

1969

## Book Reviews

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### Recommended Citation

Book Reviews, 60 J. Crim. L. Criminology & Police Sci. 229 (1969)

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to the police as gangsters with a propensity for carrying guns, were armed and in a local cafe. After receiving this information the police officers sought out the defendant and subjected him to a "limited, pat-down search".

The United States Court of Appeals for the First Circuit upheld the legality of the search under the test of *Terry v. Ohio*, 392 U.S. 1 (1968), and *Silbron v. N. Y.*, 392 U.S. 41 (1968). The court said that the informer's failure to identify himself and his lack of proven reliability might have been

significant had the information applied to individuals unknown to the police. However, the court held that what the police already knew about the gangsters, independent of what the informer told them, brought this case within a "narrowly drawn authority" to engage in a limited search for weapons . . . when an officer, on the basis of "specific reasonable inferences which he is entitled to draw from the facts in light of his experience," has "reason to believe he is dealing with an armed and dangerous individual". *Terry v. Ohio*, *supra*.

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## BOOK REVIEWS

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Edited by

C. R. Jeffery

THE TRIAL OF STEVEN TRUSCOTT. By *Isabel LeBourdais*. J. B. Lippincott Company, 1966. Pp. 257. \$4.95.

There was a time when propaganda was respectable. Before it acquired its current disrepute, the term signified writings designed to arouse readers to action, without reference to the relative virtue of the cause. It served to distinguish this type of writing from that which was meant to entertain or to educate. Now the language lacks a name for it, but the phenomenon persists. Mrs. LeBourdais' book is a case in point. It is a first-class piece of responsible propaganda; remarkable in fact, because, up to a point, it was very effective.

The *Trial of Steven Truscott* was first published in 1965, six years after Truscott, aged 14, was sentenced at Goderich, Ontario, to death by hanging for the rape-murder of a 12-year-old girl. Isabel LeBourdais' feeling of horror about the fact that a Canadian court in the Twentieth century imposed the death penalty on a child, particularly in the face of a recommendation of mercy from the jury, led her to spend years in painstaking research into the case. She became acquainted with Truscott, whose sentence had been commuted to life imprisonment, and, along with his family, she became convinced of his innocence.

The results of Mrs. LeBourdais' interest and her efforts developed in stages. First, she found herself the author of a best-seller that was criticized in

most quarters as being flawed by the current of emotionalism flowing through its pages. Newspapers and television fostered the growing clamor for something to be done. The problem was what to do, for Truscott had exhausted all remedies Canadian law afforded him. In an unprecedented action, the Governor-General, who represents the Queen in Canada, referred the case to the Supreme Court of Canada for a review of any question of law, fact, or mixed fact and law, on a consideration of the existing record and such further evidence as the court saw fit to receive.

Twelve year old Lynne Harper was last seen alive riding northward from the school grounds on the handlebars of Steven Truscott's bicycle on a busy county road near Clinton Air Force Base somewhere between 7:15 and 7:35 on the evening of June 9th, 1959. Two days later her body was found in a clump of trees locally known as the Bush which lies off the County Road at a point north of where she was seen with Steven. He claimed that he had taken her to the northern end of the Road well past the Bush and cycled back alone. Stopping on his return ride, he said, he had looked toward the place where he left her and had seen her getting into a grey car with yellow plates. The testimony of witnesses who saw him with her north of the Bush and alone on his way back was in dispute in the case. It was not disputed, however, that he was again in the schoolyard, normal in appear-

ance and behavior, by 8 p.m. Medical evidence for the prosecution placed the time of death between 7:15 and 7:45 p.m.

The investigation was not conducted in accordance with modern scientific methods and with proper procedures for the preservation of evidence. The mishandling of evidence began as soon as the body was found. Shirts belonging to members of the search party were thrown over the body for reasons of modesty and were later removed, along with any clues which might have clung to them. The body was turned over, disturbing the initial condition of lividity and casting some doubt on the conclusions to be drawn from that condition at the autopsy.

The autopsy was performed by the official District Pathologist, a Dr. Penistan. No examination was made of the body with a lens. The stomach contents, which constituted the main basis for the time of death pinpointed by the doctor, were not exposed by him to scrutiny under a microscope or to chemical analysis, but were merely subjected to ordinary visual examination under regular lamp light. No attempt was made to ascertain how much food had escaped from the stomach except into the duodenum, nor were measurements taken of the quantity of food found. At the trial Dr. Penistan first testified that turkey and ham were identifiable, indicating that digestion had not proceeded very far, since her last known meal at 5:45 p.m. on June 9th. Asked by the judge to refer to his notes made at the time of the autopsy, the doctor read into the record "... no identifiable meat."

The degree of maggot infestation was also used to support the estimate of the time of death. No attempt was made to discover the species of maggot, nor the length of its life and reproductive cycles. They were simply removed from the body together with any evidence which might have become attached to them, placed in a jar and forgotten.

Truscott was interviewed five times by police on the 10th and 11th of June and found to be a cooperative, courteous, and a generally normal boy. On the 12th he was taken into custody, interrogated for four hours by police and for another three hours by the town's medical practitioner. The interrogation ended at 3 a.m. He was not charged with any crime, nor was he given any warning that what he said might be used in evidence against him, or advised of his right to counsel.

He was medically examined without his consent, which examination revealed two lesions on the sides

of his penis, used to great advantage against him at the trial. He claimed and presented evidence that this was a condition which pre-existed for five weeks prior to the crime. The Crown presented evidence that the lesions were only two or three days old.

The preliminary hearing was attended by a full blaze of sensational publicity, without any attempt being made to protect the accused from its prejudicial effects. Under the Canadian Criminal Code, if the defense asks for a change of venue it is required to pay all of the expenses involved, and since the Truscotts could not afford to do so, no such change was asked.

The case against Truscott was entirely circumstantial, which meant the rule in *Hodge's* case applied; that is, in order to convict, the jury had to be satisfied that the evidence was consistent with guilt and with no other rational explanation.

The conclusion that Steven must have taken Lynne into the Bush was drawn from the testimony of three child witnesses who did not see him on the road when they were there. The presiding magistrate at the preliminary hearing had declined to swear any of them on the basis that they did not appreciate the nature of an oath. The trial judge had two of them sworn without inquiring whether or not they understood the nature of an oath. The third one testified that not only had he not seen Steven and Lynne but he had not seen three other prosecution witnesses who testified that he was on the road at the time in question.

The reference to the Supreme Court of Canada was followed avidly in Canada as a day-by-day transcript appeared in the press. For the first time in history, the Court heard testimony from expert witnesses covering many aspects of the case, including the time of death. Steven testified on his own behalf for the first time.

The majority of the Court, 8 of the 9 judges, disbelieved his testimony. They reviewed the evidence at great length in their written opinion. They dealt briefly with some of the procedural issues and found nothing wanting. The lone dissenter, Mr. Justice Hall, took a different approach. To him, the procedures followed on arrest, interrogation, and seizure of evidence, and at the trial itself vitiated the possibility of a fair hearing. He would have ordered a new trial.

Two years ago Truscott was offered an early parole on condition that he confess. He refused. He becomes eligible for parole in due course this year, at the age of 24.

Mrs. LeBourdais tried to move mountains for him. She only partially succeeded. But she has produced a chilling and disturbing book, one which caused a unique re-examination by an appellate tribunal of a case long considered closed. Perhaps one lesson to be drawn from this *cause celebre* is that the rights of both society and an accused can be severely prejudiced by anything less than a thorough scientific examination of the scene of a crime and the body of the deceased.

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CONVICTION: THE DETERMINATION OF GUILT OR INNOCENCE WITHOUT TRIAL. By *Donald J. Newman*. Boston and Toronto: Little, Brown and Company, 1966. Pp. xxvii, 259. \$8.50.

There can be no greater contrast to the idea of justice than "the determination of guilt or innocence without trial". In the book, hardly any space is reserved for the exploration of this challenging foil, although actually it provides a concise and valuable guide to the fascinating fact that "justice" can be done without looking into its truth. This is why perhaps the best way to regard this book is as an informative mine to be quarried by later and bolder speculators.

In the words of the author, "the accuracy and fairness of guilty plea convictions, judicial discretion to reduce charges or to acquit the guilty, the central, controlling role of the trial court, and the function of the lawyer in guilty plea cases", and also the analysis of the relevant procedures are the problems which form the skeleton of this book. The study, which is based on data gathered in the American Bar Foundation's Survey of Criminal Justice Administration, is intended to demonstrate that the conviction process, the role of the judge, and the function of the defense counsel are much more complex than has generally been assumed. The two processes of nontrial adjudication, the guilty plea and acquittal of the guilty, seemingly legal contradictions, are regarded by the author as highly significant parts of the administration of criminal justice, and receive a focal point of his study. The book offers a penetrating exposure of these processes, and the author has made a worthy attempt to present them systematically in the company of an eye-opening group of cases.

The author contends that the guilty plea is "a model of efficiency, assuring conviction of defendants at small cost to all involved", as compared

with the long and costly trial; and the acquittal of certain defendants who are actually guilty of criminal conduct, as claimed by the author, "keeps some sick, emotionally disturbed, untreatable, or 'deserving' defendants from unnecessary or ineffective correctional treatment". His book stands as an able work, where the portrait of the nontrial procedures and practices, in fact the majority of criminal convictions, is presented with clarity and competence in a well arranged and meaningfully organized discussion.

This is a useful book—but an exciting one only for those who are ready to recognize the background of the theme which actually has not been touched upon by the author, except perhaps by vague and very peripheral hints. The book is really a prelude to the essential problem of the subject. While the study is a thorough piece of work of the legalistic aspects of nontrial procedures, it seems odd that the book does not dip back into the history of the problem and does not look forward to the future. While, in fact, the book is apparently concerned with the "negotiated justice" (as Donald Cressey called it), it does not quite spell it out with its far-reaching implications.

The complex idea of criminal law indeed makes severe demands on any writer if he is to do justice to the notion of "justice", which is probably based upon a misapprehension of "injustice" and means often what those who are using this term agree to make it mean. Yet, a book on nontrial-based justice would and should prompt the reader to meditate over the boundaries and grounds of criminal law justice. Whether or not the nontrial operations of the courts can rightly be described as the administration of criminal justice, or in view of the "agreement" of the parties concerned these operations should be seen in the sphere of the civil law or in the province of some amorphous criminal law, is the depth of the multidirectional problem so often sacrificed for formalistic or one-sided analyses.

This question remains in the mind after concluding this book, which should commend itself not only to students of law but to all who take an interest in the puzzle of crime. The truth-neglecting justice is an interdisciplinary problem of law, criminology, corrections, and perhaps also of other disciplines.

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HUSTLERS, BEATS, AND OTHERS. By *Ned Polsky*. Chicago: Aldine Publishing Company, 1967. 218 Pp. \$5.95.

Polsky's book includes five chapters: "Of Pool Playing and Poolrooms," a study in historical sociology; "The Hustler," a report on field research utilizing participant observation; "Research Method, Morality, and Criminology," a critical essay on field research method; "The Village Beat Scene: Summer 1960," field research portraying the beats in Greenwich Village; "On the Sociology of Pornography," an endeavor in theory. The chapters cohere because of a central, guiding frame of reference, the deviant's definitions of the world and his place in the world.

First, Polsky traces the rise and decline of poolrooms and pool playing in the United States. He concentrates on the latent function of the American poolroom as a place where the sporting fringe of the upper class, the hedonist, and hell-raisers given to heavy drinking, gambling, and whoring could get together with the sporting element of the lower class and lower-middle class to the exclusion of females and to those who subscribed to middle-class morality. The confirmed bachelor subculture of the nineteenth century has passed with the demographic passing of the heterosexual, confirmed bachelor as a social type. Consequently, there has been a decline in poolrooms. Polsky notes the failure of some to rejuvenate the poolroom as a place for the family, women, and the square middle class. The former latent function, among other things, is not provided in the new, "clean" poolroom.

In analyzing the declining occupation of pool hustling in chapter two, Polsky avoids a social problems focus, i.e., an avoidance of problems posed by the hustler. He focuses rather on the difficulties that others create for the hustler. The occupational rather than the illegal part of the hustler's hustle is stressed. The frame of reference is general occupational theory, and the hustler is viewed as a career oriented deviant. Polsky analyzes the hustler's (a) work situation, (b) career, and (c) external world: the changes in the structure of society affecting the hustler's work situation and career. Methodology includes (a) direct observation of hustlers at work, (b) informal talks with hustlers, (c) participant observation—as hustler's opponent, as hustler's backer, and as a hustler.

Polsky draws an original, theoretical analogy between the pool hustler who moonlights in other types of crime when in need of money and the

respectable person employed in a legitimate lower-class job who resorts to occasional or one-shot criminal activity as a way to get solvent without giving up his regular job. Both the hustler and legitimate moonlighter view their second jobs involving criminal activity as part-time work. One of the most appealing things about crime to career criminals and part-timers in crime, overlooked in criminology textbooks, is that the working hours are short and flexible.

In chapter three, Polsky advocates field studies of adult criminals, i.e., the study of criminals in the open. He appropriately chastises criminologists who confine their research to captured criminals and official statistics. The animal in the jungle is not the animal in the zoo. The data on captured criminals is retrospective, biased, and hard to validate. Polsky outlines and demonstrates feasible guidelines for field research. An objective, non-treatment approach must be maintained. The researcher must let the criminal know who he is and what his goals are. Initially, eyes and ears are kept open but the mouth is kept shut. Rapport with criminals must be gained without identification with them. Gadgets, e.g., tape recorders, questionnaires, etc., that might pose a screen between investigator and criminal are avoided. Acquaintanceships with criminals are best made at the criminal's places of play and work. (The reviewer strongly endorses this view as a result of his study of professional gamblers in cocktail lounges and after-hours clubs.) Study the criminal in his environment, i.e., in his living quarters and habitat. Avoid scheduling the criminal. Make the moral decision that in some ways you may break the law yourself, e.g., have knowledge of criminal activity. It is accurately noted that the chief danger involved in field research comes from officials rather than criminals.

Polsky's postulates on field research with criminals are extremely significant in terms of theory and methodology. Field research must be done in order to get reliable and theoretically relevant data on criminals and deviants. Certainly, as Polsky recognizes, field research requires a special kind of investigator. In the reviewer's opinion, this researcher must have a flair for and an understanding of certain kinds of play activities in which criminals engage. He must be a non-judgmental realist exclusively interested in diagnosis; and, he should be sophisticated and knowledgeable about "what's happening" in the gray and criminal world. Squares are out. Unfortunately, few have these qualifica-

tions. We have too many bleeding-heart squares who masquerade as social scientists—choirs and choirs full.

The findings on the Village Beat Scene are realistically penetrating, and, for the most part, support other research in this area. Polsky demonstrates that the beat world is not devoid of racial prejudice. Recently, Negro males are entering the beat scene but they are accepted by white beats only for their "Negro-ness." The Negro is expected to "play it like a spade and it's still a drag." Polsky elsewhere very detached and objective slips here by suggesting a solution to the psychological problems of the Negro, i.e., white beats might consider accepting him in his inescapable aspect of "Negro-wanting-to-be-white." Miscegenation is also advocated. One might question Polsky's claim that most Negroes want to be white. Moreover, many whites and Negroes frown on amalgamation. As one Negro servant commented to her white mistress (an acquaintance of the reviewer), "Lord, Miss Mary, if you could be a colored girl just one Saturday night, you would never want to be white again."

In chapter five, Polsky, following Kingsley Davis' frame of reference regarding prostitution, theorizes that prostitution and pornography are functional alternatives leading to the same desired social end. Both provide for the discharge of what society labels anti-social sex, i.e., impersonal, non-marital, "perverse" sex as well as sexual behaviors stigmatized as deviant even within the intimacy of marriage. In defining pornography, the labeling process is not enough. Pornography must be seen in terms of what it actually does to or for society—"what are its particular uses and effects on people, intended or otherwise." Pornographic material frequently escapes labeling because it is packaged between significant amounts of non-erotic material or tied to art or science. Non-labeling and de-labeling pornographic materials may increase their demand.

Polsky's book contains original and provocative material, and in content, method, and theory challenges the views of many "eminent" researchers in deviant and criminal behavior, e.g., Sutherland and Cressey's sophisticated rationalizations as to why field research on criminals is virtually impossible. Polsky's research proves that you can associate with criminals in the open without passing as one; and, that criminals will volunteer information regarding the process by which they become criminals, Sutherland and Cressey notwithstanding.

Polsky's work is in the tradition of the Chicago school, and it incorporates many of the ideas and techniques of Howard Becker and Erving Goffman. Though a disciple, he is not a slave. This book marks a brilliant contribution to the field of deviant behavior and is far superior to most of the current or past publications in this area. Hopefully, many sociologists will rediscover Polsky's methodology. Unfortunately few researchers are as well equipped as he to do field research even if they were to accept his methodology. Most sociologists prefer to deal with concepts to the exclusion of people. And what a drag!

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ALCOHOLISM: MODERN PSYCHOLOGICAL APPROACHES TO TREATMENT. By *Eva Maria Blum* and *Richard H. Blum*. Jossey-Bass, Inc., San Francisco, 1967. Pp. 373. \$10.00.

When two authors, and a husband-and-wife team at that, write a book from three points of view in six parts for three audiences, something has to give. What gives, of course, is the ecumenical approach to alcoholism. How interdisciplinary can one get? The Blums show us how in this book.

The Blums call their book a treatment aid which tries to look at alcoholism from cultural, social, and psychological perspectives. Had they stuck to a simple form of ecumenism, say social psychology, they would have written a magnificent treatise. But since they chose to tell all, they end up with a Yellow Pages.

This book is for people who help alcoholics, who administer organizations that help alcoholics, and who do research on treatment. The Blums divided their book into six sensible parts for their readers. But because they themselves have helped alcoholics, have administered organizations that help alcoholics (or would like to), and have done research on treatment, they constantly put on and take off these hats throughout the six parts.

Part One deals with treatment. Here they look at how to look at treatment, the role magic plays, what treatment is, who does it, and to whom. They conclude that treatment is given when drinking behavior is no longer considered dangerous, that magic can help, that anybody who consciously tries to help an alcoholic performs treatment, and that alcoholics come in two main varieties, convinced and non-conforming drinkers.

Part Two deals with treatment as a process. They give but two short chapters to the most important idea in their book. They introduce all these notions, then fail to do justice to any of them. Treatment is a process, it has stages, and patients experience a treatment career.

Part Three has the recipes; here there are ten kinds of treatment for separate discussion. The authors try to say something nice about all kinds of treatment and to maintain a balanced view of conditioning or action therapies over against psychoanalytic or insight therapies. But since they have more specific caveats on conditioning (strangely enough, the longest chapter in the book), more warmth on analytic therapies, it is clear where their sympathies lie.

Part Four lists problems in treatment. In one of the more useful sections of the book, the Blums point out rightly that motivating therapists is as much a problem as motivating patients. They examine the problem of getting together and discuss the kinds of incompatibilities that impede talk between patient and therapist.

Part Five is for the researchers. In twelve pages, the authors list the barriers that therapists, patients, organizations, and researchers alike put up in the way of research on alcoholism and its treatment.

Finally, in Part Six, the authors make a host of excellent suggestions on how to improve care and treatment of alcoholics, treatment administration, and research on treatment of alcoholism. Typical of the hat-switching that robs this volume of the unity and coherence it deserves is the appearance of some twenty-five recommendations all in italics and long before the reader gets to Part Six. Part Six together with the italicized recommendations could stand separately as a report to the nation on problems of treating alcoholics.

Had the Blums narrowed their scope and developed one of their frameworks, they would have written a significant work on the treatment of alcoholism. For this, they needed only to extend and broaden the idea of stages in the treatment process. Then in the part on kinds of treatment they could have applied this model to each of the treatments. Had they done this, they would have answered one of their own questions—who shall give what kind of treatment to which kinds of alcoholic at what stage of the drinking and treatment career?

They chose instead to give us a Yellow Pages (or white paper) on alcoholism. There is something in

here for almost everybody. And the Blums say it with their therapist, researcher, administrator, and reformer hats on at different places in the text. Once the reader comes to see the hat parade, he realizes that buried in these several outlines lies a potentially good book on alcoholism as a career in treatment.

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THE HANDLING OF JUVENILES FROM OFFENSE TO DISPOSITION. (vol. I.) By J. T. Carey, J. Goldfarb, and M. J. Rowe, U. S. Department of Health, Education, and Welfare, Washington, D. C.

This *manual* is the first of three volumes published by the Department of Health, Education, and Welfare setting forth the results of data analyzed by a team of researchers under the direction of J. D. Lohman, Dean, School of Criminology, University of California. While there have been many books written on the topic of juvenile crime, to my knowledge, this is the first which: (1) covers the subject (juvenile delinquency) from the point of origin (offense) to the point of "conclusion" (disposition), and (2) because the *manual* was prepared jointly by a team of *scholars* and *practitioners*, the curriculum materials are a wide departure from those conventionally prepared for use by law enforcement, Probation-Parole, or juvenile Court Judges.

In the Editor's foreword of the book, the following statement is made which, basically, epitomizes the philosophy of the book. "The document has been reproduced with a minimum of change. The informal format—case histories reported through conversations and actual forms for verisimilitude, double-spacing and wide margins for easy note taking, and unacademic style appears better designed to interest the practitioner than a more scholarly and theoretical document. It is a workbook rather than a treatise."

This *manual* is intended primarily for police investigators and Probation officers in the field and, as such, addresses itself (three volumes) to decision making in the agencies of juvenile justice. Consequently, there was no attempt to include all the recent developments in the field of juvenile crime. The contents (Volume I) are logically arranged into *three* major areas:

1. *Introduction*—the introduction is divided into several areas such as: Comments on the Ra-

tionale of Training; Background of the Manual; the Police and the Juvenile; the Judge and the Juvenile; Forms Utilized by Law-Enforcement Agencies; and a Description of Osborn City-Howard County in which the actual cases discussed take place.

In sections *two* and *three* (Volume I) there is altogether a different format. In these sections actual cases are presented to the reader from the point of apprehension by the local police to the point of disposition by the Juvenile Court. Throughout the handling of the cases in question, forms, reports, and dialogue are documented, thereby projecting the image of authenticity and, at the same time, acquainting the reader with the rudiments of police or probation practices.

At the conclusion of each case, the decisions made at each level are reviewed by a series of discussions highlighting some of the problems involved. This method may be a useful pedagogy for an instructor or training officer to follow. Also, at the conclusion of each case study, social science readings are incorporated which are relevant to the decisions made at the various stages in the process. Regarding the case study approach (as a learning device), this reviewer is in complete agreement with the statement made by the authors in their preface and is presented in part: "The process of juvenile justice is viewed as a continuum through three separate agencies with considerable attention given to decisions made at each level which affect the whole process. The cases are so unusual, in that, they ask the reader to place himself in the shoes of the officer making a decision, using the information he has in a stimulated situation to develop skill in deciding what he must do. Each case places the reader in a juvenile bureau one vening, in the intake division of the probation

department at another point in time, and on the bench when the case is finally being adjudicated."

This *manual* is made much more understandable by the illustrations and case situations, and indicates that much research went into its writing. This is an exceptionally fine *manual* for assisting police officers, social workers, probation-parole officers, correctional officers employed in juvenile institutions, and educators, in the development of understanding in an area requiring a considerable amount of knowledge. The material presented by the authors, under the sound direction of Dean Lohman, goes a long way in developing a body of knowledge about juvenile crime.

Serious study of this *manual* will develop an appreciation by the reader for the part local law enforcement and probation agencies play in eradicating the problem of juvenile delinquency.

Because of its non-academic style and "practitioner approach" this *manual* does not appear to be an appropriate *textbook* for classroom usage. However, it would serve as an excellent *manual* for in-service-training programs devised for juvenile officers, police and juvenile probation intern programs, or as a *supplement* to a textbook used for pre-employment police students (at the college level).

All in all, this *manual* is a definite contribution to the police literature. The authors, under the direction of Dean Lohman, are to be commended for devoting a great deal of time and careful research into a subject that has not been treated in this fashion before.

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### Books Received

SEXUAL DEVIATIONS IN THE CRIMINAL LAW. By Alex K. Gigeroff. University of Toronto Press, Toronto, Canada. 1968. pp. x, 218. \$7.50.

PROCEEDINGS OF THE TWENTY-EIGHTH ANNUAL JUDICIAL CONFERENCE. Third Judicial Circuit of the United States. West Publishing Company. 1966. pp. 367-521.

PSYCHOLOGIE DES STRAFVERFAHRENS. By Roland

Grassberger. Springer Verlag, Vienna, Austria. 1968. pp. vi, 364. \$14.75.

ANNUAL REPORT SOCIAL WELFARE DEPARTMENT, Victoria, Melbourne. 1967. pp. 79.

CONCERNING DISSENT AND CIVIL DISOBEDIENCE. By Abe Fortas. The New American Library, Inc., New York. 1968. pp. x, 127. \$.50 (paperback).