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Book Reviews

BOOKS REVIEWED

Narcotics and the Law. William Butler Eldridge. New York City: New York University Press. 1962. Pp. 204. $5.00.

Mr. Eldridge's book was published in April 1962. On May 14, 1962, a statement on narcotic addiction in the United States released jointly by the American Medical Association and the National Research Council of the National Academy of Sciences,[1] I believe, made many of Mr. Eldridge's arguments anticlimactic and obsolete. These two leading bodies of the medical profession issued the joint statement "because there is widespread misunderstanding on the part of the public and various professional and other groups about the problems associated with narcotic addiction."[2]

The American Medical Association and the National Research Council share the common objectives concerning narcotic addiction in the United States "that present efforts should be strengthened to (a) reduce and, if possible, eliminate such addiction and (b) to provide the best possible treatment and rehabilitation services to addicted persons."[3]

The joint statement continues:

It is concluded that there is widespread public and professional misunderstanding about this subject, specifically (1) that the Federal Bureau of Narcotics believes drug addiction to be a crime; a belief that is contrary to the Federal law and its application by the Bureau, and (2) that the American Medical Association proposes the establishment of community ambulatory clinics for the withdrawal of narcotics from addicts or for the continuing maintenance of addicts on narcotics; a belief that is contrary to the official position of the American Medical Association.

Historically society has found it necessary to employ legal controls to prevent the spread of certain types of illness that constitute a hazard to the public health. Drug addiction is such a hazard.

The successful and humane withdrawal of individuals addicted to narcotics in the United States necessitates constant control, under conditions affording a drug-free environment, and always requires close medical supervision.

The successful treatment of narcotic addicts in the United States requires extensive post-withdrawal rehabilitation and other therapeutic services.

The maintenance of stable dosage levels in individuals addicted to narcotics is generally inadequate and medically unsound and ambulatory clinic plans for the withdrawal of narcotics from addicts are likewise generally inadequate and medically unsound.

As a result of these conclusions the American Medical Association and the National Research Council oppose on the basis of present knowledge such ambulatory treatment plans.

These two organizations support (1) after complete withdrawal, follow-up treatment for addicts, including that available at rehabilitation centers, (2) measures designed to permit the compulsory civil commitment of drug addicts for treatment in a drug-free environment, (3) the advancement of methods and measures towards rehabilitation of the addict under continuing civil commitment, (4) the development of research designed to gain new knowledge about the prevention of drug addiction and the treatment of addicted persons, and (5) the dissemination of factual information on narcotic addiction.[4]

1. A.M.A. & Nat'l Research Council of the Nat'l Academy of Sciences Press Release, May 14, 1962; see also N.Y. Times, May 15, 1962, p. 22, col. 5.
2. Ibid.
3. Ibid.
4. Ibid.

Also on May 14, 1962, the Bureau of Narcotics made the following statement concurring with that of the two medical bodies:

The Federal Bureau of Narcotics wishes to express its complete approval of the views contained in the statement of the American Medical Association and the National Research Council. The Bureau of Narcotics believes that the American Medical Association-National Research Council statement clarifies a subject on which there has been widespread public and professional misunderstanding. The Bureau of Narcotics subscribes completely to the view that the Federal law does not consider drug addiction a crime. The National Research Council and the American Medical Association have performed an outstanding public service which will greatly advance the joint efforts of the law enforcement agencies and medical-health organizations who are charged with responsibility for dealing with the narcotic drug problem.

The Bureau is pleased to note that the American Medical Association has reaffirmed its position opposing the establishment of community ambulatory clinics for the withdrawal of narcotics from addicts and the continuing maintenance of addicts on narcotics.

The Bureau of Narcotics also supports the five measures set out in the last paragraph of the statement of the American Medical Association and the National Research Council which will provide addicted persons with the best possible rehabilitative treatment program and reduce, and if possible, eliminate narcotic drug addiction.[5]

Much of Mr. Eldridge's discussion is predicated on the report of a joint committee submitted to the American Bar Association and the American Medical Association in 1958.[6] This report was written by an attorney having a questionable knowledge of the intricacies of the addiction problem. The only drug addiction expert on the American Bar Association-American Medical Association joint committee, Dr. Robert Felix of the United States Public Health Service, had presented testimony under oath before a Senate judiciary committee in 1956 that constitutes a flat contradiction of the ABA-AMA committee report, which he signed.

Mr. Eldridge ridicules the comments made by the Bureau of Narcotics Advisory Committee on the ABA-AMA joint committee report in 1958. The Bureau's Advisory Committee was composed of at least twenty nationally known experts in the field of drug addiction. The ABA-AMA joint committee report was, in my opinion, a melange of misleading and false statements. Apparently, Mr. Eldridge does not realize that the Bureau of Narcotics is merely the agency to enforce the federal narcotic laws and to carry out the intent of Congress as interpreted by the courts.

Continued research obviously is necessary to explore fully the many complex facets of drug addiction. Senate and House subcommittees on narcotics, after carefully examining every angle of the problem during the years 1955 and 1956, recommended continuation and expansion of the federal research program into the causes of addiction and methods of treatment and rehabilitation of drug addicts, and proposed legislation which was adopted unanimously by Congress.[7]

Mr. Eldridge fails to mention that the federal policy is to arrest narcotic traffickers and to induce the states and cities to provide hospitalization and the necessary aftercare to restore addicts to productive community life. He also omits the fact that since the passage of the Narcotic Control Act of 1956,[8] the Bureau has closed

5. United States Bureau of Narcotics Press Release, May 14, 1962.

6. Drug Addiction: Crime or Disease?, Interim and Final Report of the Joint Committee of the A.B.A. and A.M.A. on Narcotic Drugs (1958).

7. See, e.g., 101 Cong. Rec. 15490 (1956) (remarks of Senator Lehman).

8. 70 Stat. 567 (1956), 8 U.S.C. §§ 1182, 1251, 18 U.S.C. §§ 1401-07, 21 U.S.C. §§ 174,

more than fifty branch offices throughout the country when the traffic dried up as a result of mandatory sentences imposed by federal and state judges.

He makes no reference to the over-all problem. The Harrison Narcotic Act,[9] passed in 1914, together with subsequent federal and state legislation and nine international treaties and protocols dealing with limitation of production and regulation of the trade in narcotic drugs, have provided the means for reducing the incidence of drug addiction in this country from one in 400, to one in 4,000. Some of the legislation the author considers harsh and unnecessary, and he infers that the Bureau sadistically desires ever more severe penalties for narcotic violators. In reality, Bureau files contain many pleas from distraught families and friends of addicts to have the purveyors of addiction permanently removed from society. They not infrequently insist that the death penalty be mandatory.

Although the lack of unanimity of opinion has traditionally pervaded discussions of addiction problems, the author, in many places throughout the book, prejudges Bureau policies which have been supported by the majority of the medical profession and by the unanimous action of Congress. The Bureau of Narcotics, over the years, has consistently urged treatment for addicts as a necessary adjunct to the program of eliminating the illicit traffic by adequately severe penalties for the peddlers.

The author states that crime is diminished and the illicit traffic is forced out of existence under the so-called British system of narcotic control. Current British press reports belie that statement. For several years the British have been witnessing an increase in crime directly associated with addiction.

An article in the London Evening News, July 2, 1962, entitled "Drive to Smash Drug Rings," states that the Home Office, greatly disturbed about the growing problem of crime among addicts, has ordered a major investigation into the growth of illegal trafficking in dangerous drugs, to be carried out in cooperation with Scotland Yard and the police forces of certain large cities in Britain. They are also said to be compiling statistics on prosecutions for drug trafficking offenses and improper possession of drugs over the past five years.

This survey, when completed, should give a complete picture of the illicit drug situation in Britain. The investigation has been ordered because the authorities are disturbed by evidence that drug taking is on the increase among young people. Recent raids on cafes and drinking clubs have shown that drug use is far more widespread than was thought. Evidence also indicates that narcotic drugs are being smuggled into Britain on a large scale in British ships of both the Royal and Merchant navies. Three large seizures of opium and heroin were made within a week or two, just a few months ago.

Mr. R. L. Jackson, Assistant Commissioner of Scotland Yard, who is also president of INTERPOL, has asked that the matter be discussed urgently at the annual INTERPOL conference to be held in Madrid in September 1962. The reports of the current British investigation will provide the Home Secretary with information necessary to determine the need for introducing new laws governing the possession of dangerous drugs.

The author infers that the Bureau eagerly prosecutes members of the medical and pharmaceutical professions who may inadvertently be guilty of infractions of the federal narcotic laws. The fact is that the Bureau policy is never to prosecute any registrant unless there is a flagrant violation. Mr. Eldridge, freely expressing mis-

176(a), 176(b), 184(a), 198, 26 U.S.C. §§ 4744, 4755, 4774, 7237, 7607, 7608 (1958) (Supp. III, 1959-1961).

9. Harrison Narcotics Act, ch. 1, 38 Stat. 785 (1914).

givings concerning the activities of the Bureau of Narcotics for what he considers to be failures and shortcomings, changes gears as he presents an apologia for the medical profession's less-than-perfect program of treatment and rehabilitation of addicts.

To say that Mr. Eldridge's view of the over-all problem is lamentably myopic is to indulge in understatement. I am afraid that this book will serve only to add confusion and create misconceptions in areas where it will cause great harm.

HARRY J. ANSLINGER*

The New York Law and Practice of Real Property. Joseph Rasch. Mount Kisco: Baker, Voorhis & Company. 1962. 3 Vols. Pp. lxxii, xxiii, xvii, 2450. $62.00.

This latest entry in the real property field consists of a three volume treatise devoted to the law of New York. The subject is presented in a flowing style, sometimes approaching a colloquial style and causing one to wonder how this technical subject could be presented in such a fashion without loss of accuracy. The reader is assisted by an ample index, a table of cases, statutes, forms and extremely brief sections or explanatory paragraphs. The latter feature, although of assistance in pinpointing a reference or problem with all possible speed, may be objectionable in that unified materials are needlessly broken down into innumerable subtopics. The propositions stated in the text are supported by the citation of pertinent statutes or one or two decisions, usually from the New York Court of Appeals or the appellate division. The author indicates in his preface that no attempt is made at exhaustive citation, thus explaining the uniform limitation of authorities to the minimum necessary to carry the proposition stated. Although some might question the wisdom of excluding references to periodical literature, treatises and out-of-state cases and statutes, the exclusive citation of local authorities may be defended on the theory that the treatise is devoted to current law and practice in the real property field in one jurisdiction, and this can best be depicted by so limiting the citations. However, it should be noted that statutory propositions are set forth largely in the language of the enactments themselves, especially recently passed legislation, and no real attempt is made to indicate the problems of interpretation inherent in the language employed. In limiting the number of case citations, the author necessarily foregoes exposition of all of the ramifications of the particular rules stated, being content to sketch in the mainstreams of judicial opinion. This may prove a trap for the unwary or unsuspecting reader who relies on the declaratory statements made in the text as being the last word on the subject, without doing independent research on a question to determine what subsidiary rules have been developed. In fairness to the author, however, it must be recognized that in compiling a work on any subject, a line has to be drawn somewhere as to the depth to which a topic will be treated.

The content of the treatise represents, at one and the same time, a virtue and a vice in its format. On the positive side, it represents a somewhat unique approach to a desk set on the subject of real property, in that it encompasses many unrelated and dissimilar topics which come together in the office of the practitioner. Thus the normal fodder for such a work (deeds, easements, recording, etc.) is found, along with chapters devoted to the real estate contract, public rights, eminent domain, mechanics liens, powers and trusts. Few, if any, of the available smaller texts treat such a variety of themes. However, with the possible exception of the materials devoted to mechanics liens and mortgages, it is probable that too much is attempted in

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compressing whole areas of the law into modest chapters. This is certainly true of a subject like trusts which is disposed of in approximately sixty pages (not counting the related materials on powers). While it is true that the notion of combining all relevant subjects in a single place is a worthy objective, it cannot be gainsaid that some of the larger topics could well have been treated by reference to existing works, coupled with a limited discussion of some of the more practical aspects and pitfalls involved. The realistic approach is best illustrated by the sections devoted to the various liens and actions affecting real property and the extensive treatment of mortgages and foreclosure proceedings. These chapters are generously supplied with sample pleadings, forms of agreement and other instruments. The topic of landlord and tenant, including rent control, is omitted in deference to the author's earlier two volume work in that area, to which the reader is referred.[1]

The amount of space devoted to each of the topics selected for treatment occasionally leaves something to be desired. The number of pages allotted to a topic at times appears to have no relation to its importance. Thus, for example, seventy-two sections are devoted to the subject of title registration, admittedly seldom employed in this jurisdiction, whereas a mere thirty-six sections are utilized in the discussion of the somewhat complicated and omnipresent consideration of the recording act. Omissions of note are a treatment of title insurance (including the recurring question of "insurable title" versus "marketable title" and its many variations), material on current mortgage practices, such as Federal Housing Administration and Veteran's Administration financing, and the subject of zoning. At a minimum, there should be a passing reference to the attorney's obligation to check a buyer's proposed use of the property against existing zoning laws and the relationship between covenants affecting a parcel and the zoning law applicable to it. Occasionally, some worthwhile facets of a topic which is treated are also left out. Thus, for example, there is no mention of the doctrine of part performance in the statute of frauds material. Nor is there mention of the estoppel vehicle in the field of oral covenants and restrictions.[2] Similarly, the use of estoppel where an owner of realty stands by and allows another to act as owner in signing the memorandum of the contract is not fully explored.[3] The ramifications of the *World Exhibit* case in the risk of loss area are left untouched,[4] as are the problems involved in applying the recent statutory enactments governing outmoded convenants and forfeiture clauses.[5] Oversimplification appears in other areas, such as the maxim that one need not be concerned with deeds which

1. Rasch, The New York Law of Landlord and Tenant and Summary Proceedings (1950).

2. See White v. La Due, 303 N.Y. 122, 100 N.E.2d 167 (1951).

3. See, e.g., Koch v. Regan, 297 N.Y. 644, 75 N.E.2d 750 (1957); Hummell v. Cruikshank, 280 App. Div. 47, 111 N.Y.S.2d 112 (3d Dep't 1952); Croce v. Fisher, 1 App. Div. 2d 834, 148 N.Y.S.2d 539 (2d Dep't 1956).

4. World Exhibit Corp. v. City Bank Farmers Trust Co., 270 App. Div. 654, 61 N.Y.S.2d 889 (2d Dep't), aff'd, 296 N.Y. 586, 68 N.E.2d 876 (1946). The World Exhibit case has been interpreted by some as indicating that any reference to risk of loss, including risk of loss from any particular cause, makes the statutory provision inapplicable. Again, many real estate form contracts state that risk of loss from fire is on the seller. The attorney for the buyer frequently deletes the word "fire" to negate any inference that risk of loss from any and all other causes is on his client.

5. N.Y. Real Prop. §§ 345-49 present many problems, including the constitutionality of their retroactive application and the provision whereby a person benefited by an allegedly outmoded restriction can be required to accept payment in its place.

are not in the direct chain of title[6] and the clouded subjects of responsibility for errors in recording[7] and adverse possession of a strip of property through inaccurate location of a fence on a boundary.[8]

The fact remains, however, that it is far easier to review than to author, and the reviewer does recognize that much of value has been gathered within the pages of this treatise. The practicing attorney in the real estate field, especially the beginner, will find a wealth of material there assembled. It will surely provide a convenient starting point for research, provided, of course, that one's ultimate conclusion on a point of law or problem is based on detailed, independent research into the underlying cases and statutes themselves.

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Price Discrimination Under the Robinson-Patman Act. Frederick M. Rowe. Boston and Toronto: Little, Brown & Company. 1962. Pp. xxx, 675. $22.50.

Nature has sent us all into the world with a visible desire after government, but it is an undeniable instance of Divine Wisdom that we have no capacity for it at all.[1] Start with some such intimation of reality, and this study will tend to confirm it; though the author offers no such theme, and is content to end his appraisal with an expression of hope that the courts may endow the Robinson-Patman Price Discrimination Act[2] with antitrust harmony and habiliments suited to this dynamic age. In the meantime, the course of this careful examination of the law of the statute makes it plain that confused draftsmanship has been compounded by erratic administration, unenlightened by the unfolding development of interstitial goals. On the other hand, adjudication in the courts is seen on the whole as interposing a check upon the doctrinal rigidities of the Federal Trade Commission, and from the viewpoint of the author, as yielding a measure of reconciliation with antitrust policy. The Commission's solicitude for the business losses of individual rivals "invariably overshadows" protection of competition in distribution, at *both* the supplier and the customer levels.

The organization of the study lends itself well to the design of the Trade Regulation Series, of which it is a part: to provide legal handbooks that may serve both as a guide to orientation of the uninitiated and as a reference tool for the specialist. The

6. See Ammurati v. Wire Forms, Inc., 273 App. Div. 1010, 78 N.Y.S.2d 844 (2d Dep't), aff'd mem., 298 N.Y. 697, 82 N.E.2d 789 (1948) for an indication that this rule may not be applied with respect to easements over the land retained by the grantor which appear in the recorded deed to the land conveyed. A purchaser of the land retained may be required to read other deeds out of the common grantor, which are not in the direct chain of title, to ascertain whether these deeds contain any easements over the land retained.

7. See Mutual Life Ins. v. Drake, 87 N.Y. 257 (1881); Gelling v. Maass, 28 N.Y. 191 (1863); Puglisi v. Belaski, 118 Misc. 336, 193 N.Y. Supp. 357 (Sup. Ct. 1922); Gray v. Delpho, 97 Misc. 37, 162 N.Y. Supp. 194 (Sup. Ct. 1916).

8. See Belotti v. Bickhardt, 228 N.Y. 296, 127 N.E. 237 (1920); Stillwell v. Boyer, 36 App. Div. 424, 55 N.Y. Supp. 358 (2d Dep't), aff'd, 165 N.Y. 621, 55 N.E. 1131 (1899); Danzinger v. Boyd, 23 Jones & S. 537, 12 N.Y. St. R. 64 (Super. Ct.), aff'd, 120 N.Y. 628, 24 N.E. 482 (1890).

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1. Mandeville, Fable of the Bees (primer ed. 1962).

2. 49 Stat. 1526 (1936), as amended, 15 U.S.C. §§ 13(a)(b), 21(a) (1958) (Supp. III, 1959-1961).

complications of the antidiscrimination axis between antitrust and plane-of-competition law make essential the type of organization here employed—a strategy of gradual immersion in details. The substantial degree of repetition entailed thereby will hardly be felt as an imposition on the reader, no matter how well versed he may be in the materials. Thus, it is an apt choice to present first the background of the Robinson-Patman amendments along with an essay in economics, and then a chapter on the "structure" of the act. This leads to "jurisdictional" requirements (probably but not significantly misnamed), all before entering upon a detailed treatment of price discrimination, competitive effects, meeting competition and cost justification. Later chapters deal with brokerage, promotional arrangements, buyer's liability, the crime of discrimination and enforcement of civil liability.

The "over-all jurisdictional elements" include not only "commerce" and governmental transactions but additional elements that might be said to make up the fundamental pattern, that is, sales, the same seller, different purchasers, commodities, like grade and quality. One of the genuine services of scholarship, at least in this area, is to plumb with precision underlying requirements in such a way as to propose a logical procession of concepts. This book succeeds in imposing a degree of order upon an unruly mass of materials. The distinction between price discrimination and other violations completes the fundamental pattern with skillful management of the materials.

The three chapters on competitive effects seem to be worked out in terms of a primary concern to capture the precedents in a descriptive and analytical way, rather than to offer an evaluation from a particular economic stance. This, it is submitted, is a knotty task, and your reviewer observes that it is accomplished with a high degree of intelligence and skill. It is to be hoped that studies of the affected industries will yield a record of experience from which it will be possible to make gross estimates of the impact of price discrimination law. At present, it seems reasonable to conclude that its achievements in protecting competition are shrouded in doubt. Perhaps, in view of the number of variables, the difficulties of access to information, and the expense of such studies, criticism of policy in this field must continue to be based largely upon conjecture.

Conjecture and assertion abound in the 1958 Senate Committee Report on Senate Bill 11.[3] This document is used as a basis for concluding the subject of meeting the price of a competitor as a justification, the conclusion taking the form of an evaluation of this privilege. In dealing with the legislative history and cases leading up to the report, the author espouses, as is apparent elsewhere in the study, a "hard competition" view of the statute, but he does not minimize the evidence that points to the statute as a shield for small business, and even as an offspring of the National Recovery Administration masquerading as a refinement of the antitrust laws.

A substantial critique of the cost justification persuasively undergirds the conclusion that it is "an exercise in legal semantics rather than a scholastic pursuit of accounting verities." (p. 312.) The brokerage prohibition is seen as a "featherbedding guarantee" for the brokers, and the fondness of the Commission for its categorical applicability is underscored (as well as the preponderance of Commission cases of all kinds against the lowly firms, as compared with the good record of the giants of respect for law). Cost justification, brokerage, and promotional arrangements are deftly handled. The Commission gets praise for its guides for compliance with the provisions concerning promotional arrangements and its other efforts to advise busi-

3. S. Rep. No. 2010, 85th Cong., 2d Sess. 11 (1958).

nessmen about the law. Moreover, Mr. Rowe gives it a palm for vigor and fairness at a time when other agencies were scarred by scandal and suspicion.

If the foregoing recital of some of the virtues of this carefully wrought work leaves the impression that the author moves freely from exposition to expression of his doubts about the statute and his lack of admiration for its administration, is not this too a prime aid to comprehension? The book is the product of a difficult task well done.

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