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## Book Reviews

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## BOOK REVIEWS

PSYCHIATRY AND THE LAW. By Manfred S. Guttmacher and Henry Y. Weihofen. New York: W. W. Norton & Company, Inc. 1952. Pp. 476. \$7.50.

For one with my background of training and convictions, principles and opinions, the task of reviewing a book of this kind is rather uncongenial. Perhaps I can make this plainer by saying that the type of book which I find consistent with facts and sound principle is represented by the following bibliography: *The Driving Forces of Human Nature, Nature & Treatment of Mental Disorders*, both by Thomas V. Moore (Grune & Stratton); *God & The Unconscious* by Victor White (Regency); *The Successful Error* by Rudolf Allers (Sheed & Ward); *Psychiatry & Catholicism* by Vander Veldt & Odenwald (McGraw-Hill); *Psychoanalysis & Personality* by Joseph Nuttin (Sheed & Ward); *Psychoanalytical Method & The Doctrine of Freud* (2 vols.) by Roland Dalbiez (Longmans); *Dynamic Psychology* by Thomas V. Moore (Lippincott); *The Psychology of Character* by Rudolf Allers (Macmillan); *What Man Has Made of Man* by Mortimer Adler (Longmans); *Psychology, Science or Superstition* by Grace Adams (Covici-Friede); and *Experimental Psychology* by Hubert Gruender (Bruce).

By contrast with such works as these, the one under review is in many respects unprincipled, aimless and unrealistic. It does contain a limited fund of *information*: much of it morbid, much of it useless, and some both interesting and useful. But taking the whole direction of the book, I do not know where it can lead except to confusion and to a helpless sense of the irresponsibility of man caught up in that vortex of bubbling muck which too much modern psychology and psychiatry seem to resemble.

The plan of the book, so far as the subject matter of each chapter is concerned, is simple and appropriate enough. The authors found that "no general book on legal psychiatry has appeared in this country during the past quarter century." I cannot repress the observation that, if the contents of this work be any criterion, one need not be disturbed because no such book has appeared for 25 years. I cannot believe that the book will be very useful to an attorney faced with the practical job of trying to commit or to avoid commitment of someone on psychiatric grounds. Neither law students nor lawyers can be given practically adequate instruction in the fundamentals of psychiatry by such a book as this. Indeed, this volume tends to leave one with the impression that there are no fundamentals of psychiatry.

The approach of the book is basically Freudian or psychoanalytic. Constantly the authors talk about "depth" psychology. One is left wondering why moderns are so fascinated with these depths, especially the depths that are slithering with verminous things. Why don't they, once in a while, manifest an interest in "height" psychology? Must we always dig and grovel into the sludge and ooze of pornographic detail? Why are such sorry specimens of humanity constantly trotted out as examples? Such psychologists and psychiatrists resemble doctors who know what disease is without knowing what health means.

Psychology which is always *abnormal*, psychology which is singularly fascinated or obsessed with *aberrant* types seems constantly to lose sight of the normal and the psychiatrically healthful. Even when such psychology talks of psychosomatic, it neglects the psyche. It is all well and good to undertake the somewhat self-contradictory task of exploring the unconscious. But occasionally it might be

wise to explore the conscious. Besides, there is the automatic subconscious of the body—and there is the preconscious of the spirit. Why should we constantly confine our attention to people who are *tied down* by drives and urges and compulsions of the body? Wouldn't it be more healthful on occasion to look up to *free* men and to freedom of the will? We have, no doubt, bodies charged with emotions, tensions and complexes. We have lusts and concupiscence. Has man never betrayed the domination and transcendence of the spirit? Modern psychiatry and psychology is, in the main, neglecting the ontological structure of man's nature as a rational animal. That neglect makes it easier for man to forget the natural law and sound basis for morals. Maybe they could learn something from the "Third School" of Vienna which, is manifestly an improvement on both Freud and Jung. Viktor Frankl, the founder of this school, has indeed turned Freud upside down. Whereas Freud says that *religion* is the universal neurosis of mankind, Frankl says the *lack of religion* is the universal neurosis of modern man.

The book under review, while not pretending to be "a psychologically orientated philosophy of the law," does pretend to be, in part at least, a "psychiatric and legal theory."<sup>1</sup> The trouble with this theory is that it neglects the philosophy and nature of man. For that reason the only philosophy on which sound culture and civilization can be based is conspicuous in this book by its absence.

In the paragraphs of this book one loses, too, an understanding of law and its philosophy—and of the timeless principles of justice.

It is wrong to suggest, as do the authors, that "certainty is the primary objective"<sup>2</sup> of the law. Of course, there must be some certainty behind the law. Indeed, there must be some certainty behind any body of knowledge or you simply do not have knowledge. But just because there is certainty behind the law (and behind all knowledge) is no reason to suppose the law is always in the quest of "certainty." In certain areas properly covered by law certainty is unobtainable. There we need, nevertheless, authority in general, and the authority of the State in particular, as expressed in laws about which men could debate endlessly but by which men end debate when further debate is profitless.

Now, one of the certainties behind our legal system—a certainty that gives meaning to "liberty" or "responsibility" is *free will*. This is not to say that man's will is always free, but that man is capable of positing free acts. The authors of *Psychiatry and The Law* sometimes expressly, but more often by implication (because of their excessive emphasis on urges and drives), cast doubt on man's capacity for freedom of will: "Free will is the chief cornerstone of the criminal law, while psychiatric experience of necessity develops some degree of adherence to a philosophy of determinism."<sup>3</sup>

An example of one of the problems created but not settled by this book is the very definition of psychiatry: "That branch of medical science which deals with the diagnosis and treatment of mental disorders."<sup>4</sup> Whether a person believes in the soul or in the spirituality of the mind, or whether he is a rank materialist, is, it seems to me, extremely important in this connection. Before you can handle the diagnosis and treatment of disorders of the mind you ought to know what the mind and its order are. In this book it would be as hard to find a definition of mind as it is to find Utopia.

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1. P. viii.
  2. P. 4.
  3. *Ibid.*
  4. P. 5.

Those who flatter themselves with modern methods and their efficiency will be somewhat let down to learn that a thorough psychoanalysis, such as is recommended by the American Psychoanalytic Association, requires a minimum of 250 hours. A lot of lives would be lost if medical doctors were as clumsy and protracted in their methods.

In the very first pages of this book the authors tell us that "psychiatry has reached the point where it can tell us some significant things about the very nature and need of law."<sup>5</sup> The subsequent text does not live up to this promise. What it says about the nature of the law, and even its need, could well have been omitted; especially since it often seems to misunderstand the nature of law.

Nor would we need modern psychiatry to dress up an ancient insight in these words: "Law is therefore necessary, not only to hold in check an antisocial minority, but to restrain the self-assertive and self-justificatory impulses in all of us. . . ."<sup>6</sup> It hardly betrays much of an understanding of the law to say that "Law is the collective effort by which we protect all of us against each of us."<sup>7</sup> One is still left wondering, at the end of the book, what are some of these significant things about the very nature and need of law which modern psychiatry can deliver.

It seems to me that it is easier to learn something of genuine psychiatry and psychology from the case books than to learn something of veritable law from modern psychiatry as presented in this volume.

Chapter 2 is directed to the subject of "Personality Formation." But the authors have, apparently without realizing it, been largely handicapped by their failure to understand what the *person* really is. It is hardly a significant contribution to human knowledge to say that "Mental disorders are today viewed primarily as failures in the socio-adaptive capacity of the individual."<sup>8</sup> or that: "Every man was found to have his breaking point."<sup>9</sup> Centuries ago man had better definitions of personality than this one: "Personality is the mental bone and marrow, the basic stuff out of which the individual is made. It has been defined as 'the individual in action.'"<sup>10</sup>

Maybe some examples of the "old faculty psychology" have been and ought to be discarded. But what is hashed up here in the cause of personality formation is as unworthy as the worst forms of the old faculty psychology.

Over and over again the authors tell us with an air of discovery, what no alert person could have missed. For example: "We have no means of strictly measuring the inborn intellectual endowments . . . ."<sup>11</sup> They present the false dilemma: "To what degree is our personality structure hereditary and to what extent does it depend on our environmental influences?"<sup>12</sup> Sound philosophers, spiritual writers and ordinary persons endowed with a modicum of common sense have, over the centuries, realized that our personality often depends more upon our free and deliberate choices than upon either heredity or environment.

The book teems with case histories, many of which are, in the opinion of this writer, of questionable value. It is even more questionable to rely upon some

5. P. 11.

6. *Ibid.*

7. *Ibid.*

8. P. 13.

9. P. 14.

10. *Ibid.*

11. P. 15.

professor's lonely and spotty researches into the conduct of monozygotic and dizygotic twins. How can research into the lives of only 13 *identical* twins and 17 *fraternal* twins be converted into worthy generalization? How much can a professor really learn about the background of prison inmates in such study? How much natural faith is mingled with scientific pretension in such research? Yet the authors quote as meriting "serious notice"<sup>13</sup> the conclusion of this futile snooper into jail-bird biographies: ". . . that criminality was biologically determined and hereditary."<sup>14</sup>

Ever since Charcat, Bernheim, Brewer and Freud, people in this field are not content to say that they have certain more or less vague *theories* about dreams or slips of the tongue or momentary spells of forgetfulness. They lay claim to *scientific knowledge* about the subconscious causes of these phenomena. They know the *symbols* and meanings which run through dreams, etc. They know the hidden significance of lapses and mistakes. But when you come to examine the evidence for their dogmatic conclusions, it pales into invisibility. In the end, you are confronted with their request that you put blind faith into what they claim to see. Once you believe in their near-theories, as though they were scientifically established facts, you are frequently bound hand and foot to a rigid determinism. "The behavior of human beings is never truly accidental—it follows inalterably the pattern of stimulus and response. It adheres to the principle of cause and effect just as certainly as a chemical reaction does."<sup>15</sup> Apparently we do what we do because we *must*, in response to some stimulus. We have no free choice. Yet in other places the authors disown an inflexible determinism.

The whole drift of this book, while at times paying lip service to the idea of responsibility and freedom, is to excuse crime and the criminal by consigning man to a whole series of conjectures: "defective training," "poor environment," "hereditary impulses," etc. This drift becomes so obvious that it seems even to worry the authors now and then, because they express the *fear* that one could translate this "into the concept that all malefactors are mentally sick people,"<sup>16</sup> as a *reductio ad absurdum*.

As a lawyer, I fail to see how psychology or psychiatry can render much of a practical aid to the law upon the basis of this book's analysis of, for example, the cases of arson (pyromania) set forth on pages 57 ff. Here is the way the authors summarize one case-history: "The dynamics of this case seemed intelligible. Here was a man who was sadistically treated in childhood. . . . As a child he displayed sadistic impulses toward animals. Fire has a primitive destructive appeal. When fate dealt him a stinging blow . . . he felt compelled to fight back with all of his stored-up destructive vindictiveness."<sup>17</sup>

Strange, how moderns can get consolation from an ancient thought (*conscience* or *contrition*) dressed up a little ridiculously in psychological jargon: ". . . the key to understanding the dynamics of . . . depression is that a harsh superego is exacting self-punishment for unconscious guilt feelings."<sup>18</sup> Contrition and conscience make much more sense even though they are much older than this type of word magic, and much more forthright and conscious.

Some criminal who had over a long period of years given himself up to fits of

12. *Ibid.*

13. P. 17.

14. *Ibid.*

15. P. 24.

16. P. 26.

17. Pp. 59-60.

18. P. 63.

ungovernable temper is excused by the statement that "There was some inner force that was mercilessly pushing him into a repetitive anti-social pattern of behavior."<sup>19</sup> One of the "grounds" for this conclusion was the following admission of the patient himself: "I took my fist and hit the god damned wall, then I busted a milk bottle and started cutting myself around the face . . ." <sup>20</sup> The emphasis here spurns but cannot disown *original sin* and *concupiscence*. The authors prefer "cacogenic factors"<sup>21</sup> as more enlightening.

Apparently, for these authors, "many of the sexual laws have fallen into desuetude."<sup>22</sup> One is left wondering which laws are included in this grouping of "many". Apparently marked "castration anxiety" explains exhibitionism.<sup>23</sup> The case<sup>24</sup> of a lad named Clarence ends with the statement: "There is no specific indication of sexual abnormality."<sup>25</sup> Yet two paragraphs earlier in setting forth Clarence's case history, they say he admitted that "Hetero-sexual relations began at thirteen and occurred, he said, every time that he went to a girl friend's house."<sup>26</sup> Apparently, the authors blame this boy's criminality upon a physical defect and an unharmonious home, dominated by a nagging mother.<sup>27</sup> That man has any capacity for self-control or any duty to master impulses or to vanquish temptation is never adverted to.

We are informed that kleptomania and arson often constitute "masked sexuality" or are "symbolically sex acts." No evidence, mind you, just sheer statement. But you are to presuppose the infallibility of modern science. Some of it, apparently, is supposed to spill over into people who call themselves scientists and write learned tomes.

No wonder, then, that Guttmacher & Weihofen quote, with approval, the English psychiatrist, Clifford Allen, who recommends "that we frankly teach that masturbation is harmless and continence harmful."<sup>28</sup>

The only part of the book that made me burst into laughter involved an intelligence test (Stanford-Binet) given to a seventeen year old colored boy. "When asked what 'a man should do before beginning something very important,' he replied, 'get a license.'" <sup>29</sup> The encroachment of bureaucratic government into private affairs had even reached poor "Lavern P."

In dealing with the subject of the "Psychiatrist on the Stand," the authors confuse themselves and will, perhaps, confuse others by making an inane analogy. They say that "Scientists may have to work for decades and even for centuries to find an answer to a problem, . . . but social and political problems must be answered as they arise."<sup>30</sup>

Certainly it is easy to discern the difference between an inquiry into the cause and cure of cancer and an inquiry into the guilt or innocence of a man under charges

19. P. 104.

20. *Ibid.*

21. P. 108.

22. P. 112.

23. Pp. 100 and *passim*.

24. P. 118.

25. P. 119.

26. P. 119.

27. P. 121.

28. P. 136.

29. P. 184.

30. P. 206.

of first degree murder. There *may be* scientific methods available in the one case. But, whether they be called scientific or not, we do *not* have the cure to cancer. There is *no* scientific apparatus or laboratory technique whereby we can learn with certainty that Jones is or is not a murderer. All that can be derived from such comparative reflections is this: that the scientific method has its limited place and so do the political and social methods. It is silly to subject sociology and politics to disparaging comparisons with experimental science. The methods of quantitative and empiriological science is simply not available to deal with deliberate human conduct. Empirical science is quantitative and often yields generalizations in the form of mathematical equations. No such scientific generalization can facilitate the application of criminal law. It is, of course, true that "a trial is not a scientific investigation." It is just as true that an experiment in qualitative analysis is not a trial. So what? Because a trial is not a scientific investigation it does not follow that a trial "is not a search for objective truths."<sup>31</sup>

The authors here betray their misunderstanding of law and legal procedure. They seem not to have learned<sup>32</sup> that the word "fact" can easily be analyzed into *five* meanings which are neither univocal nor equivocal but analogous.

"It is hard for lawyers and doctors to see eye to eye on the fundamental problem of how to eliminate needless legalistic formality in hospitalization procedures and at the same time maintain adequate legal safeguards against error and abuse."<sup>33</sup> I hope lawyers will always be intransigent in protecting the *rights* of persons who are proposed for hospitalization as mentally ill. After reading this book, I am more determined than ever to place no act of blind faith in the mere judgment of psychiatrists (who, as everyone knows, pop up on both sides of most litigated questions of mental competence). Nothing taken from this book's psychiatry is an improvement upon the defense of personal freedom which is always implicit and often explicit in our legal system, no matter how the latter is criticized by the authors.

The authors recall that Dr. Carl Binger, "a prominent New York psychiatrist," had declared that Whittaker Chambers was "a psychopath and hence an untrustworthy witness."<sup>34</sup> As a matter of fact, Chambers was a far better and more rational witness than Binger, who, on the admission of the authors themselves, "in the hands of a skillful cross-examiner like District Attorney Murphy . . . made a poor showing."<sup>35</sup>

"The dividing line between truth and untruth is a shadowy one."<sup>36</sup> Do the authors not realize that anything that *they* have offered as *the truth* is thus cast into doubt by their own facile generalization? Could they not be discriminating enough to qualify by saying: "*Sometimes* the dividing line, etc." In any case, authors who have that unqualified notion of the division between truth and falsehood could hardly be expected to make a significant contribution in a chapter entitled "Veracity".

By quoting another psychiatrist, they furnish a rather novel theory of why the perjurer commits perjury: "The denial of the fact of the crime enables him to avoid a psychic pain far more threatening than the penalty for the crime or for perjury."<sup>37</sup>

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31. P. 205.

32. P. 207.

33. P. 288.

34. P. 364.

35. P. 365.

36. P. 372.

37. P. 375.

The authors talk about: "the phenomenon of confession" (non-sacramental) as being "more likely for the neurotic than the normal individual. The neurotics either have a harsher superego than the normal or they are less capable of tolerating its strictures.

"The superego is . . . 'that part of the parental ideology which has been incorporated into the psychic system.'"<sup>38</sup>

On this theory people who confess crimes, people who confess their errors—for example those who convert from Communism—are under suspicion of being *neurotic!*

The authors betray amazing ignorance of the meaning of the jury system: "Taking the verdict of the jury allows the rule of law to be tempered by the public sense of justice in hard cases . . . . It is merely the case of a jury unwilling to apply the law as written, and using any excuse that happens to be at hand. . . ."<sup>39</sup>

When I was in law school, I learned that the jury was supposed to take the law from the judge and apply it as defined by the judge. *Psychiatry and the Law* converts the jury system into a kind of fluctuating "equity" superimposed upon the traditional common-law-equity system. It varies from jury to jury.

The authors quote with approval Gregory Zilboorg (who, I am reliably informed, has recently become a convert to Catholicism and who, therefore, would be the first to retract what the authors here quote): "For what else is it, if not perjury, if a clinician speaks of right and wrong, and criminal responsibility, and the understanding of the nature and the quality of the criminal act committed, when he, the psychiatrist, really knows absolutely nothing about such things . . . ."<sup>40</sup> Such a view infects with unreliability everything we can know. Why should a man presume to criticize the law if he can understand absolutely nothing of right and wrong? Some day the Gregory Zilboorg of today and tomorrow will rise up to condemn with the authority of truth the Gregory Zilboorg of the foregoing quotation.

Until that happens I can only wait with expectancy. While I wait I am only confirmed in the view that the bibliography which I set forth in the first page of this review is far more reliable and far more enlightening than anything contained in *Psychiatry and the Law*.

GODFREY P. SCHMIDT†

STATUTORY CONSTRUCTION. By Judge Francis McCaffrey. New York: Central Book Co., 1953. Pp. 167. \$5.00.

#### FOREWORD\*

Words are the most penetrating radiations of the human intellect's most fissionable material.

And yet words often gyrate crazily, without plan or pattern.<sup>1</sup>

Then confusion becomes worse confounded as men wittingly or unwittingly play

38. P. 377.

39. P. 400.

40. Pp. 406-407.

† Lecturer in Law, Fordham University School of Law.

\* This article will appear as the foreword to the above entitled book.

1. Whitehead, *et al.* v. United States, 245 Fed. 385, 388 (1917).



tricks with the gyrating words,—erasing them, modifying them, substituting for them, and even omitting them.

“And the damned grotesques  
Make arabesques  
Upon the shifting sands.”

Only recently the Supreme Court of the United States uttered a judicial cry of anguish in endeavoring to discern meaning in “conglomerate” layers upon layers of words requiring skill in construction “not unlike that called for in the decipherment of obscure palimpsest texts,” which are parchments newly written upon after previous erasures, the latter of which may or may not come to light upon clever chemical treatment.<sup>2</sup>

Cases are to be found, indeed, in which a statute has been held to be entirely without meaning.<sup>3</sup>

The perfect statute, like perfect Justice, is “God’s idea, man’s ideal.” We may approach near to it, but we never achieve it.

And yet there are experts who can trace the boundaries of principle along the shadowy marches of the amorphous, the inept and the inapt.

Even where words have vanished from a statute such men can frequently perceive in the context repercussions of meaning which are eternally decisive. Thus, in dealing with the doctrine of *casus omissus* (which forbids the supplying of a missing word or concept), Judge McCaffrey demonstrates the rationale of the rule as bottomed upon the lack of legislative power in the judiciary.<sup>4</sup> But then he goes on to say: “It could hardly be said to be an exercise of legislative power to supply an omission which is in reality a part of the statute, in that the legislature intended to include the matter when the statute was enacted.”<sup>5</sup> Then he compares at length a case which so held, *Rural Ind. School Dist. No. 10 v. Independent School District et al.*,<sup>6</sup> with a case which rejected such a suggested innovation, *Levberg v. Schumacher*.<sup>7</sup>

This is in the high tradition of Black, Blackstone, Dwaris, Maxwell, Pomeroy, Pound and Sedgwick, all of whom are cited in the text.

In one case, the court read the word “not” into a statute.<sup>8</sup> In another the court refused to read “be a minor and unmarried” as “be a minor or unmarried.”<sup>9</sup>

These seeming conflicts of principle were explained in the sixteenth century in terms of “the equity of the statute.”<sup>10</sup> Nowadays, we speak of “the spirit and reason of the law.”<sup>11</sup>

Judge McCaffrey quotes from the *Holy Trinity Church* case and says: “The quoted words of the Supreme Court might well have been used by the 16th

2. *Calmar Steamship Corp. v. Scott*, 345 U.S. 446 (1953).

3. *United States v. L. Cohen Grocery Co.*, 255 U.S. 81 (1921); *Drake v. Drake*, 15 N.C. 110.

4. P. 27.

5. P. 28.

6. 120 Iowa 119, 94 N.W. 284 (1903).

7. 225 N.Y. 167, 121 N.E. 808 (1919).

8. *Matter of Deuel*, 116 A.D. 512, 101 N.Y. Supp. 1037 (1st Dep’t 1906).

9. *Isaac et al. v. Denver & R.G. Co.*, 12 Daly 340, *aff’d*, 102 N.Y. 718 (1886).

10. E.g., in Plowden’s “model” case of *Eyston v. Studd*, 2 Plowd. 459 A.

11. *Rector & c. of Holy Trinity Church v. United States*, 143 U.S. 457 (1892).

century judges to sustain their decision in *Eyston v. Studd*." So that the trend has turned full cycle.

Examples of conflicts of learned opinion in the higher reaches of statutory construction might be multiplied. Thus, when two acts are separately enacted at the same legislative session, without reference to each other, and amend the same section of a previously existing statute, it has been urged that the later act controls.<sup>12</sup> There is contrary opinion, however, that the court should seek and carry out "the dominant intent" of the legislature, irrespective of the date of taking effect, or of enactment, of the separate acts.<sup>13</sup>

These clashes between irresistible forces and immovable objects serve to suggest the indescribable noises present as the judicial philosopher seeks to chart his way through the storm, past Scylla and Charybdis, toward the Beacon of the Just Result.

This calm and unhurried distillation into 167 clear, terse pages, of the "law and order" manifest in principles of statutory construction has been safely guided by the beacon, and it will surely bring its many readers into snug harbor.

It has been said that as the diameter of our knowledge increases, so does the circumference of our ignorance.

Wrongly read, this theorem leads to futility. Viewing it with vision, on the other hand, this author has been hard at work upon the diameter. And the staccato of his incisive riveting makes music,—as men climb to the crescendo of his thought.

JOHN F. X. FINN†

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12. *Winslow v. Fleischer*, 112 Ore. 23, 228 Pac. 101 (1924); *Roberts v. Tice*, 198 Ark. 397, 129 S.W.2d 258 (1939); *Buttorf v. York City*, 228 Pa. 143, 77 Atl. 436 (1920); *People ex rel. Davis v. Wabash R.R. Co.*, 276 Ill. 92, 114 N.E. 552 (1916).

13. *People ex rel. Chadbourne v. Voorhis*, 236 N.Y. 437, 141 N.E. 907 (1923); Report, N.Y. Law Revision Commission, 1947, pp. 439-515, entitled "Statutory Definition of Legislation Correcting Errors in the Form of Statutes Affected by Two or More Amendments Enacted at the Same Legislative Session Without Reference to Each Other."

† Professor of Law, Fordham University, Member New York Law Revision Commission.





*Upon Motion Duly Made and Seconded It Was*  
RESOLVED THAT

The Faculty of the School of Law of Fordham University records with deepest sorrow the loss of our beloved friend, Ignatius M. Wilkinson, Dean of the School of Law. Dean Wilkinson was a most gifted teacher, an exceptionally able lawyer and a devoted public servant. He possessed the rare combination of administrative ability and sound scholarship. His sterling integrity of character and his fine teaching have inspired his students and associates for the more than forty years during which he served the school with undivided devotion.

Our deepest sympathy is extended to all the members of Dean Wilkinson's family.

June 25, 1953