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The Jury And The Defense Of Insanity

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BOOK NOTES

PRIVACY AND FREEDOM. By Alan F. Westin. New York: Athenum. 1967. Pp. xvi, 487. \$10.00.

Alan Westin's *Privacy and Freedom* is a detailed and comprehensive evaluation of the conflict between privacy and surveillance in modern society. The book was written under the auspices of the Special Committee on Science and Law of the Association of the Bar of the City of New York, with financial support from the Carnegie Corporation, and will undoubtedly stand as a major reference work on the subject.

The book is organized into four parts: (1) the function of privacy in society; (2) a description of the advances in surveillance technology; (3) the response of American society to the introduction of these new techniques; and (4) an evaluation of the past and future role of American law in this area. In the first of these parts, the author establishes the social value of privacy, an approach notably absent from other works on surveillance. Privacy, he contends, provides individuals and groups in society with a preservation of autonomy, a release from role-playing, a time for self-evaluation and for protected communication.

Since World War II advancement in electronic spying devices has presented increasing threats to privacy in society. Mr. Westin attributes this increase in surveillance to the general low cost and ease with which electronic devices may be obtained. An additional factor is the change in social mores, evidenced by individual willingness to divulge more information on living habits and a general element of curiosity present in all societies, reflected by popular demand for intimate details of the lives of public figures. Mr. Westin, however, does not limit the concept of surveillance to physical observation, wiretapping, or eavesdropping. He includes psychological surveillance (use of personality testing and lie detectors as a means of personnel selection) and data surveillance (central collection of information on individuals in computer banks).

The author contends that American law is beginning to respond to this increase in surveillance by offering greater protection of privacy. For example, he feels the Supreme Court is moving toward the protection of privacy as a constitutional right under the fourth amendment. In *Berger v. New York*,¹ a case decided after the book had gone to

¹388 U.S. 41 (1967).

press, the Court did use the fourth amendment to invalidate a New York eavesdropping law. However, Mr. Westin believes that there is a need for legislation to safeguard this right. He advocates a balanced position, generally prohibiting surveillance but allowing limited use in cases of national security and major crimes. This recognition of the demands for limited surveillance by law enforcement officials is only one of many instances throughout the book of Mr. Westin's realistic and objective appraisal of public attitudes and trends in the law.

ROBERT L. BLAND

BACK TO BACK. By Leonard Baker. New York: Macmillan Company. 1967. Pp. 311. \$6.95.

Franklin Roosevelt's Judicial Reorganization Plan of 1937 was more than a waystation in the continuing struggle for liberal reform. It was "a struggle to determine if the Presidency, the Congress, and the judiciary were indeed equal branches of the federal government as the people understood the Constitution to say, or whether one branch, the Presidency, was supreme" (p. 6). *Back To Back* by newspaper correspondent Leonard Baker is both a narrative and analytical account of this struggle, its causes, and its effects. The author begins his study with President Roosevelt's surprise announcement of February 5, 1937, to submit a judicial reorganization plan to Congress. The plan authorized the immediate appointment by the Chief Executive of six additional Supreme Court Justices in order to obtain a body sympathetic to New Deal legislation.

The eyewitness style Mr. Baker uses to examine this historical event is well suited to the wide audience he is attempting to reach. The legal and parliamentary intricacies of the dispute are explained fully in non-technical terms without sacrificing style or accuracy. His rich detail gathered by means of personal interviews with many of the protagonists of that bitter fight, such as Senators Wheeler, Nye and Pepper, adds immediacy and drama to the narrative.

Baker does not conclude his narrative with the congressional defeat of the Presidential plan. Instead, he continues with an analysis of the ramifications of the failure of the Court "packing" plan. He contends that the Court fight saw the rise of the Southern Democrat-Midwestern Republican coalition, which was to continue to block progressive legislation until its demise in 1963 over the question of civil rights legislation. However, Mr. Baker considers this twenty-five

year lull in New Deal policies to be a long range advantage to the progressive cause, since Americans were given an opportunity to digest and evaluate this new approach to national government.

While Mr. Baker admits that the people gave Franklin Roosevelt an overwhelming mandate for the continuance of New Deal legislation in the 1936 election but were strongly opposed to the Judicial Reorganization Act, he fails to draw a conclusion from this apparent inconsistency. A logical conclusion is that an aura of respect and trust surrounds America's highest judicial body, and despite the nation's political convictions, a great majority of the people refuse to tamper with the Court's physical composition. This is apparent today. While many are in violent disagreement with the present Court's decisions, only a small splinter group would attempt once again to change the Court's composition.

While the story of the Court "packing" plan has been told in a more scholarly and accurate manner many times before, the author's fresh approach and novel source material make *Back To Back* a light yet informative commentary on an intriguing historical period.

JOHN E. KELLY, III

BEHIND THE SHIELD: THE POLICE IN URBAN SOCIETY.

Arthur Niederhoffer. Garden City, New York: Doubleday and Company, Inc. 1967. Pp. 253. \$5.95.

Recent statistics on crime and widespread public disorder in the United States have caused attention to be focused upon the police and particularly upon the urban police forces. While dissention and conflict between significantly large numbers of the population and the police are apparent, perhaps the greatest problem exists within the police system itself, in the attitudes of its members toward society and themselves. Mr. Niederhoffer is uniquely qualified to discuss the urban police force and its problems, having spent twenty-one years as a policeman with the New York City Police Force. He also holds a doctorate in sociology.

Mr. Niederhoffer's declared objective is to enable the reader to "comprehend the present reality of the police system" (p. 10). The term "reality" is somewhat illusory because the author seems to use it primarily in reference to police attitudes and personality, rather than to the day-to-day operations of the urban police system. The

author accomplishes his aims through an extensive sociological study of the causes and results of police cynicism.

Policemen bitterly think of themselves as a minority group in a society where the upper-class looks down on them; the middle-class ignores them; and the lower-class fears them. Even the courts appear to be against them.

Cynicism is an ideological plank deeply entrenched in the ethos of the police world For many reasons the police are particularly vulnerable to cynicism. When they succumb, they lose faith in people, society, and eventually in themselves. In their Hobbesian view the world becomes a jungle in which crime, corruption, and brutality are moral features of the terrain (p. 9).

Cynicism is regarded by the author as being at the very core of police problems and his approach throughout most of the study is to point up the sources and results of police cynicism rather than suggesting solutions to police problems.

The author discusses the dissatisfaction of large numbers of policemen with recent Supreme Court decisions extending the rights of criminal offenders and limiting police procedure. He asserts that bargaining between defense counsel and the courts, not police interrogations, has produced almost all past and current confessions. Statistics are also presented to illustrate that law enforcement has not been hampered by the recent Supreme Court rulings, except insofar as they have engendered greater cynicism among policemen.

The study clearly indicates that the basic problem in the development of more efficient law enforcement is to change police attitudes toward society, their work, and themselves. Such changes will not come about by adding men and equipment to the present forces but will result only by developing public respect and concern for the police and their vital role in society.

HARRY C. ROBERTS, JR.

THE JURY AND THE DEFENSE OF INSANITY. By Rita James Simon. Boston: Little Brown and Company. 1967. Pp. 269. \$10.00.

Changes in the criterion for determining legal insanity, as introduced in *Durham v. United States*,¹ have produced much controversy in the field of criminal law. In an effort to resolve the controversy between the *Durham* test and the century-old *M'Naghten* (right-wrong)

¹214 F.2d 862 (D.C. Cir. 1954).

test for legal insanity, an experimental study was undertaken as part of the University of Chicago Jury Project. The results of the study have been compiled in this work by sociologist Rita James Simon.

The experiment was designed to study the operation of the criminal trial jury in a case in which the defense of insanity is raised. Tape-recorded trials of two such cases were "tried" before experimental juries whose verdicts were compared with the instruction on legal insanity given to the jury. One-third of the juries were given the *M'Naghten* instruction, one-third the *Durham* instruction, and the remaining one-third were given no instruction on insanity.

The author has compiled the statistical findings from the study into numerous tables and charts which are used throughout the book to support the findings and conclusions. Results of the group reactions in terms of verdicts showed only a slightly greater number of not-guilty-by-reason-of-insanity verdicts from those juries instructed under *Durham* than from those instructed under *M'Naghten*, while the juries receiving no instruction responded much the same as those instructed under *Durham*. The author concludes from these findings that the substance of the *Durham* rule is more closely aligned with the juror's natural sense of justice.

Other findings from the study presented by the author give the reader a clear insight into the jury in operation. This information was derived primarily from observations of the recorded jury deliberations. However, the findings do not really resolve the controversy between the two tests for legal insanity since the evidence at best shows that the use of the *Durham* test would not materially alter the outcome of defense of insanity cases. Perhaps this study also demonstrates that there is no need for the controversy to be as heated as it sometimes is.

Thus, while this work by Mrs. Simon will not provide a solution to the issue regarding the proper test for determining criminal responsibility in defense-of-insanity cases, it is valuable as a behind-the-scene look into the deliberations of the criminal trial jury.

DAVID L. ROSS