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Book Reviews

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BOOK REVIEWS

HOW TO AVOID PROBATE. By Norman F. Dacey. New York: Crown Publishers. 1965. Pp. 341. \$4.95.

Once upon a time in the Kingdom of Probatania, when a person died leaving property, a group of specially trained magicians took charge of his estate and arranged for its disposition among his heirs. The magicians used a rather elaborate system called probate as a method for determining what was to be done with the deceased's property. They made sure that the King received a portion of the deceased's goods¹ and also extracted a portion for themselves as compensation for their services.² The balance, if any, was then turned over to the family of the decedent.

Since the magicians dealt with magic, they felt that they need not explain to the Probatanians what they were doing. For their part, the Probatanians generally trusted the magicians, believing the ceremonies to be necessary for the care and protection of their families. Some sought help before death by asking the magicians how they should plan the disposition of their estates. Others left it to the surviving members of their families to seek the magicians' help after their death. The system worked reasonably well for many years, but some felt that the magicians' primary purpose was not to serve Probatania, but to line their own pockets by taking what belonged to the poor and illiterate.

Something had to be done. A few magicians urged removal of the magic from the ceremonies,³ but their efforts remained unknown to the mass of Probatanians. Fortunately for the latter, a champion who had not been trained as a magician appeared upon the scene as "one of America's leading professional estate planners."⁴ He offered to save the masses "from the bondage of the iniquitous probate system."⁵

Wonder of wonders, this Great Probate Emancipator (hereinafter, "GPE") found "a magic key to probate exemption, a legal wonder drug which will give you permanent immunity from the racket. The magic key is the inter vivos or 'living' trust"⁶

Unfortunately, the Probatanian peasant class was unable to obtain the

1 The allotment to the King was generally not liked, but all agreed it was unavoidable. "Avoiding probate does not mean avoiding taxes." DACEY, HOW TO AVOID PROBATE, 6 (1965) [hereinafter cited as DACEY].

2 The precise size of the magicians' fees was a matter of debate. A "well-known [but unnamed] estate attorney" said that the costs of estate administration "on small estates of \$10,000 to \$20,000 . . . are likely to be, on average, 20%. On medium sized estates of, say \$100,000, they probably would be around 10%. On larger estates they would be a smaller percentage." DACEY 6. On the other hand, a "leading [also unnamed] legal reference service" placed these costs at various percentages ranging from a maximum effective rate of 8.6% to a minimum effective rate of 5.2%. *Ibid.*

3 The National Conference of Commissioners on Uniform State Laws has authorized the preparation of a Uniform Probate Code. The proposed Code would have independent administration free of the probate court as its fundamental principle. Cf. MODEL PROBATE CODE (Simes 1946).

4 DACEY front cover.

5 *Id.* back cover.

6 *Id.* at 13. The most magical of all the magic keys was appropriately named after the GPE himself. For a description of the "Dacey Trust," see *id.* at 129-30.

services of the GPE because the nobility kept him busy at all times with the problem of managing their gold. Taking pity on the poor, the GPE dedicated himself to saving the masses by writing a book to be sold throughout the length and breadth of Probatania. In his book, the GPE showed the masses how they could avoid the magic of the magicians. Since the GPE's magic key was sweeping in its utility, it could be used throughout Probatania without regard to any peculiar local rules that might exist in an isolated corner of Probatania.⁷ So long as the evil magicians were carefully avoided, the Probatanians could be sure that the magic key would work.

The GPE allocated the 341 pages of his book as follows:

Forms (originals)	86
Duplicate copies of forms	86
Blank (but numbered) pages	62
Instructions as to how to fill out the forms	57
Text	45
Blanks for ordering more copies of the book	3
Title pages	2
	<hr/>
Total	341

Since the forms were to be used by the reader, the GPE thoughtfully arranged to have the pages perforated for easy removal.

The text of the GPE's book was devoted to a description of certain special wonder drugs to evade the magicians, a condemnation of the magicians and their selfish practices, and suggestions on how to avoid certain rusty keys. The GPE's instructions to his readers were to:

1. Avoid the magicians' evil probate system by using the magic keys and wonder drugs.
2. Decrease the King's take at death by gifts during lifetime.⁸
3. Decrease the King's take during lifetime by giving up property for ten years or more.
4. Decrease the King's take during lifetime by giving up property to charity for two years or more.
5. Sign immediately the registration certificate for any vehicle that the reader might own. If he should die, his wife could then transfer ownership without the magicians' help.⁹

⁷ For examples of isolated rules, see the "community property" and "independent executorship" magic of a small corner of Probatania, known as Texas.

⁸ The reader was warned about the necessity of qualifying a gift to a minor for the \$3,000 exclusion, DACEY 206, but the magic key to accomplish this, *id.* at 209-10, failed to qualify such a gift under either the INT. REV. CODE OF 1954, § 2503(b) (no requirement of beneficiary or guardian who could presently demand the income or corpus), or the INT. REV. CODE OF 1954, § 2503(c) (presence of contingent beneficiary).

⁹ In Probatania, there was no risk that anyone other than one's spouse (or other qualified person) would complete the registration certificate so as to create an appearance of ownership where it did not exist. The rule of the magicians that any property which a person owned had to pass either by "testamentary instrument" or the "laws of descent and distribution" could be dismissed as foolish formula of the magicians. See DACEY 237.

6. Put property in a safe deposit box bearing the name of the reader's wife; do the reverse for her assets.¹⁰

7. Use a pour-over will, provided local magic rules permit.¹¹

8. Decrease the King's take upon death by using the marital deduction.¹²

9. Give any insurance policies that the reader owned on his own life to his wife to reduce the King's take at death.¹³

10. Insert a direction in the special GPE magic key to require the trustee to pay the executor liquid funds upon request so that the latter would have sufficient funds to pay the King.¹⁴

11. Avoid probate. The reader might need some magic for property he was unable to get under the GPE magic key, but this should be kept to a minimum.

12. Avoid joint ownership with rights of survivorship, since the King objected particularly to this type of ownership.

13. Avoid the evil magicians under all circumstances. They were either inadequately informed, guided by their own self-interest, or both.

After the GPE's book was published, the magicians, feeling that the GPE had done the Probatanians a disservice, urged the people to ignore the GPE.¹⁵ They obtained an order from the King telling the GPE to stop practicing the magic of the magicians.¹⁶ The continued popularity of the GPE's book,¹⁷ how-

10 Marital discord was unknown in Probatania. There was no need to fear that one spouse would contend that the assets had been given to him by the other. Reversing the safe deposit boxes was especially good for fooling the King. When a husband died, the King's men opened *his* safe deposit box and found *his wife's* assets. Meanwhile, the widow was able to open *her* box and take out *her husband's* assets. Again, silly rules of the magicians regarding who owned what might be ignored. See *id.* at 11.

11 The GPE never explained this exception to his usual view that such rules were of little importance. However, he protected the Probatanians from the magicians by advising: "Check this point with the trust officer at your local bank." *Id.* at 133.

12 In the GPE's draft for the marital trust, the trustee was given power to allocate certain "capital gains" of mutual funds to principal. *Id.* at 143 (Deed of Trust, § C(10)(A)). The marital deduction presumably was protected by giving the widow unconditional access to the principal during her lifetime. *Id.* at 139 (Deed of Trust, § (B)(1)(a)). When some magicians contended that these clauses could present problems of interpretation, the GPE explained that his own simple formula (unlike those of the magicians) did not present difficult problems of interpretation.

13 *Id.* at 161.

14 The mandatory directions in the Dacey Trust requiring that insurance proceeds be used to pay administrative expenses and death taxes, *id.*, at 139 (Dacey Trust, § B(2)(a), (b)), would cause insurance proceeds available for such purposes to be included in the decedent's adjusted gross estate under INT. REV. CODE OF 1954, § 2042(1), even though the decedent had retained no incidents of ownership. See generally Wren, *The Use of Life Insurance in Estate Planning*, 41 ST. JOHN'S L. REV. 6, 17-18 (1966).

15 The Probatanian College of Expert Magicians and the Probatanian Magicians Association issued statements condemning the GPE's work. They also commented that the magicians ultimately would profit from the GPE's book since they would be called upon to straighten out the affairs of Probatanians who followed the advice of the GPE. Strauss, *Book Review, Res Gestae*, Sept. 1966, pp. 5 n.4, 9.

16 This order was difficult for the GPE to interpret since he felt that he could not stop something that he had not been doing. No attempt was made to stop the publication of the GPE's book. Such an attempt might well violate a Probatanian's right to a free press. Although the GPE was free to publish a book, the magicians successfully prevented him from advising individual Probatanians. The GPE wrote his book to gain revenge on the magicians. Morgan, *The Probate Fuss*, *Look*, Nov. 29, 1966, p. 36. There is still substantial debate in Probatania as to just what constitutes the practice of magic.

17 Throughout Probatania, it was said that the GPE's book was more popular than sex when it was noted that *How To Avoid Probate* ranked No. 1 on the national nonfiction best-

ever, indicated that the magicians generally failed in their effort to save the people from the GPE. Indeed, some Probatanians felt that the GPE quite successfully defended himself against the attacks of the magicians.¹⁸ They urged that the magicians were simply fearful of what the truth, as revealed by the GPE, would do to their status in Probatanian society.

At this point, the few reform magicians who had been trying to improve their magic prior to the appearance of the GPE's book now sought to make their magic (1) uniform throughout Probatania, (2) simple and readily understandable by all Probatanians, and (3) as independent of the magicians as possible. Fearful that these reformers might be urging professional suicide, some of the older magicians urged that the reformers did not have the interest of Probatania at heart. They argued that the magicians' controls were necessary to protect the surviving members of the family of a deceased Probatanian.

The reformers then suggested that Probatania give the people a choice. Upon the death of a Probatanian, his successors could invoke the magic of the magicians or not as he chose. Above all, the reform magicians felt that the people of Probatania should be informed as to the details of the magic. They even thanked the GPE because although he had overstated the case against the magicians, he had brought to the attention of the people of Probatania the need for reform. Some waggish magician suggested that the GPE might use a portion of the vast royalties from his book to assist the reform magicians in drafting a new formula, dedicated not to the magicians or to the GPE, but to the people of Probatania.

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PRINCIPLES AND PRACTICES FOR THE LEGAL SECRETARY. By Marian Cornell and Kenneth Heafield with an introduction by the Honorable Paul L. Adams of the Michigan Supreme Court. Chicago: Callaghan & Co., 1965. Pp. 209.

Principles and Practices for the Legal Secretary is an excellent book and deserves to be included in the secretary's library along with such highly respected works as Altman's *Self-Administering Course for Legal Secretaries*¹; Doris and

seller list, while *Human Sexual Response* ranked No. 2. Strauss, Book Review, *Res Gestae*, Sept. 1966, p. 5. *How to Avoid Probate* retained its No. 1 position, but *Human Sexual Response* subsequently declined to position No. 6. *Time*, Nov. 11, 1966, p. E4.

18 One such attack was made on the ground of plagiarism. Milton E. Meyer, Jr., a-Denver, Colorado, attorney, has charged that Mr. Dacey's view of the desirability of avoiding probate by use of the revocable trust . . . is mine—lifted virtually verbatim from an article I wrote on the subject some six years ago . . .” *The National Observer*, May 30, 1966, p. 5, col. 1. [Mr. Meyer's article may be found at 37 *DICRA* 333 (1966).] In reply, Mr. Dacey called similarities between his text and that of Mr. Meyer's “purely coincidental.” *The National Observer*, May 30, 1966, p. 5, col. 2.

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Miller's *Complete Secretary's Handbook*²; Hutchinson's *Standard Handbook for Secretaries*³; and Miller's *Legal Secretary's Complete Handbook*.⁴

It is time that more members of the legal profession recognize the need to develop *legal assistants* who are able to serve the lawyer with the same degree of skill as that exhibited by expert assistants such as doctors' nurses. All too often, nonlawyer employees from eighteen to eighty are spoken of as "the girls" and are employed as ordinary stenographer-typists. A well-paid and happy legal assistant can do much for the busy lawyer, provided he has employed a competent person, has insured that she has received the required training, and has offered her the necessary incentive. *Principles and Practices* will be a valuable aid in providing the necessary training.

The book is aimed at the secretary who wants to be more than a typist. It cautions:

The secretary owes herself the duty to learn the use of her mind. . . .
The secretary also owes her employer the duty to think. . . . The secretary must strive for her own conception of "the idea to be stated." Only in this manner can she intelligently function and coordinate her work with that of her employer.⁵

The chapter entitled "The Habit of Perfection" wisely warns: "Never type anything that doesn't make sense to you. . . . Never type a word about which there is doubt of the correct spelling or meaning."⁶ The authors make it clear that it is the lawyer who must permit and encourage the secretary to use her own mind.

The book's eleven chapters are divided into two general categories. The first six chapters are devoted to the specific types of work performed in a law office. Included are general discussions of the lawyer's work; of the types of legal instruments he most often uses; and of his relationship to his clients, the courts, and society. These chapters may be slightly difficult for a recent high school graduate to comprehend, but they are complete and can be understood with some assistance from a patient employer. The remaining chapters discuss general legal secretarial techniques, the handling of clients and visitors, proper telephone techniques, relations with the boss, and office housekeeping. A lengthy appendix contains samples of typed legal forms and a glossary of common legal terms.

After a book has been published it is always tempting to suggest other subject matters which could have been included or to attempt to improve upon that which is provided by the authors. This reviewer will yield somewhat to this temptation, not in the spirit of criticism — since the book is excellent — but as food for thought as to what else the reader might consider in training his assistant.

All of the book's references to dictation are to stenography. However, the use of dictating machinery is now widespread in the more modern law offices

2 Englewood Cliffs: Prentice-Hall. 1956. Pp. xxiv, 682. \$6.95.

3 Dallas: McGraw-Hill. 1958. Pp. 638. \$6.95.

4 Englewood Cliffs: Prentice-Hall. 1953. Pp. 662. \$7.50.

5 CORNELL & HEAFIELD, *PRINCIPLES AND PRACTICES FOR THE LEGAL SECRETARY* 150 (1965).

6 *Id.* at 104, 105.

and cannot be ignored in a work devoted to making the assistant as effective as possible. Today's expert legal secretary must be capable of using the most modern equipment.

Similarly, a section on the secretary's use of automatic typing devices might be helpful. These machines greatly increase secretarial productivity and also take some of the duller routine (typing boiler plate and proofreading) out of her work day.

Reference is made to the preparation of extra copies as a matter of office routine. Again, modern copying machinery renders this practice expensive and often obsolete.

Stress on modes of dress, hair styling and makeup might be of special value. Male lawyers frequently find it difficult to discuss such matters with their feminine assistants.

Also, a bibliography of materials on law office management would aid the secretary in finding answers to a host of problems which cannot be covered by this specific work. Reference might be made, for example, to the A.B.A.'s *The Lawyer's Handbook*,⁷ Cantor's *Managing the Law Office*,⁸ and journals, such as *Law Office Economics and Management*,⁹ which provide articles in each issue especially for the legal secretary.

A final benefit that will be gained from a reading of *Principles and Practices for the Legal Secretary* is that it not only will let the legal secretary know how to perform in the law office, it will let many a lawyer know what a truly expert secretary might do for him.

Robert I. Weil*

7 St. Paul: West Publishing Co. 1962. Pp. 557. \$7.00.

8 Chicago: Callaghan & Co. 1964. Pp. xii, 296. \$18.50.

9 Chicago: Callaghan & Co. \$22.50 (published quarterly).

* Member of the firm of Daniel J. Cantor & Company of Philadelphia, management consultants to the legal profession; assistant editor of *Law Office Economics and Management*, a quarterly journal published by Callaghan & Company, Chicago. Mr. Weil has written on economic and management topics for a number of legal journals and has lectured on this subject before groups of lawyers throughout the United States.

BOOKS RECEIVED

- THE BIBLE AND THE SCHOOLS.** By the Honorable William O. Douglas, Associate Justice, Supreme Court of the United States. The Justice discusses and defends the reasoning underlying the Supreme Court's decisions regarding religion in the public schools. Boston: Little, Brown & Co. 1966. Pp. 65. \$3.75.
- CASES AND MATERIALS ON PROPERTY.** By John E. Cribbet, Professor of Law, University of Illinois; William F. Fritz, Professor of Law, University of Texas; and Corwin W. Johnson, Professor of Law, University of Texas. This is the second edition of this "University Casebook Series" title. Brooklyn: The Foundation Press. 1966. Pp. xxiii, 1272. \$14.00.
- CONFRONTING INJUSTICE: THE EDMOND CAHN READER.** Edited by Lenore L. Cahn; Foreword by the Honorable Hugo L. Black, Associate Justice, Supreme Court of the United States; General introduction and prefatory chapter notes by Norman Redlich, Professor of Law, New York University. Selections from the work of the late judicial philosopher. Boston: Little, Brown & Co. 1966. Pp. xxiv, 428. \$8.95.
- COURTS AND RIGHTS: THE AMERICAN JUDICIARY IN ACTION.** By John P. Roche, Professor, Brandeis University, and former National Chairman of Americans for Democratic Action. The author presents an examination of the precise role of the judiciary in shaping the modern Constitution. New York: Random House. 1961, 1966. Pp. x, 143. \$3.95.
- DAYS OF OUR YEARS WITH LABOR.** By Robert C. Knee. A brief history of the development of labor law. Cincinnati: The W. H. Anderson Co. 1966. Pp. xiv, 160. \$4.95.
- FREEDOM AND ORDER.** By Henry Steele Commager. The noted historian comments on the American political scene in an attempt to reconcile liberty and order. New York: George Braziller. 1966. Pp. xiv, 320. \$6.50.
- FROM ESCOBEDO TO MIRANDA: THE ANATOMY OF A SUPREME COURT DECISION.** By Richard J. Medalie, Deputy Director, Institute of Criminal Law and Procedure, Georgetown University Law Center. These materials are a part of the Institute's program of examining and illustrating the steps in the criminal law process. Washington: Lerner Law Book Co. 1966. Pp. xix, 339. \$7.50.
- THE GREAT SALAD OIL SWINDLE.** By Norman C. Miller. A description of the machinations of Tino DeAngelis, whose dealings in nonexistent salad oil wreaked havoc on the business community. Baltimore: Penguin Books. 1965. Pp. 256. \$1.25 (Paperback).

- INSIDER TRADING AND THE STOCK MARKET.** By Henry G. Manne, Professor of Corporation Law, George Washington University. A legal and economic analysis of insider trading concluding that such trading results in no significant injury to long-term market investors. New York: The Free Press. 1966. Pp. xiii, 274. \$6.95.
- JUDICIAL REVIEW AND DEMOCRACY.** By Howard E. Dean, Professor of Political Science, Portland State College. An analysis and evaluation of the argument that the exercise of the essentially political power of review is undemocratic. New York: Random House. 1966. Pp. xi, 209. \$1.95.
- JUSTICE AND THE PRESS.** By John Lofton. An assessment of the proper balance between the right of the public to information and the right of the individual to a trial free from the effects of prejudicial publicity. Boston: Beacon Press. 1966. Pp. xiv, 462. \$5.95.
- LAW AND PSYCHOLOGY IN CONFLICT.** By James Marshall. Mr. Marshall charges that human perception and recollection are so imperfect that the "evidence" admitted by our legal system bears little relation to reality. Indianapolis: Bobbs-Merrill. 1966. Pp. xiv, 119. \$5.95.
- THE LAW IN QUEST OF ITSELF.** By Lon L. Fuller, Carter Professor of General Jurisprudence, Harvard Law School. Two competing directions of legal thought — natural law and legal positivism — are examined. Boston: Beacon Press. 1940 (First published as a Paperback in 1966). Pp. 150. \$1.95.
- MIRACLE AT PHILADELPHIA.** By Catherine Drinker Bowen. The story of the Constitutional Convention, May to September 1787, told by the noted biographer and historian. Boston: Atlantic-Little, Brown. 1966. Pp. xix, 346. \$7.50.
- THE NORMANS.** By Timothy Baker. Were the Normans a great civilizing force or were they cruel destroyers of a vital culture? Mr. Baker explores this conflict in a survey that covers a forty-year period centered on the Battle of Hastings. New York: The Macmillan Company. 1966. Pp. ix, 317. \$7.95.
- SEXUAL BEHAVIOR AND THE LAW.** By Samuel G. Kling. A layman's guide to the controlling laws, written in question-and-answer form. Bernard Geis Associates. 1965. Pp. x, 301. \$6.95.
- THE TRIAL OF STEVEN TRUSCOTT.** By Isabel LeBourdais. The book, a best seller in Canada, attempts to demonstrate that fourteen-year-old Truscott was wrongfully convicted of murder. Philadelphia: J. B. Lippincott Co. 1966. Pp. 257. \$4.95.
- THE ZONING GAME: MUNICIPAL PRACTICES AND POLICIES.** By Richard F. Babcock. Mr. Babcock reports on the disordered field of suburban zoning and suggests the directions a restructuring should take. Madison: The University of Wisconsin Press. 1966. Pp. xvi, 202. \$5.75.

Pages 453-456 are Intentionally Blank.

