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Book Reviews

order of the court prohibiting the taking of photographs in connection with any judicial proceeding on or from the same floor of the building on which courtrooms are located. On appeal the defendant argued, first, that the order was void on the ground of vagueness, since it did not state whether it applies to terminated proceedings. Defendant's second contention was that the order was violative of his First Amendment freedoms in that it was unduly restrictive of the press.

The Court of Appeals upheld the conviction, stating, initially, that by prohibiting the taking of photographs, "in connection with any judicial proceeding," the order applied to any proceeding, whether in process, recessed, or terminated. Since there was already a section of the United States Code which proscribed similar conduct in connection with a judicial proceeding in progress, the court contended that the order was meant to expand this provision. The court also held that defendant's First Amendment freedoms were not infringed. "It is beyond argument that a trial court must be afforded ample latitude to insure that an accused receives a fair trial comporting with fundamental due-process requirements—a proceeding conducted in an atmosphere of procedural decorum and as free as possible from the threat of prejudicial publicity." This right to limit the news-gathering process starts at the courtroom door. The majority also expressed some doubt that the right to gain access to information, as opposed to relating that information, is encompassed within the freedom of press.

Judicial Immunity Protects Judges Against Suit Under Civil Rights Act—*Pierson v. Ray*, 87 S.Ct. 1213 (1967). This was a civil case against police officers and a municipal judge brought in the United States District Court of Mississippi. The plaintiff claimed that the officials involved had violated his rights under the Civil Rights Act of 1871. The Court, reversing in part, held that local judges could avail themselves of judicial immunity from a suit under this act when the issue concerned purely judicial actions. The Court was careful to make the distinction that purely administrative functions of judges were not subject to the immunity. The Court also held that the defense of good faith was open to police officers provided the alleged act was in the performance of official duties.

There was a strong dissent by Justice Douglas which pointed out that the Civil Rights Act referred to "any person" and made no mention of judicial immunities. He also stated that the Congressional Record disclosed strong minority support for such an immunity, but an amendment to the effect was defeated.

The remand was based solely on evidentiary problems, the Court holding that no defense of good faith had been interposed by the defendant police officers. This decision, while having an emotional impact on many, is the only justifiable one. No doubt many judicial and police acts do violate the spirit of the Civil Rights Act, but to allow unlimited federal judicial review of them would create anarchy in the state legal systems. Few local judges could be made to change their ways, and an overwhelming number of additional appeals could be expected to harass hard working officials.

BOOK REVIEWS

Edited by

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THE SUSPECT AND SOCIETY—Criminal Procedure and Converging Constitutional Doctrines. By *Walter V. Schaefer*. Evanston: Northwestern University Press. 1967. Pp. 99. $3.50.

This book consists of the Rosenthal Lectures given in 1966 at the Northwestern University Law School by the author, who is well known as a justice of the Supreme Court of Illinois and as a former professor, and now lectures in law at Northwestern University. The lectures were given after *Escobedo v. United States*, but before *Miranda v. Arizona* and its related cases were decided. After *Miranda* the lectures were published as delivered with appropriate references to that case.

The author sees the problem of the suspect and society as a conflict between the rights of the accused and the necessity of adequate police interrogation as a remedy of law enforcement in the interest of society.

In the first part, entitled *The Converging Doctrines*, the constitutional doctrines which bear upon criminal procedure from arrest to arraignment, and specifically with police interrogation, are analyzed. These constitutional doctrines include probable cause for arrest (Fourth Amendment), the privilege against self-incrimination (Fifth Amendment), right to counsel (Sixth Amendment), and the procedural due process and equal protection requirements of the Fourteenth Amendment. Some criticism of the common-law method of the development of constitutional doctrines is expressed, based primarily on the concept that the method has a tendency to push a doctrine to its logical conclusion if the proposition has any viability. On this premise the author foresees that the constitutional doctrines under analysis will develop to the undesirable point where no questioning of a suspect by the police will be permitted.

Each constitutional right of the accused is critically examined. The changing underlying basis of the doctrine of a voluntary confession is delineated as first resting upon reliability, then upon the method of obtaining the confession under the accusatorial system and decrying the inquisitorial system, and finally, upon a due-process basis.

In examining the relationship of the voluntariness of the confession to the privilege against self-incrimination, it is pointed out that historically the two doctrines were distinct, but the Supreme Court has recently rejected the traditional concern of trustworthiness as a test and held the basis for the exclusion of an involuntary confession was the deterrence of undesirable police behavior under the accusatorial system. The Court's swing to the view that an involuntary confession also rests upon the Fifth Amendment privilege against self-incrimination is suggested as making it easier for the Court to arrive at the doctrine of *Malloy v. Hogan*. In sum the author believes the Fifth Amendment privilege should be narrowly construed and has no application to station-house interrogation and he would go back to reliability as the sole test of an involuntary confession.

The history of the constitutional right to counsel is developed and the doctrine's practical application to the jail house explored. Criticism is expressed of the probable cause doctrine for detention or arrest because of its misplaced emphasis on the belief of the suspect's guilt rather than on whether the particular restraint of the suspect was reasonably necessary as a means of law enforcement.

The second lecture, entitled *A Legislative Proposal*, deals primarily with the Model Code of Prearraignment Procedure formulated by the American Law Institute. The discussion of this proposal is prefaced by advancing the view that police interrogation is a necessary, useful, and desirable technique of law enforcement. While the possibility of abuse in the present system of interrogation is recognized as being inherent in the secret quality of the station-house interrogation nevertheless the remedy, which the present decisions of the Supreme Court foreshadow to the author, is not to outlaw all interrogation, confessions and admissions made during a period of police custody.

In the main, the author accepts the Model Code of Prearraignment Procedure but points out that the advice given by the station-house officer would be more effectively and appropriately given by a judicial officer. The problem of representation by counsel during the police interrogation is discussed and the author's resistance to "an extended right to counsel stems from my belief that asking questions is a natural and fair means of securing answers which society must have".

In the third lecture, entitled *The Priviledge—an Appraisal and a Proposal*, the author examines the Fifth Amendment privilege against self-incrimination and characterizes it as a doctrine in search of a reason. He finds most reasons for the privilege—whether the shadow of the rack, the protection of innocent men, or the lending of dignity, humanity and impartiality to the criminal proceeding—as not fully justifying the privilege, at least in its expanded concept. Its invocation to protect political and religious beliefs is thought to be unjustified as such beliefs should come under the shelter of the First Amendment, which primarily was intended to protect them.

Since the author believes the privilege is invoked most often because of the accused's fear of being impeached by his prior criminal record, he advocates that to safeguard the accused, and to remove some of the collateral effects of such impeachment, that only past convictions which directly bear on testimonial deception, such as

perjury, should be admitted in evidence. In addition, since the privilege against self-incrimination suggests guilt to the layman, and since the privilege is against our sense of morality, the author claims the trier of the facts should be allowed to decide whether the claim of the privilege was valid in a given case or whether the inference of guilt should be drawn. This, of course, requires backtracking on recent decisions so that comment can be made on the failure of an accused to take the witness stand.

In the search for a solution to the problem of police interrogation—coupled with a recognition of the need for a balance of the concerns for effective law enforcement and a fair system of criminal procedure—the author proposes a plan not necessarily new in legal literature but one up-dated to the present. He proposes that interrogation of suspects by the police be before a judicial officer who would first make a determination whether grounds existed for the detention and the interrogation, advise the suspect of his rights, and make a record of the interrogation as required by the proposed Model Code. It is argued the interrogation conducted either by or before a legal officer affords a rational adjustment of conflicting social interests, although the author recognizes that there may be a difficulty in supplying a sufficient number of magistrates to do the job. In my view, this practical feature of the proposal is underrated and represents a serious objection to the plan. Much taxpayer education is going to be required if police can only interrogate suspects before a magistrate; capable and adequate magistrates just will not be provided in our presently existing society, whether it is rural or cosmopolitan.

The author would also modify the hearsay rule on self-serving declarations so that the accused could prove the consistency of his story at trial by the admission of his testimony before the magistrate. Before being questioned, a suspect would be advised, in addition to being told he need not answer, as the Model Code requires, that if he is subsequently charged his failure to answer would be disclosed at his trial.

In summary, if one accepts the major premise that the constitutional doctrines will eventually develop under the liberalism of the Supreme Court to the point of effectively preventing police interrogation of a suspect, it is rather easy to follow the author's logical argument to his proposed remedy. However, his solution, although conservative, does not seem to this reviewer to be a practical solution in this country, where the problems of law enforcement in metropolitan areas are so different from the methods and needs of urban and rural communities. Whether or not one agrees with the author's appraisal and proposal, however, one must agree that the problem needs to be discussed and considered so that we may ultimately have the kind of law that we want and need.

The views of the author are well articulated as one would expect from such an eminent legal scholar, teacher, and jurist as Mr. Justice Walter V. Schaefer. The book is exceptionally readable, well documented, and thought-provoking. It is a book every jurist interested in the problem of criminal procedure, and even those not directly interested, should read—and enjoy.

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THE SILENT SYNDICATE. By *Hank Messick*. New York: The Macmillan Company, 1967. Pp. 303. $6.95.

Hank Messick, a meticulous researcher and able writer, has presented in this book a detailed, factual account of one of America's most powerful and opulent crime syndicates. Originally based in Cleveland, the syndicate spread its tentacles to every section of the nation and eventually became the dominant power in Nevada's legalized gambling empire.

The author traces the origin of the Cleveland syndicate to the newspaper circulation wars in the early 1900's. Interwoven in its history were members of the Mayfield Road mob in Cleveland and the Purple Gang in Detroit. In the background, aiding the syndicate grow to wealth and power, was the insidious influence of politics.

The "big four" in the Cleveland syndicate were Moe Dalitz, Louis Rothkopf, Morris Kleinman and Samuel A. Tucker. Of almost equal stature were Thomas Jefferson McGinty and Chuck Polizzi, an orphan of Jewish refugee parents who was reared by a Polizzi family.

Many of the hoodlums recruited for the newspaper circulation war in Cleveland and who became affiliated with the syndicate received training in violence long before Prohibition. However, rum running served as a principal source of revenue during the Prohibition Era and associations were formed and friendships cemented between the

Cleveland syndicate and powerful gang leaders in all sections of the nation.

Although gambling eventually became the principal source of the Cleveland syndicate's wealth and power, its operations were highly diversified. Money flowed into its coffers from liquor, race tracks, restaurants, real estate, laundry, television and scores of other ventures. In 1933 Morris Kleinman pleaded guilty to evading taxes on gross income of $1,673,554 for the years 1929 and 1930 and was sentenced to prison for four years. One of the Federal agents who investigated the case was Alvin F. Giesey. Following Kleinman's parole on September 1, 1936 Giesey went to work for the syndicate and became important in its operations.

The murder of a former city councilman of Cleveland in 1931 created a public furor. The man who rented the room in which the body was found was identified as Pittsburgh Hymie Martin, a close associate of Moe Dalitz and Lou Rothkopf. Martin was awarded a slice of the syndicate's gambling operations and as late as 1965 was directing the numbers racket in south Florida with the backing of Kleinman, Tucker and Dalitz.

In December, 1935, Harold H. Burton, later an associate justice of the U. S. Supreme Court, was elected mayor of Cleveland on a reform ticket. He brought in the legendary Eliot Ness as city safety commissioner and ordered him to clean up Cleveland. The roots of the underworld were deeply intrenched in the community and Ness learned that members of the Cleveland syndicate were truly the "untouchables".

Among the significant ventures that figured prominently in the development of the Cleveland syndicate into a national power was the formation of the Molaska Corporation in 1933, just ten days before liquor became legal again. This corporation was formed in the offices of attorney Samuel T. Haas who rendered yeoman service to the syndicate over a period of several decades. Named president of the Molaska firm was John Drew of New York (real name Jacob Stein), a co-conspirator of the infamous Gaston B. Means during the heyday of the Ohio political gang that ruled the state and nation. Other officers included "fronts" for Moe Dalitz, Sam Tucker and the notorious New York gang leader Meyer Lansky. Also having an interest in the corporation were such underworld leaders as Pete Licavoli of Detroit, Charles (Lucky) Luciano, Joe Adonis, Frank Costello and Louis (Lepke) Buchalter of New York, Abner (Longie) Zwillman of New Jersey and many others. Through the joint venture of Cleveland and New York mobsters in the Molaska Corporation, illicit alcohol was produced long after liquor became legal. And, avers the author, "In the tangled history of Molaska Corporation can be found the men and the associations upon which the structure of organized crime in mid-century America is based."

For many years the Cleveland syndicate's principal big-scale gambling operations were based in Ohio and Kentucky. Then on April 24, 1950 it struck its pot of gold with the opening of the plush Desert Inn gambling casino in Las Vegas. The Desert Inn served as an opening wedge for the Cleveland syndicate in Nevada's legalized gambling industry. Before long it became the dominant power in Las Vegas. The Desert Inn complex grew rapidly and scores of other companies were formed by the syndicate in Las Vegas.

The *Silent Syndicate* should be read in conjunction with the book *Gamblers' Money* written by Wallace Turner in 1965 (Houghton Mifflin Company). Turner's book deals with gambling in Nevada and highlights the activities there of Cleveland's Desert Inn crowd. Obviously, the legalization of gambling does not change the character of those who run it. The history of the Cleveland syndicate is a history of conniving, extortion and fraud.

The *Silent Syndricate* is a valuable source of information to law enforcement agencies. It is filled with carefully gleaned factual material on organized crime and reflects its complex structure. It refutes the hypothesis of those who would reduce organized crime in America to a single ethnic group, such as the Sicilian Mafia. The book is filled with countless names and thus, at times, becomes rather involved. This is natural, since organized crime itself presents a complex and, at time, an involved picture.

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

Professor Stumpf's thoughtful volume is a gem of systematic analysis and integrative reasoning. It rewards practitioners, administrators and other students of law enforcement with philosophical and legal data attesting to the intimacy of law's ties

with morality. The author's comprehensive and sophisticated probe of judicial decisions and philosophical arguments illustrates how—even in realms ordinarily thought devoid of interrelationships with morality such as "basic norm" and "law as command" theories, as well as conceptions of Soviet law—there are strong presuppositions, if not explicit assertions, that the legal order emerges from or rests upon the moral order.

Professor Stumpf is a philospher, and the law official can hardly fault him for failing to cope with some major problems that may be primarily of interest to lawyers. Nonetheless, the reader who seeks concrete assertions and programs for operationalization rather than prods to comparison and comtemplation is bound to suffer disappointment. The author's concern is limited to considering "whether we can argue successfully that law is a moral phenomena and that in order to understand the full nature of law we need to recognize the intersection of law and morality". It is not his province to map the intersection or to program the traffic signals and other administrative devices that must regulate behavior in the intersection. He argues convincingly that morality not only underlies law but may also override positive law on occasion. But such occasions are calendared no more than the intersections with morality are mapped. The reader is left in a state of intellectual arousal to formulate his own norms about when morality may justify or even demand disobedience to law.

Perhaps reader cognition and arousal are precisely what Professor Stumpf has sought to produce. He hints that this is what he has in mind when he discusses levels of obligation: "If the law were to represent our only standard of right", he tells us, "we would lose the independent perspective which moral insight provides from which to evaluate the law". The retention of "the independent perspective" is, of course, a salient component of a free society; political and legal obligation have pluralistic roots.

There may be, however, another explanation for the absence of concrete criteria on when man may proclaim disobedience in the name of morality. Like the rest of us who would rather not confront the crucial pressures, conflicts and changes that abound in law enforcement today, Professor Stumpf may have de-escalated the magnitude of the operational aspects of the problem. On the last page of the volume, he asserts that "the time may very well come when a person feels that his obligation to law is not ultimate, that his moral obligation is of a higher order".

Whatever the future may hold in this respect, it is very much in the present that we see disobedience to positive law encouraged and proclaimed in the name of a higher and prior morality. Indeed progression of protest movements from platforms akin to "we obey the law but we work diligently to change it" to "we must disobey the law in order to change it", accounts for a major quandry in which the conscientious law official finds himself today: Given the realities and limits of discretionary authority in the hands of officials at the various levels of law enforcement, should their powers and duties in coping with civil disobedience be exercised in identical fashion as when coping with other varieties of socially deviant behavior, or does the moral stance of protestors against an inequitable status quo warrant or demand different responses? The crucial question at the moment is not so much *whether* law and morality are intertwined but *at what points* do they shift from being parallel sources of obligation of behavioral compliance to being in a perceptible hierarchical relationship authorizing, if not prescribing, behavioral disobedience.

Perhaps Professor Stumpf will address himself to this phase of the problem in forthcoming research. The precision, balance and insight represented in this volume provide both a necessary and sufficient launching pad for the development of more specific norms and guides to administrative implementation of the relationships between morality and law. The reader cannot fail to be impressed, for example, by Professor Stumpf's refusal to accept superficial or meretricious analyses of judicial rules or philosophical principles. Some of the many high points in his volume may be found in his systematic destruction of myths surrounding the positivism of Hobbes and Austin and the conception of ideology in Marxist analysis. Furthermore, the author's discussion of how moral elements enter judicial opinions evidences his fullest comprehension of the subtleties that can be brought into play in the day to day manifestations of the judicial process.

In *Morality and the Law* Professor Stumpf performs a salutory function of demonstrating that there are no clear ways of thinking about law as an entity independent of all moral characteristics. With such work as antecedent and foundation, what are called for now are clear ways of thinking about how best to incorporate and implement in

the role functions of law enforcement officials the guidelines to action that spring from the intersection of law and morality.

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PRISONERS AND THEIR FAMILIES. By *Pauline Morris*. London: George Allen & Unwin Ltd., 1965. Pp. 327. Cloth 50s, Paper 21s.

Reported in this book are the findings from a study of the family life of prisoners in England and Wales. The principal research consisted of interviews with married male prisoners and their wives, with the addition of a longitudinal study of a smaller sample of families. The research was oriented to the proposition that imprisonment creates a situation of stress and crisis for prisoners and their families.

Much of the material in *Prisoners and Their Families* is presented merely in descriptive form. Considerable attention is devoted (repeatedly throughout the book) to a tedious description of the research design. Survey data gathered from the prisoners and their wives are tabulated and described in three chapters. Much of this material may be useful to anyone interested in information about English prisoners. But one is not always certain what the facts are supposed to say in regard to this study. Five hypotheses are presented in the first chapter, yet they are essentially ignored throughout the book. Next to the last chapter, however, the reader is presented with the verdict on the extent to which the hypotheses have been supported in light of the data amassed in the preceding chapters. To summarize, two of the hypotheses are supported by the evidence: (1) Family relationships following upon conviction and imprisonment will follow a pattern set by family relationships existing before imprisonment. (2) Wives with wide kinship networks will seek additional support from them during the husband's imprisonment. On the other hand, the evidence failed to support the other three hypotheses: (3) Utilization of the statutory and voluntary social services will be greater and more systematic among the families of habitual offenders than among those of first offenders. (4) The wives of prisoners with children of school age will seek employment, while by contrast those with children under school age will not be employed, nor will those where there are children in both groups. (5) The adjustment of the family to imprisonment will vary with the type of offense and with the extent of previous criminal experience.

A more systematic use of the hypotheses throughout the book would have provided the necessary framework for analysis and interpretation—as opposed to the descriptive nature of the presentation. But in spite of the problem of theoretical treatment, *Prisoners and Their Families* is a commendable book in several ways. Much is learned about the family life of prisoners. (However, because no control group is used, it is not known if the family life of prisoners differs from that of non-offenders.) Family differences in relation to the prison experience are analyzed according to three classes of prisoners: stars (those serving their first term of imprisonment), recidivists, and civil prisoners (those in custody for non-payment of debts or for arrears in family-maintenance). In addition, by devising a typology of family situations, the author is able to show that the various types of marital relationships are associated in different ways to the potential crisis of imprisonment. An interesting finding which emerges from this discussion is that for some offenders—and their wives—imprisonment solves more problems than it creates: For some men imprisonment may provide a welcome escape from the pressures of home life; and imprisonment of the husband presents a new independence for some women. There thus seems to be some evidence to suggest that in a sizable number of cases imprisonment functions either as a stabilizing factor in marriage or as a solution to perpetually difficult situations. It may not be too extreme to suggest that there is a causal relationship between the criminality of men and their marital relationship.

Especially interesting is the chapter devoted to civil prisoners and their families. As an offender type, the person who fails to pay debts or maintain family has been neglected in research. Here we learn among other things that such offenders prefer imprisonment to paying money because they consider such demands unjustified or unreasonable. Default of payment for these persons seems to be a matter of principle. In respect to imprisonment and family life, it appears that problems of adjustment of the civil prisoner and his family are unrelated to the fact of imprisonment, which distinguishes civil prisoners from criminal prisoners.

The primary objective of the research upon which this volume is based was to "elicit facts upon which penologists and administrators might

base future policies." Specific recommendations are made regarding: (1) financial provision for prisoners' families, (2) improvement of social casework in prisons, and (3) improvement of facilities for contact between the prisoner and his family. The value of the book is in its documentation of the fact that imprisonment does not occur in isolation for a man with a family. There are implications here both for theory and practice.

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