

BOOK REVIEWS

IT'S LIBEL OR CONTEMPT IF YOU PRINT, IT. By Leon R. Yankwich
Parker & Company, Los Angeles, 1950. Pp. xvi, 612. \$12.50.

Twenty years after the publication of his *Essays in the Law of Libel*, now unfortunately out of print and almost impossible to find, Judge Yankwich has written a new book under the challenging title, *It's Libel or Contempt if You Print It*. Described by the author as an "expansion and contraction of the material in the other book," this new volume will be warmly welcomed by lawyers and laymen alike. It should be of particular service to newspapermen for, despite the admonition of the title, the book is designed to tell them "what *they can do*, under the penalties of the law of libel and contempt, and still perform their dominant function in our free society."

The book is divided into two parts, the first being a discussion of "The Newspaper and the Law of Libel." Here Judge Yankwich, out of his long experience as practicing attorney and judge, and from his impressively wide and varied reading, has set forth in simple, untechnical language the principles of the law and has provided a wealth of illustrative case material. The chapter and subdivision headings are such as to enable quick reference to be made to the point of one's particular interest, but the case material and the extensive but pertinent quotations from decisions are so frequently filled with human interest that one may well be lured on to further reading even after the answer to an immediate problem has been found. Part II of the book is a discussion of "Freedom of the Press and its Limitations and Responsibilities." This section contains an interesting and often dramatic and exciting historical review of the subject which in the very telling becomes a defense of the great Freedom and a summoning of all to stand fast and maintain it. Here again Judge Yankwich has vitalized legal principles by using a happy mixture of legal anecdote and story and a wide selection of case materials, ranging from the trials of Peter Zenger and Tom Paine to the *Terminello* decision. These matters are given added contemporary impact and significance by sections discussing and describing the role of the judiciary in protecting the individual in Anglo-American jurisprudence as contrasted with that in Germany and Russia.

Judge Yankwich's book is not the ordinary legal treatise. It is frequently conversational in tone and is filled with the reflections of an inquisitive mind which is attracted by biblical and talmudic references, folklore, personal experience, the inner workings of judges, the development of social mores, and the endless fascination found in the decided cases in the law. Although there are many pages of the book devoted to the briefing of cases, which in themselves afford a mine of reference and quotable

quotes for the practicing lawyer, there are also great parts of the work which are not unlike familiar essays on an engrossing subject.

Both the layman and the professional man will find here what libel is, what words or comments have been held to be libelous, what defenses are available, what proceedings may be had in court, the meaning of criminal libel, the right to privacy, the law of contempt as applied to newspaper comment and a straightforward discussion of the obligations as well as the rights of newspapers and newspapermen.

The book has apparently been carefully designed for easy reading. It has large, clear type and although there are more than 600 pages it is not unduly heavy or cumbersome to handle. Footnotes have been relegated to the end of each chapter and there the interested reader will find an added store of information for the further pursuit of a particular subject. The indices are extensive and, so far as random investigation disclosed, helpful and complete, a thing too often neglected in lawbooks. They show moreover the inclusive nature of the author's study since the Topical Index alone runs to 18 pages, while the Index of Cases takes 25 pages in addition to another 16 pages of index for statutes, textbooks and miscellaneous references. With these impressive advantages in format, it is regrettable to have to note the existence of several unfortunate typographical or printing errors which proofreading should have detected.

The general public has not, in the past, been particularly familiar with the field of the law so engagingly treated in this book. Even the general practitioner has only infrequent opportunity to cope with the many problems of a libel case. This does not mean, however, that Judge Yankwich's book will have an appeal only for a limited class of readers. On the contrary, the recent development of events on the national and international scenes has brought into sharp focus for all of us the importance of the problems discussed by the author relating to the law of libel and the function of a free press in a free society. Since the appearance of this book the public has become all too familiar with the theory and the practice of the fine art of what has been called "character assassination" and "ordeal by slander" as carried on in the public arena of congressional investigating committees. In this country we have also recently witnessed the great human drama of the most controversial trial of our generation grow out of the pre-trial procedures of a simple libel case. Just a short time ago in France we have had the fascinating spectacle of one of the world's greatest powers in effect called into the dock in another libel case. We ourselves have just passed through one of the most vitriolic and bitterly fought political campaigns in the nation's history in the course of which things have been said and repeated by political candidates and their supporters that make even Judge Yankwich's illustrative cases seem pallid by comparison. And we have seen the newspapers of the country faced with an unusually difficult and delicate problem of exercising self-restraint, and what Judge Yankwich calls "noblesse oblige", in reporting, discussing and editorializing about all of these matters.

It would be exceedingly interesting to have the author's comments on these events which have occurred too recently to be included in the present volume. All of these developments are such, however, as to cause the lawyer, the layman, the interested and informed citizen to go back to first principles. Judge Yankwich's book is a pleasant vehicle for the journey. The author is a wise and beguiling companion and guide.

Edwin P. Rome †

SUPREME COURT PRACTICE. By Robert L. Stern and Eugene Gressman, Bureau of National Affairs, Inc., Washington, D. C., 1950. Pp. xiii, 553. \$7.50.

Few lawyers outside the Solicitor General's Office practice regularly in the Supreme Court. Yet any lawyer may in the course of his practice have the rare case that is potential Supreme Court material. In this book, an experienced member of the Solicitor General's staff and a former law clerk to a Supreme Court Justice undertakes to tell lawyers what they will need to know in order to handle a case in the Supreme Court. The result is a valuable reference book, simply written and easy to use, but not intended to exhaust the authorities on Supreme Court jurisdiction. (The exhaustive work is Robertson and Kirkham, *Jurisdiction of the Supreme Court of the United States* (Wolfson and Kurland ed. 1950)).

Perhaps the outstanding service of the book is the detailed outline of the procedure to be followed in filing petitions for certiorari, statements as to jurisdiction, and various motions. The answers to common specific questions which arise along the way can be found in this material.

The lawyer's first question after the jurisdictional one will almost surely be: Is it worth filing a petition for certiorari in this case? The chapter on how the certiorari jurisdiction is exercised presents, for the most part, a realistic discussion of criteria for assessing the "certworthiness" of a case. One criticism bears mention. A common misjudgment made by lawyers who file petitions which are subsequently denied is the conviction that the Court will somehow take notice of an erroneous decision that has no particular significance beyond the interests of the parties to a civil dispute. To a lesser degree, the same misjudgment is made as to criminal cases. The authors' comments on review of erroneous decisions lend support to this notion, but the cases cited are those involving third degree police methods in criminal proceedings. Although error below is not to be overlooked in the writing of a petition, it is a mistake to think that error alone is likely to be the basis for the granting of certiorari. It is still necessary to emphasize that the Supreme Court is not a court of general appeal, but that its primary function is to resolve the most important questions of federal and constitutional law.

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If it is decided to file a petition, what does a lawyer do next? Probably the best advice—and you will find it in this book—is to write, telephone, or visit the office of the Clerk of the Court. A brief conversation with the learned men in that office will serve to avoid embarrassment later when time is running out.

The book incorporates forms for various petitions, briefs, and motions. The cardinal rule for petitions is to keep them short, with a suggested limit of 20 pages. There is also advice on oral argument, and a number of household hints, such as where to hang your hat and check your briefcase.

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