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## Book Note

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## BOOK NOTE

THROUGH THE COURTROOM WINDOW. By the Honorable Charles S. Desmond.\* St. Paul: West Publishing Co., 1959. Pp. 256. This is the second publication owing its origin to the hobby of the astute Chief Justice of New York's highest tribunal, and, like its predecessor, SHARP QUILLETS OF THE LAW<sup>1</sup>, it contains capsule resumes of some of the bizarre cases presented to the New York Court of Appeals during its 113 years of existence.

The book, as Justice Desmond states in his Foreword, "makes no claim to profundity, legal learning or felicity of style."<sup>2</sup> The reader who peers through the courtroom window in quest of the Desmond apperception and ready wit will be disappointed to find that the author shares his vantage point as a spectator, and shuns the role of commentator on the process of law unfolding. The cases are treated in the detached and expository manner of a reviewing jurist, rather than dramatized or argued as an advocate. Nevertheless, the pages of the work speak for themselves, suggesting a sort of legal allegory in which the unfortunate, often deplorable litigants represent a progression of human foibles ranging from everyday ineptitude to passion, violence and greed. Where the author does comment, it is with an aura of sympathy for the unhappy coincidence or quirk of fate which entangles an innocent victim in this web of frailty.

It should be remembered that all of these cases have involved a controlling question of law of sufficient controversy to reach the highest level of one of the country's finest state judicial systems. From the voluminous trial records of each case presented, the author has chosen background facts necessary to pinpoint the legal issues and to lucidly explain the court's holding, and he does this in language the layman will welcome. The court-record sources are only occasionally revealed.

The narration is at its best when directed to homicide cases. And Desmond ably supports his hypothesis that "Murders in life spring from sudden rage or brooding hate or lust, jealousy, greed, thievery or drunkenness. Obscurely motivated, deviously planned and brilliantly conceived crimes are rare."<sup>3</sup>

A fairly common thread of defense in many homicide cases reaching the Court of Appeals is apparent. Police officers are consistently efficient in supplying prosecutors with confessions of accused murderers, and often such confessions will be repudiated on trial by defendants on the ground that they were obtained by force. A careful reading of these cases raises an uneasy mistrust in the ability of a jury to decide this question. This mistrust ripens in the discussion<sup>4</sup> of *People v. Wade*,<sup>5</sup> a case particularly interesting in light of the recent Caryl Chessman fiasco. William Wade repudiated a confession of complicity in a 1940 prison break in the course of which a guard and a policeman were killed. Convicted by a jury which rejected his coercion defense, Wade remained in prison for 18 years, during which time he took appeals to various courts, occasionally acting as his own lawyer. Finally, a federal court reviewed the trial record and determined that the confession had been illegally obtained, despite the contrary determination of the jury, and that a conviction based upon it violated due process of law.<sup>6</sup> Here, however, the lengthy delay worked in favor of the accused; the original witnesses were no longer available, and a new trial was impossible.

The importance of clear and complete evidence in determining legal fault

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\* Chief Justice, New York Court of Appeals.

1 Buffalo: Dennis & Co., Inc., 1949.

2 P. iii.

3 P. 1.

4 Pp. 205-12.

5 291 N.Y. 574, 50 N.E. 2d 660 (1943).

6 *United States v. Jackson*, 256 F.2d 7 (2d Cir. 1958).

between private litigants is demonstrated forcibly by a comparison<sup>7</sup> of *Manley v. New York Telephone Co.*<sup>8</sup> and *Seeley v. New York Telephone Co.*<sup>9</sup> Manley and Seeley were simultaneously knocked to the ground, presumably by electric shock, while speaking to each other on telephones some 40 miles apart. In separate actions, Manley's complaint was dismissed while Seeley recovered \$25,000. The Court of Appeals affirmed the dismissal, but the Appellate Division of the Supreme Court approved Seeley's recovery. The resulting anomaly is reconcilable, if at all, only in terms of the evidence presented by each plaintiff. Manley was unable to adequately show the cause of his injury. To Desmond, "It was the difference in proof that made the difference in result."<sup>10</sup> However, it is interesting to note that Desmond dissented in the *Manley* case<sup>11</sup> (a four to three decision) on the ground that Manley's evidence was sufficient to take the case to a jury.

Other cases detailed concern a myriad of subjects such as will contests, governmental tort liability, athletic spectator injuries, workmen's compensation, animal antics, and license tax evasion.

To the average reader, the pocket analyses of these cases, by a trained legal mind from an objective viewpoint, provides an insight into the machinations of the law during that mysterious interim between the commission of the crime or civil wrong, often sensationalized by newspaper accounts, and the ultimate adjustment of rights and liabilities. This in turn may suggest to him that the conservative protection of traditional rights under our common law system, unswayed by sporadic panics and prejudices, results in justice assured, not merely delayed.

Chief Justice Desmond's leisure-time study of New York cases has long benefited the legal profession because of the technical competence and judicial ability of the man himself. His attempt to share this hobby with the public in general in *THROUGH THE COURTROOM WINDOW* succeeds to the extent that interesting facets of the law create genuine reader appeal.

*F. James Kane*

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<sup>7</sup> Pp. 163-68.

<sup>8</sup> 303 N.Y. 18, 100 N.E. 2d 113 (1951).

<sup>9</sup> 281 App. Div. 285, 120 N.Y.S. 2d 262 (1953).

<sup>10</sup> P. 168.

<sup>11</sup> 100 N.E. 2d at 117.

## BOOKS RECEIVED

### MEDICINE

#### COLLECTED PAPERS, 1956-1959, OF THE AMERICAN BOARD OF LEGAL MEDICINE.

New York: Central Book Co., 1960. Pp. ix, 238. \$10.00. In 29 short essays, members of the American Board of Legal Medicine attempt to present some considerations which strive for the attention of the medico-legal specialist. The medico-legal problems, which embrace any legal matter or contest involving medical facts, are discussed from a number of vantage points. The topics range from *Medical Evidence in Administrative Decisions on Disability to Trauma in Urology* and *The Medico-Legal Aspects of Public Health*.

#### LAW AND MEDICINE: TEXT AND SOURCE MATERIALS ON MEDICO-LEGAL PROBLEMS. By William J. Curran.

Boston: Little, Brown and Co., 1960. Pp. xxvii, 829. \$12.50. This is a combined text and casebook for practicing attorneys and students of law in those areas of medical science, medical practice, and public health which are significant to the practice of law. In each chapter of the book the author attempts to develop three stages: an orientation to medical science and medical practice; an examination of certain advanced clinical areas; and the application of medical issues in legal situations.

### JURISPRUDENCE

#### LEGAL REASONING: THE EVOLUTIONARY PROCESS OF LAW. By William Zelermyer.

Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1960. Pp. xv, 174. \$4.35. The author has attempted in this short work to present to the average, non-legal reader the process by which the law is evolved and developed. He follows the steps by which a judicial decision is reached in a style that explains — or eliminates — most technical legal terms.

### JUVENILE DELINQUENCY

#### UNDERSTANDING JUVENILE DELINQUENCY. By Lee R. Steiner.

Philadelphia: Chilton Co.-Book Division, 1960. Pp. vii, 199. \$3.95. This is a book for the educator, the social worker, the parents, the law-enforcement officers, and also for the architects of our juvenile court system. It poses many questions on the causes of juvenile delinquency which have not been answered by modern science. In contending that we have given judges in children's courts too much power, the author recommends that we have in all juvenile cases a court composed of the common people who know the neighborhood and the home conditions of the child defendant.

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