

1967

Book Reviews

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Recommended Citation

Book Reviews, 58 J. Crim. L. Criminology & Police Sci. 97 (1967)

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ously, the requirement of an intelligent consent implies that the subject of the search must have been aware of his rights, for an intelligent consent can only embrace the waiver of a known right." The court concluded that the defendant must be warned of his right to resist such a search before waiver will be recognized in consent search cases.

Comment: This is the first reported case in which the court has ruled that a person must be warned of his right to resist a consent search before the search will be legal. The court left open, however, the question of what form such a warning must take. In *Miranda v. Arizona*, 384 U.S. 489, the Supreme Court said that before the police could interrogate one in their custody, the person would have to be warned of his right to remain silent, that anything he said could be used in evidence against him, and that he could confer with a lawyer before answering any questions. If the person had no lawyer, then the police would also

have to apprise him of his right to have counsel appointed.

It seems likely that the warning required under the fourth amendment would have to be similar to the one dictated by the *Miranda* case. There has always been a close connection between the fourth and fifth amendments, and some legal writers have intertwined the two in cases involving admissibility of illegally seized evidence. It therefore seems safe to say that the courts will probably require a warning along the lines of the following.

The person would have to be warned of his right to be free from a search without warrant unless he consented to it; that anything found in the search could be used as evidence against him; that he had a right to consult with counsel before consenting, and to have counsel appointed for him if he was indigent. Until the person fully understands his rights as expressed in this kind of warning, no "consent" search would be valid and evidence obtained as a result would be inadmissible in court.

BOOK REVIEWS

Edited by

C. R. Jeffery

RADIO, TELEVISION, AND THE ADMINISTRATION OF JUSTICE—A DOCUMENTED SURVEY OF MATERIALS. By *The Special Committee on Radio and Television of the Association of the Bar of the City of New York*. Columbia University Press, New York and London, 1965. 321 pp. \$8.00

THE PRESS IN THE JURY BOX. By *Howard Felsher* and *Michael Rosen*. The Macmillan Company, New York, 1966. 239 pp. \$5.95.

The omnipresent free press-fair trial conflict, whether real or merely apparent to defense counsel and appellate courts, is the subject matter of these two recent publications. The Bar Association Committee's interim report is limited to the effects of radio and television on the administration of justice, and is directed to the law trained or law oriented reader; *The Press in the Jury Box* deals with all news media, and is aimed at the lay public.

Although the Bar Association Committee's volume is clearly the more scholarly and open-minded of the two, *The Press in the Jury Box* deserves plaudits if only for bringing the free press-fair trial controversy to the attention of persons who, because of their lack of contact with the law, are not fully aware of it. For such persons, *The Press in the Jury Box* is a good introduction to the problem with which so many courts, defense counsel, prosecuting attorneys, newsmen, and members of police forces are confronted so frequently.

Radio, Television, and the Administration of Justice was prepared by the Special Committee on Radio and Television of the Association of the Bar of the City of New York, under the chairmanship of Judge Harold R. Medina. This book is divided into two major parts. Part I, "The Effect of Radio and Television on the Administration of Justice",

identifies various types of radio broadcasts and telecasts that may affect the administration of justice in criminal cases, and also deals with the effects of such publicity on the administration of justice in the civil courts. For those who consider the free press-fair trial question one of interest only to defense counsel in criminal cases, this latter portion of Part I is indeed enlightening.

Part I is replete with citations to and quotations from the cases discussed, in contrast with *The Press in the Jury Box*, which can hardly be used as a legal source material.

Part II, which comprises more than half of the volume, consists of many interesting and useful documents and materials. Among these are excerpts of letters from chiefs of police and law enforcement administrators from 37 major cities and the FBI, describing the wide variety of rules, regulations, customs and practices, or lack thereof, dealing with the use of radio and television in police departments. The interesting paradox is how so many instances of truly prejudicial publicity such as are described and cited in Part I could possibly have come into existence when virtually every police official responding to the Committee's inquiry is so concerned about "prisoners' rights."

Also in Part II are various Canons of Ethics, Court Rules, and court opinions, including the entire text of all the opinions written in *Estes v. Texas*, 381 U.S. 532 (1965); a survey of radio and television programs about the operations of the courts and the administration of justice; a collection of voluntary codes, court opinions, and proposals aimed at controlling the conduct of attorneys, law enforcement officers, and others; and a list of references to free press v. fair trial in the Warren Commission Report.

As a survey of its contents indicates, this work reaches no conclusions as to a possible solution to the problem.

I have come across no other work which presents within the confines of a single compact volume such a wealth of information for the law-oriented reader concerning the free press-fair trial conflict. Part II, in particular, contains material which, to the best of my knowledge, has not previously been collected for publication.

The Bar Association Committee's book is published only as an interim report. In the introduction, Judge Medina anticipates that the Committee will attempt "to devise means of giving responsible interested persons a full and fair opportunity to

express their views pro and con on general and particular phases of this most perplexing and complicated problem of our times." p. x. The *Journal's* readers would do well to look forward to the further development of this Committee's work.

[It should be noted that in this book's "Selective Bibliography" there is listed an article authored by our reviewer, which article was based upon a Master of Law's thesis written by her when she was a graduate student at Northwestern University School of Law. *Editor.*]

The Press in the Jury Box is co-authored by Howard Felsher, a television writer and producer, and Michael Rosen, an attorney, presumably to present to the lay public an exposé of the sensationalism so often used in reporting material dealing with criminal cases. While the book succeeds in doing just that, it does so in a manner no less sensational than that material which it seeks to condemn. As has been previously noted, this reviewer commends this volume as an introduction, for the lay public, to a serious problem indirectly affecting each of them. However, its lack of citation to authorities and superficial treatment of the subject render it of little use to lawyers or other law-oriented persons.

I do not mean to criticize authors Felsher and Rosen for utilizing sensationalism in presenting the problem to laymen; indeed, if I were writing a book on the free press-fair trial controversy for laymen, I doubt whether I could find a better approach for the purpose of arousing them to realize that such a problem exists. No doubt the Committee's scholarly volume, so well written for and useful to the professional, would not cause a layman reading it to suddenly say to himself, "That's just terrible! Something must be done about this problem." *The Press in the Jury Box*, however, may well impel him to do just that, and perhaps even to do something about it, if he should be in a position to do so. For this reason, it is of indirect value to the legal profession.

The grave difficulty for authors of a book like *The Press in the Jury Box* is to reach the laymen for whom it was obviously written. As an attorney, I find even my leisure reading centered about legal-type literature. If the *Journal* had not requested me to review this book, I probably would have come across it on my own. Quite naturally, the extra-curricular reading habits of laymen are not nearly so "legal" as those of lawyers. I would be interested in knowing the number of persons not

legally trained or oriented who have read this volume.

After examining one horrible example of prejudicial publicity after another, the authors of *The Press in the Jury Box* would seek to cure the evils they have uncovered by adoption of the proposal suggested on pages 236-39 by Judge Bernard Meyer of the New York Supreme Court. I have no quarrel with the advisability of adopting this proposal or a similar one, nor do I doubt that adoption of such a proposal will quickly, if not quietly, put an end to convictions based on information other than evidence properly received in open court under the protections of the Constitution and the rules of evidence. Indeed, this reviewer has urged the adoption of a similar proposal. (See *The Press and the Oppressed—A Study of Prejudicial News Reporting in Criminal Cases*, 56 J. Crim. L., C. & P.S. 1, 158 (1965).)

In presenting the problem of free press-fair trial and the sound views of such learned jurists as Judge Meyer to the public at large, the authors of *The Press in the Jury Box* have done much. One can only hope that their book will in fact reach the readers for whom it was intended.

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CRIMES WITHOUT VICTIMS: DEVIANT BEHAVIOR AND PUBLIC POLICY. By *Edwin M. Schur*. Englewood Cliffs, N. J.: Prentice-Hall, Inc., 1966. Pp. ix, 180. \$4.95

The motivation for this book is to be found on its last page: "There is, then, an urgent need for increased public education and wider appreciation of sociological perspectives on deviance." This lucid book, written with a verbal economy which is only too rare in the behavioral sciences, does much to fill the need. Dr. Schur has chosen as illustrative examples of deviance three "crimes" without victims, namely illegal abortion, homosexuality, and drug addiction.

The book begins with an introductory section wherein the author points out how society defines and in so doing reinforces deviance. After a general discussion of deviance, which includes some brief well-merited criticism of those who deal with the subject too globally or superficially, Schur bluntly allocates to the behavioral scientists the responsibility many of them try to evade: social policies, laws, and value judgements are going to be made

and the scientist who holds himself aloof from their formulation is hurting rather than helping his fellow man.

In the chapters dealing with the three chosen types of deviant behavior the author succeeds admirably in presenting briefly the essentials of the social and legal situations involved. What few adverse criticisms I offer are not of what he said, for I found myself in almost complete agreement with him, but are for what he did not say. In the chapter on abortion it would have been helpful to cite the extensive experience the Japanese have had following the liberalization of their laws. A second omission is a development so recent as to be impossible to include in the book: the formation of The Society for Humane Abortion, The Association for the Study of Abortion, and The California Committee to Legalize Abortion. As an anthropologist, I wished that in the chapter on homosexuality there had been mention of societies wherein a combination of homosexual and heterosexual behavior is the norm; knowledge of this gives one a needed perspective when discussing etiology and pathology. It might also have been pointed out that western countries which have no laws against homosexual activity between consenting adults do not appear to have suffered in consequence. In discussing the prevention and treatment of homosexuality Dr. Schur presents the unpleasant truth which society hates to face, namely that psychotherapy is not too effective, that there are too few therapists, and that it is too costly in time and money. The Institute for Sex Research currently holds the position that the most effective means of preventing or minimizing homosexuality is encouraging heterosexuality. Sexuality will be expressed in overt behavior; instead of attempting to repress heterosexual activity and then complaining of the resultant increase in homosexuality or paraphilias we should face reality, choose the sexual activity we wish for all members of society, and then facilitate the chosen behavior. In the chapter on drug addiction there is but one noticeable omission, and that is rather minor: there is no mention of the recent experiments in transferring addiction from heroin and morphine to less dangerous and less expensive drugs.

Dr. Schur's book is outstanding and refreshing for avoiding the numerous misconceptions and myths surrounding the taboo subjects, and for exposing and then disposing of them. The alleged effeminity of the homosexual, the inevitable guilt

of the aborted female, the criminality of the drug addict, and other favorite stereotypes are examined with an objective eye and assigned the minor status they merit. Education, particularly in emotionally charged fields, must consist not only of offering new knowledge, but of correcting misinformation.

In the last chapter of the book the author makes a number of inferences from the preceding descriptive chapters and thereby makes a worthwhile contribution to our understanding of deviant behavior. He defines the necessary elements of a crime without a victim as (1) an exchange of goods or services that are socially disapproved and legally proscribed, (2) a lack of harm to others, and (3) an unenforceability of laws against the crime due to lack of complainants. He observes that the individual develops a deviant self image according to the amount of deviant behavior: little in the case of the female who has had an illegal abortion since her deviance is seldom repeated, but much in the case of the homosexual and drug addict whose repetitious behavior requires the formation of a specialized subculture to facilitate gratification of their needs. Dr. Schur concludes by pointing out that any weighing of social policies must to a great extent involve subjective value judgements, but adds that "The more constructive sociological task is to try to understand the behavior in its relation to human needs and social values and institutions, and to help decision-makers determine which policy will best maximize social gains and minimize social costs."

This book will be valuable to behavioral scientists and to others concerned with the management of human behavior. One hopes it will have an even wider circulation and fulfill the educational purpose for which it was intended.

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MORBID JEALOUSY AND MURDER: A PSYCHIATRIC STUDY OF MORBIDLY JEALOUS MURDERERS AT BROADMOOR. By *Ronald Rae Mowat*. London: Tavistock Publications, 1966. Pp. xii, 131. \$5.25

This book is a study of 64 (male and female) convicted "morbidity jealous murderers and attempted murderers" sent to Broadmoor over a twenty-year period ending in 1955.

The study suffers from several common and fatal flaws that often attend efforts to create, hopefully, a meaningful explanation of a particular type of

murderer by invoking descriptive law, medicine, psychiatry, and limited case histories. First, the study is flat and uninformative because the data are drawn exclusively from public records: police reports, medical notes, case notes, certificates of insanity, letters and other "available" documents. Second, the author is handcuffed by existing diagnostic confusion; for example, he applies the following terms to the "morbidity jealous murderer": "mentally ill," "neurotic," "mentally abnormal criminals," "psychotic," "deluded," "insane," and "morbid." In addition, medical and psychiatric records show that some of the "morbidity jealous" are schizophrenic, depressed, alcoholic, monodelusional, and that some are in "organic states." To be sure, these classifications are not wholly unrelated, but from the standpoint of methodology this confusion prevents the study from arriving at any meaningful comment on morbidity jealous murderers. The confusions generated by uncritical diagnostic labeling are not dispelled by the author's cavalier comment that "We know now that most murders are the work of the psychotic or the grossly mentally disturbed."

In addition, there are little or no sociological data describing the "morbidity jealous murderer." Reference is made to age, incidence of delusions of infidelity, age at admission to Broadmoor, and mean age. There are no references to education, income, occupation, class position, religion, or rural-urban residence. Chapter 7 is entitled, "Other Social Behavior of the Morbidity Jealous Murderer." Since the author has not, in preceding chapters, discussed the *social behavior* of the morbidity jealous, the reader can only ponder the meaning and content of Chapter 7. The author's references to social behavior include such items as previous convictions for assault, times married, age at marriage or association with mistress or lover, marital separations, incidence of confession, attempts at suicide, and verdicts of the court. These are useful data but they constitute neither social behavior nor social characteristics.

A final deficiency is that the study is largely descriptive rather than analytic. The author does submit a brief review of theories of the morbidity jealous (East, Ruin, Jaspers, Freud, and Jung, among others). These theories, relating jealous rages, violence, and delusions to ego-defense, projection, real or imagined personal inadequacies, and philandering, are mentioned but receive no critical evaluation. Nor is there any comment on what, if

any, therapy these murderers received during imprisonment.

The author's tables are frequently inconsistent in form and some are inaccurately captioned. Even considering inflation and current publishing costs, the book is unconscionably overpriced.

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BORSTAL RE-ASSESSED. By *Roger Hood*. London: Heinemann, 1965. Foreword by Leon Radzincowicz. Pp. xii, 244. 42s net

Borstal Re-Assessed is a scholarly and thoroughly fascinating account of the origins, development, elaboration, alterations in and present status of the English borstal system in the approximately fifty years of its existence. Roger Hood has done remarkably well in pulling together all the various strands, the conflicts in philosophy, the seemingly endless arguments about goals and means, the series of legislative enactments, and the official reports of the various agencies and commissions. His spare and dispassionate narrative style is a model of clarity, substantive integration, and readability.

This volume in effect consists of four sections. In the first, Hood presents and discusses the chronology of the borstal system. Its inception is traced to the revolutionary report of the Gladstone Committee in 1895 urging the establishment of a penal reformatory emphasizing discipline and work; its guidelines, in part at least, to the influence of the Elmira Reformatory on British thinking. The initial reformatory experiment began in 1900 when eight young prisoners arrived in chains at Borstal, a convict prison in which space had been allocated for this purpose. From this modest beginning, there followed the introduction of the modified borstal, the expansion of the system from 1908 to 1922, and its stress on discipline and the preparation of the boys for manual and semi-skilled labor and working class status; the period of ferment, growth and public acceptance of the borstal institution's educational and vocational focus in the years 1922 to 1939; the discharge of two-thirds of the population of the borstals and the loss of many staff members for war service in 1939; the breakdown in earlier traditions and practices during the

war years; the post-war rebuilding period; and, finally, the introduction of competing types of institutions such as the detention center and the short, sharp shock approaches as well as the fusion with the prison system which seemingly have sapped the vigor and innovative spirit of the borstal movement. In comparison with its earlier vibrancy, the present status of the borstal institutions seems largely devoid of the excitement and experimentation of the pre-war period.

In the second section, *Borstal Re-Assessed* is concerned with the principles and content of training in the borstals. The emphasis on training, after all, was a cardinal element differentiating the borstal idea from the imprisonment practices of the past. Training (treatment in U. S. terminology) emphasis seems to have varied along a broad spectrum. Initially it was conceived as essentially discipline and work centered; later, it took on, as far as practical within the penal context, the coloration of the public schools. Attitudes were to be changed by good example, hence the emphasis on the quality of staff; the house system; the open institution; and the priority of education over security. At present, the pendulum has swung back and training is again focusing on discipline despite innovations such as group counselling and therapy.

The third section describes the evolution of borstal after-care. The most remarkable feature was the role played by the middle class, higher educated volunteer in the after-care program prior to its professionalization. The cultural difference between the U. S. and English middle class in this area of service and in the conception of *noblesse oblige* is a sidelight which deserves mention.

The last part concerns the outcome of borstal treatment. After due allowance for variations and changes in the system, and in reporting, the results indicate rather unequivocally that the percentage of boys reconvicted within follow-up periods of two and of three years after release has markedly increased in the last thirty years. From a failure rate of 29.8 per cent (the high water mark) for the boys two years after their release in 1936, this recidivism rate systematically increased to 64.2 per cent in 1960. This increase, coupled with a serious rise in the absconding rate, all but shattered the hope for the borstal as the prototype of open institutions. Its demise as a pacesetter is as much a tribute to its success in achieving the acceptance of its correctional philosophy and emphasis as to its inability to continue to innovate in the drasti-

cally altered social context that is present-day England.

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CRIME AND ITS TREATMENT IN CANADA. Edited by W. T. McGrath. Toronto: Macmillan, 1965. Pp. 510. \$10.00

Since Canadian literature on criminology is so scarce it is a pleasure to welcome the publication of this substantial book which was written with the collaboration of 16 distinguished experts, from 9 provinces of Canada. The tenor of the volume is pragmatic; the opening chapter by McGrath defines the relationship between crime and the institutions that are organized to protect society. A substantial chapter written by T. Grygier is devoted to a study of the relationship between criminality and society. Conflicts between morality and law, punishment and rehabilitation, science and practice are summarized in a masterful way and with "social protection" as its goal, enabling treatment and rehabilitation while preserving the principle of legality. Following a short chapter dedicated to the physiological, psychological and sociological causes of crime by D. Penfold, P. J. Giffen presents a concise analysis of Canadian criminal statistics (police, penitentiary and courts) pointing out, not only their deficiencies, but also suggesting the conclusions to be drawn from crime in Canada.

Canadian criminal legislation described by A. J. McLeod, reveals that the evolution pursued a meandering process rather than being influenced by a rational juridical development. Mr. McLeod, an expert long associated with criminal legislation in Canada, clearly outlines its principal provisions. The multi-pronged organization of the Canadian police force, divided among the Federal RCMP and the several provincial and municipal police agencies is described by W. H. Kelly, while the judicial systems, their jurisdictions and administrative procedures of justice are analyzed by St. Ryan. This chapter is perhaps the most complete, the most scientific and the most original of the entire book; all those who wish to understand this particularly involved system (because of different traditions and jurisdictions in each province) will be rewarded by reading these 72 pages, complete with detailed references.

There is a rapid survey of juvenile and family courts within provincial jurisdictions (W. T.

McGrath); probation systems also dependent on the several provinces are described by St. J. Madeley. One is struck by the wide discrepancies among the different regions of the country, a fact probably reflective of the disparity in social evolution. The challenge of reeducating young delinquents is incumbent on reform schools; the experience of Ontario is presented by D. Sinclair from the point of view of a seasoned educator. An anecdotic chapter dedicated to the Canadian jail of the 19th Century (J. E. Edmison) is followed by J. V. Fornataro's incisive analysis of the actual situation of Canadian penitentiaries. The author pleads convincingly for urgent and essential reforms. The function of parole services, an exclusive federal jurisdiction, is explained with great detail by F. P. Miller, without however supporting data as to its frequently disputed effectiveness since the establishment of the National Parole Board. After-care and the role of private agencies are briefly discussed by A. M. Kirkpatrick and in chapters 15 and 16, Messrs. Russon, Armstrong and Turner deal with the problems of resocialization in general (pp. 410-429) and the treatment of alcoholics, drug addicts and sexual perverts in particular, (pp. 430-464). The coordination of efforts and institutions for a better justice is severely exhorted by A. M. Kirkpatrick, who insists on the necessity of humanizing our attitudes towards criminals.

It is obvious that one cannot do justice to such a work in a review; like all books written in collaboration, this one presents striking inequalities. Contributions by Grygier, Ryan, McLeod and Giffen stand out by their intellectual quality and accuracy. Other contributions are narrower in outlook; the data and experiences are much too limited in scope to enable the reader to grasp a broader perspective on the subject and is prey to some parochialism.

Anyone who seeks either an enlightened opinion on Canadian crime or the social reaction to it or on the institutions which Canada has available to protect itself against criminals will realize that this country is neither better nor worse than other North-American or West-European state whose penal systems are known. One is nevertheless struck admittedly by the absence of perspective with regard to broad general reforms which link the judiciary, the police force, the penal system, etc. . . . , in a book so explicitly oriented to "correctional" practice. Requesting cooperation among services will never replace practical propositions

whose goal is the efficacious protection of society against crime. This might be asking too much in view of the present state of knowledge and the experience of our administrators of justice.

Anyone who wishes to familiarize himself with administrative systems of Canadian justice will peruse this book in vain; anyone who desires to learn about the dynamics and characteristics of Canadian criminality will not be satisfied either; anyone who wishes guidance by relying on precise statements of the present situation, with a purpose of reforming the administration of justice will be frankly disappointed. The allotment of pages to different subjects are enlightening in this respect;

of 510 pages, 18 are devoted to etiology, 32 to statistical descriptions of criminality, 20 to medico-psycho-social techniques of rehabilitation and 49 to penal philosophy, 119 pages in all. As it stands, however, this piece of work, with all its qualities and faults faithfully reflects the "correctional" reality of 9 Canadian provinces of the 1960's. For anyone who knows that there are 10 provinces in Canada, he should realize that none who contributed to this volume reflects, nor originates from, the Province of Quebec.

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- PURSUIT OF AGREEMENT, PSYCHIATRY & THE LAW. By *Jonas B. Robitscher*. J. P. Lippincott Company, New York. Pp. 270. \$8.00.
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