

RICHARD K. JANGER

whether the jurisdiction would extend to waters wholly within a state not having commerce.

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## BOOK REVIEWS

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EVIDENCE OF GUILT—RESTRICTIONS UPON ITS DISCOVERY OR COMPULSORY DISCLOSURE. By *John M. Maguire*. Boston, Toronto: Little, Brown and Company, 1959; xi, 295 pp., \$12.50.

This book is a commentary on five important protective rules of evidence. Three of them involve constitutional violations: (1) self-incrimination, (2) involuntary confessions, and (3) unreasonable search and seizure. Two of them involve violations of statutes, rules of court, or case law: (1) wire-tapping and other communications interception; and (2) the use of confessions obtained during illegal detention between arrest and bringing before the magistrate. As its title shows, the book deals with the legal restrictions upon discovery or compulsory disclosure of evidence of guilt. The chapters are complete in themselves; but the author employs a plan of cross-reference which makes it possible to see the relations of each rule to the other rules and the extent to which they overlap. The table of contents is very detailed but unfortunately makes reference to the section number

rather than the page; the latter is also true of the footnotes. The book is remarkably free from errors in printing; at page 13 the word "indispensable" is misspelled; and at page 225 the word "noting" is misspelled.

Professor Maguire offers at page 3 a very convincing reason for writing his book: "So much and such violent popular discussion of these protective rules is occurring, and they are being put to so many tests and puzzling applications, that a technical treatise of fair comprehensiveness about them seems timely. Hence this book." The reviewer has been chiefly interested in the topics of criminal pleading and criminal practice, but has been under the impression that in many states a fourth or fifth of the cases on criminal procedure involve questions of evidence. Yet in this country, as contrasted to England, virtually no one volume treatises have previously been written on criminal evidence.

The author of this review is very much pleased that Professor Maguire has come around to the view that a separate volume on criminal evidence is desirable. Back in 1948 when I corresponded

with him he was much more reluctant. He felt that there was such an over-production of treatises on law that few get any benefit from most of them. American law has become so confusingly vast as to make attempts at encyclopaedic treatment sources of obscurity rather than illumination. He could see some use in brief, readable treatises that go to the bedrock of principle and are not sunk with a clutter of citations. But these are definitely out of fashion. We must have profuse information even if it chokes us. Professor Maguire felt that even a fractional book on criminal evidence should be written by one steeped in the whole topic of evidence. It is surely one of the greatest virtues of the volume under review that it was written by one who has given his whole career to the teaching of evidence in one of the greatest law schools. From the point of view of this reviewer, Professor Maguire has made the best possible use which a retired professor can make of his time. He has left students of evidence, criminal procedure, and constitutional law permanently in his debt.

The method of analysis is one calculated to make the reader understand the rules discussed. Each rule is illustrated by a hypothetical fact situation, followed by a series of questions. The questions are concerned with the justification for the rule, the situations in which it operates, the pressures that may be used to discourage the use of the privilege, the degree to which governmental action can restrict the application of the rule, and conduct which will prevent a claimant from asserting the privilege. There is very helpful discussion of the extent to which violations of the rule result not only in exclusion of evidence directly obtained by the forbidden conduct but also in the exclusion of evidence obtained indirectly thereby.

There is a discussion of the *McNabb-Mallory* doctrine in chapter four. The whole topic is discussed in only 12 pages. Those who have studied this subject will find little that is new. But many will agree with the author's conclusions as expressed at page 166: "Critically viewed neither side of this dispute overwhelms the other; very likely the whole intricate matter is one for detailed legislative adjustment rather than for rule-of-thumb judicial treatment. Certainly no adjustment can be truly satisfactory without preliminary systematic collection and appraisal of much information from many sources."

The cases cited by the author are for the most part very recent, many in the decade from 1950 to

1960. The reader will thus obtain a very good picture of existing law and existing trends in the law. Possibly it may be concluded that continuity in the law has not been given sufficient weight. However to discuss the earlier law would make the book unreasonably long. Legal historians might well give more attention to the topics discussed in this book.

The author has maintained a nice balance between protecting the rights of the individual defendant and protecting the right of the public to have the criminal law enforced without encountering insuperable obstacles. He states at page 241: "The purpose of this book is far less to accomplish reformatory change in the main protections legally afforded individuals and other persons against overwhelming governmental pressure in determinations of guilt than to explain the present form and effect of those safeguards. Wise reform of social restraints can occur only after clear, just, and comprehensive statement as to what they are and how they work."

The author is not among those writers on evidence who think that the individual criminal defendant is too well protected. At page 242 he concludes that "there is good cause to believe that on the whole our scheme for protecting private persons against overwhelming official power in the proof of guilt is civilized and reasonable." Many writers on criminal evidence seem more prosecution minded than writers on criminal pleading and practice. But this is surely not true of Professor Maguire.

The book exhibits a number of virtues not displayed in many modern writings on evidence. The language is as clear as the nature of the subject matter permits. The cases hold what they are cited for. When the author is uncertain about a matter, the reader is made aware that he is uncertain. The reviewer has read this book three times, and expects to turn to it often in the future.

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THE SELECTION OF OFFENDERS FOR PROBATION.

By *Max Grünhut*, in cooperation with United Nations Secretariat. United Nations Publication, New York, 1959, (Sales No.: 59.IV.4.) 66 pp. \$0.50 (or equivalent in other currencies).

This pamphlet presents valuable, up-to-date information on important aspects of probation experience in Western Europe. It should be useful

to criminologists and students who are interested in comparing and contrasting European probation with that of the United States.

The United Nations Economic and Social Council considers probation as one of the best methods of preventing recidivism, as well as of treating the offender, and urges all governments to consider its adoption as a major instrument of policy. Thus they have commissioned further research on specific aspects of probation and made this available in published form. This work is one of a number of United Nations publications devoted to probation and its ramifications. Its author, Dr. Max Grünhut, is well qualified, as he is a reader in criminology at Oxford University, England.

After an introduction on probation and sentencing method, Dr. Grünhut describes the English probation system as it operates in the criminal and juvenile courts. This is contrasted with the new probation system of West Germany which was established after World War II. Some recent developments in France and Sweden are included before the summary and conclusion which point up comparisons and contrasts in these European systems.

Dr. Grünhut shows that there are fundamental differences in legal systems, attitudes toward crime and punishment, and social situations which produce differences in the selection of offenders for probation. England, where there has been the longest experience with probation, has the most flexible system administered by practical, psychology-oriented officials, while Germany has a new probation system which maintains a more authoritarian attitude as well as more faith in expiation. The French juvenile court grew out of the suspended sentence and its probation depends upon the function of the judges of the court. Sweden has gone further than either Germany or France to give true probation similar to England, although the Swedish system is still not as flexible as the English and has certain fundamental differences.

This is an inductive study based on selected empirical material and intended as a pilot study for further research. Valuable insights and experience are given which should not only prove helpful to probation workers in other countries but also stimulate some countries of the world to initiate such a process. Simple statistics are used and tables are included. An American criminologist notices, however, the lack of systematic statistical treatment such as the Gluecks or other American

criminologists might have used. The decisions of success in probation are based upon the judgment of experts rather than statistical ratings of success or failure. This should in no way detract from the value of the book. It gives a current analysis of important aspects of English and West German probation, recent developments in French and Swedish probation, as well as interesting comparisons and contrasts. It is recommended for American criminologists who wish to familiarize themselves with probation developments outside their own country.

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ICH BEANTRAGE FREISPRUCH. Aus den Erinnerungen des Strafverteidigers. By *Prof. Dr. Erich Frey*. Hamburg: Bluechert Verlag, 1960, 492 pp.

The memoirs of one of the most famous defense lawyers of the Weimar Republic during the twenties and immediately following World War I read like a mystery thriller and compare more than favorably with our "Perry Mason" series. Dr. Frey has set out to write, as he modestly put it, "*aus den Erinnerungen*," i.e., not *Erinnerungen*. If the reader will bear in mind that the purpose of the book is to recall incidents of the past rather than to narrate the author's life, the reader will be well rewarded on these four counts: (1) The trials in which Dr. Frey "grew up," and which are among the most famous and sensational in post World War I Germany, are historical documents; they are a part of Germany's history. (2) The book tells of the sociological and criminological makeup of Germany's most difficult period prior to the event of Hitler. (3) Germany's criminal code is discussed for the lay reader with feuilletonic ease. And (4) the psychological aspects of both the defender and the defendant are gone into with minute detail by means of verbatim dialogues between them both. No important details are omitted, such as the physical appearance of the prisoner, his clothing, and his mannerisms and speech; and the psychological diagnosis of the client's personality displays rare insight.

The *Erinnerungen* (which contain almost nothing of the author's personal life; he is now a resident of Santiago, Chile, and in his late seventies) contain six chapters uneven in length, each chapter discussing from two to five famous cases. Each chapter is oriented toward a specific type of crime. Thus

the first chapter, entitled "The Urge to Kill," deals with 3 famous murder cases, one of which, that of Fritz Haarmann, is still recalled by this reviewer. The case made headlines for many months, for it is not often that a murderer kills some 200 victims all of whom were young men who were first forced into a homosexual relationship with the murderer, then killed, then dismembered, their clothing sold, and parts of their anatomy sold to local butcher stores for human consumption, because meat was scarce and expensive immediately after World War I in Germany. Some of the victims' bones were found in a river near the city of Hanover. The main cause of the difficulty in finding the murderer was the police; as an "undercover agent" for the police, the murderer was the person the least suspected by the police; he was actually "protected" by the police. This case was also one of the few in Dr. Frey's early career where he had to lay down his mandate as a public defender partially because of lack of cooperation on the part of the defendant and partially because of an aroused vox populi which demanded its "pound of flesh" by way of a death sentence.

The other chapters are entitled "Women in Moabit" ("Moabit" being the name of a famous criminal court in Berlin), "Hoodlums (*Gaumer*) in Tuxedo and Pullover," "The Wrong Path," "Physicians in the Dock" (*Aerzte auf der Anklagebank*), *Schlussplaedoyer* (Dr. Frey's epilogue), and the longest and most fascinating, *Die Steglitzer Schuelertragoedie* (or The Student Tragedy in Steglitz, a suburb of Berlin). This last named chapter dealt with a case which turned out to be of international significance, since it was used by the German poet and playwright, Frank Wedekind, in many of his plays. It deals with the murder and suicide of two German high school students, who had been given over to a prematurely awakened sex life, drinking, and *Weltschmerz*. It reflects the

German post-World War I period of the twenties, which proved to be one of the greatest difficulty for German youth, subsequently making it possible for Hitler to achieve a majority in the *Reichstag*; millions of young discontented and unemployed voters had lost their sense of belonging. This case of Paul Krantz (whose verdict was "not guilty" on a charge of double murder) encompasses nearly one fifth of the book and, after more than a generation, is still timely enough to be read and analyzed by today's attorney, criminologist or psychologist of whatever country. At the time of the trial, in 1927, this reviewer was just a few years the junior of the defendant and, like most of his contemporaries, followed the trial proceedings in the papers as well as in the courtroom with intense concern. However, the real inside look into the trial is probably presented in Dr. Frey's chapter. While it may have particular interest for this reviewer, it should be stressed that reading about this case will help us greatly in our effort to combat juvenile delinquency, even though some of our well known clichés in the diagnosis of juvenile delinquency are missing here, such as poverty, low intelligence quotient, broken homes or gangs.

In his *Schlussplaedoyer* (final arguments to the jury), Dr. Frey pleads with the jury that he is unbroken and "only touched a little by the criticism that I have let pass a single moment or a challenging opportunity during these 77 years of my life." Therefore, Dr. Frey asks that he should be given a verdict of "not guilty" in view "of all the circumstances of time and fate." We are certain that any jury will fulfill the writer's request and, more than that, will commend him for having revealed one of the most interesting *Zeitdokumente* available to readers interested in law and order and in his fellow-man.

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