

Winter 1954

## BOOK REVIEWS

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### Recommended Citation

Randall, C. H. Jr.; Leverette, Sarah; Stubbs, Thomas M.; and Dean, William Tucker (1954) "BOOK REVIEWS," *South Carolina Law Review*. Vol. 7 : Iss. 2 , Article 8.

Available at: <https://scholarcommons.sc.edu/sclr/vol7/iss2/8>

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## BOOK REVIEWS

THE ART OF ADVOCACY, A Plea for the Renaissance of the Trial Lawyer. By Lloyd Paul Stryker. New York, Simon and Schuster, 1954. 306 Pp.

Mr. Stryker is a leading member of the most vigorous bar in the country, that of New York City, and when he speaks of his art his words must carry authority. There is much in this book to benefit the young law student about to enter the practice, whether he intends to be a trial lawyer or not. There is much of value to the law teacher, and even to the veteran trial lawyer, although the book is not intended to be a handbook of trial technique. The bar associations, and every lawyer, should ponder Mr. Stryker's conclusions as to the present state of advocacy and its implications for our system of justice.

The first of the book's three parts takes the reader through a trial, from the time the client appears, or rather from the time the lawyer patiently awaits the appearance of a client, to the closing speech to the jury. The verdict on this trial will never be rendered, but the verdict on Mr. Stryker's performance cannot but be favorable. Not only is he a master of his craft, but he is also a widely read scholar and a delightful writer. In discussing such phases of the trial as searching for the facts, interrogating the client, and opening to the jury, he draws on his own broad experience and his broader reading to dramatize each point which he makes.

In the second part, Mr. Stryker considers what it takes to make an advocate, and submits that an advocate must be a highly educated, warmly sympathetic human being. Like all great practitioners, Mr. Stryker recognized the decisive contribution which theory can make. He recommends the adoption by the young advocate of a model from among the outstanding advocates of the past, Martin Littleton, Rufus Choate, Abraham Lincoln, Thomas Erskine, Max Steuer, John W. Davis and many others; to the list the student might add Lloyd Paul Stryker. But study of the art should not stop here. Aristotle and Cicero and Francis Bacon have examined the theory of the art, and their wisdom is timeless. Even literature and science can broaden the insight of the young advocate, for the stuff of advocacy is life in all its facets.

In the third part, Mr. Stryker deals with the problems posed by the present attitude of both the bar and the public to the practice of criminal law. The criminal lawyer has suffered a loss of esteem

even in the eyes of his fellow lawyers that must be considered shocking. Basic to our system is the right of every person accused of crime to have counsel for his defense, and the correlative right, stated in Canon 5 of the Canons of Professional Ethics of the American Bar Association, of every lawyer to defend a person even if he thinks him guilty of the crime charged. Mr. Stryker takes this canon seriously; he defended with honor to himself and the law Alger Hiss in the latter's first trial for perjury. At the heart of the advocacy system, as distinguished from an inquisitional system of justice, is this idea that the point of view of each party to a legal proceeding, criminal or civil, be presented in the strongest light possible by competent counsel. If this precept is weakened, the whole system must suffer. Mr. Stryker feels that this right would best be protected by a divided bar, as exists in England. The difficulties of adopting the English tradition are great, and are recognized by the author.

I have suggested that Mr. Stryker has much to say to law professors, and a word in answer thereto is therefore permissible. As former Faculty Assistant in Charge of the Ames Competition at the Harvard Law School, I cannot but feel that his passing criticism of the attitude of the faculty of that school towards advocacy was made without his having examined the evidence. The faculty is and has been deeply concerned with advocacy at the appellate level. Through the Ames Competition, virtually every student has practical training in brief writing and oral advocacy, and those who advance into the upper rounds of the Competition receive an incomparable training in advocacy that cannot but better equip them to be advocates on the trial or appellate level. The so-called "group work program" with its elaborate model trial, inaugurated several years ago, gives a vicarious training in trial work. Mr. Stryker himself admits the value of vicarious participation in a trial. This year the School has added a seminar in trial practice, permitting interested students to extend their training. I might add that anyone who had the good fortune to study the course in evidence under Edmund Morgan could not but gain a deep insight and interest in the trial process.

If Mr. Stryker's criticism is that the law schools of the country are not doing enough in this respect, I thoroughly agree, and so do most law schools. But the problems of introducing a satisfactory program are great. Here at South Carolina, and at Southern Methodist and George Washington law schools, elaborate practice court programs are successfully in operation.

But the strongest argument to any criticism that the law schools

are not producing advocates can quote Mr. Stryker himself. A student can be pointed along the path to becoming an advocate, but he must make himself. He must read omnivorously, not only from the law and from the experience of the great lawyers of the past, but also from all the richness of our culture. In addition he must thoroughly familiarize himself with all matters outside the legal field which are pertinent to his case, such as business practices, medicine and the other sciences. In short, the law school does not give a legal education; it merely serves as the beginning of a life-long process of study and preparation.

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1953 ANNUAL SURVEY OF AMERICAN LAW. Edited by Robert B. McKay. New York Univ. School of Law, New York, 1953. Pp. 1030. \$10.00.

Though the Annual Survey of American Law has been published each year since 1942, it remains a unique publication in the legal field both in its plan and coverage. The *Survey* was established by Chief Justice Arthur T. Vanderbilt of New Jersey while he was Dean of New York University School of Law, an origin which, of itself, accords the series a place high among contributions to American legal literature. It is now a permanent feature of the New York University Law Center.

The *Survey* is produced by the faculty of New York University School of Law and selected guest contributors who, each year, take the substance of the law as it flows from our judicial and legislative machinery, our law schools and the profession at large in the form of cases, statutes and commentary and with rare discrimination condense this flood into "an analytical account of the progress of the law" which can be found in no other publication. The result presents to the busy lawyer and the informed layman in one volume an ably executed summary of the law for the year, a summary enriched by the judicious and informative commentary of expert surveyors.

In form the 1953 Annual Survey of American Law is divided into six fields of law under which are grouped the related subjects within each field, with coverage extending from the very vital subject of international law to the somewhat specialized subject of legal bibliography. Within each subject the presence of footnotes in almost bibliographic proportions provides sources for further study. A table of cases, together with a table of statutes, rules and executive orders, completes the *Survey* with the very helpful treatise-type aids common to the classic law text.

Covering developments in the field of international law during 1953, Professor Cecil J. Olmstead of New York University School of Law has ably surveyed the controversial "Bricker Amendment" proposals, the principal litigation brought before the International Court of Justice, and the major accomplishments of the fifth session of the International Law Commission of the United Nations, as well as certain national court decisions which dealt with questions of a more or less international aspect. Developments in the field of conflict of laws are well summarized by Professor William Tucker Dean of Cornell Law School, including such phases of the subject as jurisdiction, limitations on the exercise of judicial discretion and choice

of law. Communism and the Constitution is the primary subject for discussion in Professor Ralph Bischoff's coverage of Constitutional Law and Civil Rights, in which is included an excellent analysis of the *Rosenberg* case. Summaries and analyses of the significant developments in the all-important fields of federal income, gift and estate taxation, trade regulation, labor relations and public housing are presented by such experts as Professors Harry Rudick, Joseph Trachtman, Walter Derenberg, Sylvester Petro and Robert F. Koretz. Completing the picture of developments in the law during 1953 is the thorough treatment given the subjects of commercial law, torts, family law, property, procedure and legal philosophy by such authorities as Seligson, Knauth, Domke, Niles, Atkinson, Peterfreund, Karlen, Cahn, Elliott and others. Though not complete, this brief mention indicates the nature of the *Survey* and the caliber of its producers.

It is no longer possible for the successful practitioner to confine himself to a study of the decisions and statutes of the forum. Confronted with a mass of constantly changing administrative rules, regulations and decisions on the federal front, many of which affect even the narrowest and most localized practice he must be on actual and not merely constructive notice where change occurs. Though evolving somewhat more slowly, the changes in such fields as sales, insurance, contracts, property and procedure outside as well as inside the local jurisdiction may very often become important items to the judge and the practitioner. It is obviously impossible for the individual to obtain even a "speaking acquaintance" with the entire mass of law that is handed down each year by our courts, legislatures and administrative bodies. To assist in this task the Annual Survey of American Law takes its place as a valuable addition to the resources of the practitioner. With its summary form it is not designed for, nor is it intended as a means for, exhaustive study or research. It purports to put the professional on notice with reference to significant developments in the law and to fit into the picture of the law with an expert hand the happenings of the year in proper perspective. It gives to the informed layman a concise and readable summary of the trends within the law. For these purposes, the 1953 *Survey*, as well as the preceding volumes, is highly recommended to the judge and the practitioner who would know what is taking place in the year by year progress of his profession and to the layman who would be cognizant of the operations of court and legislature.

SARAH LEVERETTE\*

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THE COUNTY COURT IN NORTH CAROLINA BEFORE 1750. By Paul M. McCain. Duke University Press, Durham, N. C., 1954, 163 pp.; \$2.50.

This painstaking study traces the growth of county or local courts in North Carolina from its founding in the 1660's to mid-Eighteenth Century, and demonstrates, as the powers and functions of these courts evolve, their influence upon the lives and fortunes of the inhabitants. Based upon a careful examination and analysis of a vast quantity of original source material, this book will be of considerable interest, not only to students of the history of legal institutions, but to social, cultural, and economic historians as well.

The system of government of both the Carolinas stemmed from the views of the English philosopher, John Locke (1632-1704), whose *Fundamental Constitutions*, published in 1669, advocated ideas at least tending toward democracy or self-government. Locke's successful advocacy of views, then so revolutionary, may be accounted for by his intimate friendship with Lord Ashley, Earl of Shaftsbury, Chancellor of the Exchequer, an influence further enhanced by Locke's membership from 1696 to 1700 on the Board of Trade. This study embraces for three quarters of the time involved, and up to 1729, the rule of the Lords Proprietors, and for the last quarter, from 1729 to 1750, that of the Royal government.

The two most surprising facts revealed here are that these county courts, after a time at least, exercised functions which today we would regard not only as judicial, but executive and, to some extent, legislative as well. The other surprise is that officials of the Court were permitted to hold not only dual, but multiple offices. These practices under our present views would be severely frowned upon.

The General Court and the Court of Chancery, composed of the Governor and members of his Council, beginning from the earliest settlements about 1664, exercised all judicial functions. In time, as the settlements grew, and what had once been four large coastal precincts had become nineteen counties, extending inland to the Piedmont, we see the need for local courts arising, and their expansion in power and prestige as the population grew and the lives of the people became more complicated.

The Governor and Council named the County Court Justices or Justices of the Peace. The people themselves were permitted to elect members of the Assembly, which, together with Governor and Council, crystallized eventually into a Lower and an Upper House. This

General Assembly enacted tax laws, established courts, fixed boundaries and the like.

The jurisdiction of county courts, by 1690, embraced civil actions, triable by jury, in amounts not exceeding 50 pounds Sterling, (later increased), and over misdemeanors and lesser crimes (not punishable by death), wherein procedure was summary and without jury. Judgments in civil actions were payable in tobacco, at the rate of 2,000 pounds of tobacco as the equivalent of 10 pounds Sterling. No Equity jurisdiction was granted to them, except as to the estates of minors, wherein accounting from their wards was often the problem for adjudication. By Act of 1738-9 the powers of county courts were enlarged. Prosecuting attorneys were then, for the first time, appointed; grand juries were first employed. Authority to levy local taxes, through the sheriff, whose selection was, in part, controlled by the court, and whose duty, among others, was to supervise elections, first appeared. A great boon to the proper functioning of these courts, and to the government of the Colony as a whole, was the publication in 1752, of the complete and revised laws of the Colony, a project commenced in 1736 and completed in 1749.

The justices were chosen from the prominent and influential laymen and substantial citizens of each county. The number of justices for each county varied, averaging about 12, with a requisite quorum of 3. The ranking, or presiding justice was at first called a "Steward," and later, "Chairman;" the others were called "Assistants." The docket for trial of cases was divided into two parts; Pleas for the Crown, and "Common Pleas" (in which individuals were involved, each against the other). In addition to the Sheriff, as executive officer, under whom served his constables, there were clerks of court and registers of deeds. The few practicing attorneys were commissioned by the Governor. Sessions of court were held in the counties every four months, and usually lasted five days. The order of business was much as would be followed today. Even after adjournment the justices were accessible at their homes for the signing of necessary orders in emergencies. County courts had concurrent jurisdiction, up to their jurisdiction limits, with the General Court in civil actions at Law, but, finally, the General Court disallowed cases being brought before it for sums of less than 10 pounds. As to matters tried before magistrates county courts had appellate jurisdiction.

In addition to the customary jurisdiction county courts entertained probate proceedings, which not only embraced proof of wills, duly executed, and nuncupative and holographic wills, but deeds, powers



of attorney, claims for additional lands under the law of head-rights, and brand-marks for livestock. It granted letters of administration, named administrators with the will annexed, and required filing of inventories and statements of account by personal representatives, which were carefully examined and passed on. Then too, orphans and their estates, with appointment and supervision of their guardians were cherished functions of the county court. Orphans might be bound out as apprentices for a term of years under court order. Their masters were usually required to teach them trades and furnish some education. The court was called upon to deal with problems of indentured servants (often illegitimates), and slaves to see that the terms of indenture were fulfilled. Masters at times had their complaints of betrayal of duties of such servants, and runaway slaves had to be dealt with.

The courts were given the administrative duty of acquiring suitable sites for and erection of public buildings, such as court houses for sessions of court and preservation of records, and jails, when such were required. Stocks must be built and these various public buildings must be kept in repair. The need of public houses, or taverns, to house court officials and members of the public generally, with their horses, soon arose. The court granted licenses for such purposes and fixed rates of charges for the various forms of accommodation, including the sale of spirituous liquors. By 1740, the court supervised the erection of warehouses for the storage of commodities in which taxes were payable, due to the shortage of currency.

Authority in the county courts to levy taxes was quite limited at first but gradually expanded as the needs increased for taxes, both general and special, not only to defray normal public expenses, but for the erection of public buildings, for running surveys, and to establish and maintain roads, ferries and bridges. The powers to establish and provide proper weights and measures, to purchase ammunition, and to provide proper powder magazines were added to the other responsibilities of the court. In order to insure adequate tax revenues the court had to see that a complete list of taxables was made up by June of each year. The fact that taxes were necessarily payable in commodities made it necessary for the court to provide warehouses for storage and correct weights and measures to insure a just collection of taxes.

Road problems, including their laying out and the maintenance of bridges and ferries, and of rendering streams navigable and keeping them so, were by no means peculiar to North Carolina, but were

common to the other colonies as well, especially in the coastal areas in Virginia, both the Carolinas, and Georgia. Male citizens between the ages of 16 to 60 (with some exceptions) were required to work on the roads each April and September and were subject to fine and punishment for neglect to do so.

Mr. McCain's careful study has assembled for the first time the widely scattered materials pertinent to the history and functions of these County Courts, and now are made available to students of such topics. We know of no other comprehensive study of any of the other Southeastern county courts, although it seems certain that similar studies will follow. The dearth of published materials of this kind has lately been the subject of frequent comment. A recognition of the need necessarily foreruns the supply of it. In this work it has been demonstrated that "the Court," to the average North Carolina settler, meant, not the General Court, sitting far away at Edenton, but the *County Court*, which, in so many ways, immediately touched his life and affected his welfare.

THOMAS M. STUBBS.\*

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REPORT ON THE ATOM. What You Should Know About the Atomic Energy Program of the United States. By Gordon Dean. New York: Alfred A. Knopf. 1953. Pages vii, 321; vi.

Gordon Dean, chairman of the United States Atomic Energy Commission from 1950 to 1953, tells in his preface of the need he felt for a primer on the atomic energy program in this country when he was first appointed to the Commission. It is that need which he has attempted to fill, and the book should be judged accordingly. It is not an expose of the inner tensions of a Government agency; personalities are not discussed and very little will be found which has not already appeared in the better newspapers. Yet it is all gathered together in a compact volume, lucidly written and with occasional enticing hints of the book Mr. Dean could write if freed from security restrictions and if he were less discreet about the internal politics of the Commission and its relations with the rest of the Government.

His narrative begins with a brief history of the atomic energy program in the United States from its inception after Albert Einstein's letter to President Roosevelt in 1939 to the establishment of the Atomic Energy Commission after the war. Two chapters describe the geology of uranium and thorium and the unclassified information about processing from ore to metal. The production policy of the Commission—all operations by private contractors—is explained and the problems of the post-war expansion are touched on. From this review of the Commission's contract policy it is clear how routine, whether or not warranted, was the recent Commission award of a contract for \$107,000,000 for electric power facilities without competitive bidding.

Little is revealed about atomic weapons in the chapters devoted to that subject; they remain subject to the highest degree of security restrictions. Two military aspects of atomic energy are criticized by Mr. Dean: the secrecy as to the size of the United States stockpile, which he believes should be revealed to deter aggression, and the lack of adequate communication between the Joint Chiefs of Staff and the Commission. The first criticism has been voiced increasingly without any light having been cast on who opposes the release of such information, unless it be the military, and there the lack of adequate communication may be to blame. Liaison through the instrumentality established by the Act, a committee whose military personnel report now to the Department of Defense, does not appear to be effective in reaching the Joint Chiefs at the planning stage of their responsibilities, and bringing the Commission chairman into the later

stage of National Security Council discussions on atomic energy has not proved a substitute.

Mr. Dean is an enthusiast over atomic energy as a source of electric power which he spends two chapters developing. Radioactive isotopes are explained in terms that should be clear to anyone, and his description of their utilization forms a bridge to his justification of Commission expenditures on fundamental research, pure in the sense it is not directed to the solution of an immediate problem, but intensely practical because from just such apparently aimless studies grew the atomic bomb itself.

The financial cost of atomic secrecy can be grasped by Mr. Dean's estimate that one out of each twenty of the dollars spent by the Commission goes for security. He is well aware of the far more serious costs of secrecy, that of compartmentalizing scientific thought and inhibiting the international interchange of ideas which lay behind the development of the bomb. Mr. Dean offers this cool reply to such wild statements of Soviet espionage as have been heard on Capitol Hill:

Although it is clear that Russian science could itself have developed all the knowledge it needed for an atomic weapons program, it is quite probable that the efficient spy ring around Fuchs advanced, probably by as much as a year and a half, the date by which the Russians achieved their first bomb. (p. 300.)

Not only Soviet but British, Canadian and other national programs in the atomic energy field are outlined and a postscript mentioning the Soviet thermonuclear explosion confirms Mr. Dean's assessment of Soviet scientific and engineering prowess.

It is for the tantalizing brief final chapter that Mr. Dean saves his most striking statements: that atomic-powered aircraft can be achieved if enough money is spent (the research appropriation was heavily cut recently); that atomic-powered dirigibles may become important; that atomic generation of electric power can compete with traditional fuels within a decade and that the Commission is near the end of what will be its last major expansion. For the troubled reader who has followed Mr. Dean through the atomic energy crisis to the end of the book he has this eloquent advice:

Do you feel strongly enough about all or any of these things to make some sacrifices to help your point of view win out — sacrifices measured in terms of paying taxes, of running for office, of leading study and discussion groups, of working with civic

organizations, of writing letters to your Congressman, or perhaps just of educating yourself and participating intelligently in conversations with your family, neighbors, and friends?

If you are not interested enough to do any of these things, you are not earning your right to live in and enjoy the benefits that can be yours in the atomic age. (p. 320.)

Written by a lawyer but for the general public, *Report on the Atom* will reveal to every South Carolina lawyer the minimum he must know about the atom to advise his clients and lead the community in what has become an important state in the atomic energy production program.

WILLIAM TUCKER DEAN.\*

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\*Not related to the author.