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BOOK REVIEWS

Law and Tactics in Jury Trials (The Art of Jury Persuasion). By Francis X. Busch of the Chicago Bar. Indianapolis: Bobbs-Merrill Co., Inc. 1949. Pp. 1174. \$17.50.

It is rare to find a worth while treatise on the Art of Living. Perhaps there is a good reason. Those who know how to live apparently seldom divulge the art in book form. Those who do not know how, but feel constrained to write a book about it, seldom produce one worth reading.

Probably the analogy can be carried over to the Art of Jury Persuasion. There appears to have been a tendency in writing on this subject to either embalm the truth in platitudinous generalities on the one hand, or on the other to slip into the practice of recounting court room experiences—pleasant to be sure with a congenial group of lawyers and judges as an after dinner pastime with cigars before an open fire—but not necessarily helpful as a legal treatise. In his *Law and Tactics in Jury Trials*, Mr. Busch has proven the exception, and has denied himself the easier and more frequently traveled path, with the result that his labors have produced a really worth-while work.

Mr. Busch, who is unquestionably well prepared for his task, was admitted to the Illinois Bar in 1901. In addition to his long and varied experience as a practitioner, he has been a law school professor, and somewhere along the line he has taken the time to do much scholarly research, which is in evidence throughout his masterful and lawyer-like work. He not only explains in easily readable style the underlying theoretical and academic background of his subject, beginning with the institution of trial by jury and ending with the verdict, but pins down the general aspects of the various steps in procedure and tactics with pointed practical examples taken from actual trials. All of these are supported by citations from reported cases.

In addition to having been written in an entertaining manner, the work is remarkable for its ample citations which make it a handy reference. Frequently, at the foot of the page, there are many citations on the same point from various states, particularly where there exists a divergence of ruling as between the states. The type, material arrangement, editing, subheading, and indexing all combine to make an easily readable volume in which the various topics are quickly accessible.

There are twenty-five chapters in the book. These deal with such subjects as the Development of the Jury System, the Methods of Selecting Juries, Presentation of Evidence, Direct and Cross Examination,

Opinion and Expert Evidence, Argument, Instructions, and the Verdict. Many of the chapters are illustrated with useful and apropos excerpts from actual cases. In spite of its length the book is neither tedious nor prolix.

While the price of the volume (\$17.50) may at first seem prohibitive, it is difficult to see how so much labor, scholarship, and experience as were obviously required to produce this work could have been put forth for less. In owning and studying a work on this subject, the cheaper one is not apt to be the most economical. Many practical suggestions for selecting and addressing jurors, dealing with clients, examining witnesses both before and during trial, and for avoiding the multitude of booby traps and pitfalls in cross examination are not only pointed out but are vividly illustrated. The author hammers home the trite, but never too often repeated warning, that success in the court room is due less to flashes of inspiration than to thorough and methodical preparation, but is convincing when he demonstrates how these less spectacular methods sometimes produce spectacular results.

Somerset Maugham in one of his short stories says that some people read for instruction, which is praiseworthy, and some for pleasure, which is innocent, but not a few read from habit, which he supposes to be neither innocent nor praiseworthy. Mr. Busch's book might be read profitably three times—once for instruction as a young man starts out on his career as a practitioner, once in the middle of his practice for both instruction and pleasure, and once near the end of a long practice for pleasure.

Confessedly the book is not offered as a substitute for experience, but it does give many experiences helpful meanings, and points out how to avoid many others which could be highly embarrassing.

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The Pilgrimage of Western Man. By Stringfellow Barr. New York: Harcourt, Brace and Company, 1949. Pp. xiii, 369. \$4.00.

In the sense that it tells us the purpose and plan of the book, the author, in the Prologue, has himself reviewed it. The purpose is to tell the story of Western Man's "long and painful odyssey, of his search for unity, for freedom, and for justice under law. The reason for telling this story . . . is simply that always, in his pilgrimage, he must review his actions and memories, if he would find his bearings in the strange new countryside; if he would know in the face of new perils and new challenges which of his memories are most relevant and revealing; if he

would continue his pilgrimage with faith, with high heart, and with deepened understanding."¹

The plan is to begin with a brief examination of medieval man's vision of the City of God, which implied "the ultimate unity of all Christendom, of all classes, of all nations, in a social pattern revealed to Christians by God."² That earthly life was imperfect was expected and conceded, but the vision was there; and it permeated political, social and economic, as well as religious institutions. "But the Middle Ages waned, the hope and faith weakened, . . . and the Pilgrim City lost heart."³

The Renaissance, the Reformation, the commercial revolution and the rise of monarchy each played a part in building a new vision of a City of Man founded upon man's own, though God-given, reason. Then, under the impact of the industrial revolution and of the political revolutions which substituted the new nation-states for the old monarchies "a new vision of the City of Man appeared, a vision of a free and humane City, governing itself by its own will and its own common sense, a City in which men would be equal sons of God, if indeed there was a God; a City, certainly, in which men would be brothers and would co-operate to their mutual advantage, whatever their particular views about God might be. As the City of God faded slowly and became blurred in outline, the brave new City of Man grew in brilliance; and men exchanged a fading memory for a burning hope. . . . Men turned to the Machine."⁴

The machine created, at the least, a world-wide economic interdependence, if not actual community; but political disunity remained. The bright hope of Victorian times for the peaceful City of Man ended in World War One, Armistice One and World War Two. "The men of Europe staggered to their feet, recognized that, for weal or woe, they now dwelt in a world which the Machine had made one neighborhood; 'united' their separate armed states in a second league of sovereign governments; and began at last to speak of a common federal government for mankind. The task was terrifyingly difficult. But what was the alternative? World War Three? With jet planes at supersonic speeds? With atomic bombs and bacterial weapons? It was now Armistice Two, and the United States and the Soviet Union were proceeding with the greatest armament race in history."⁵

To tell this story in a book of moderate length for the general reader is, of course, a most ambitious undertaking. It necessitates great selectivity in the use of historical materials. It involves many value judgments. But the reaction of this reviewer, a non-historian, is that

¹ P. xiii.

² P. xi.

³ P. xiii.

⁴ P. 16.

⁵ P. xii.

the task to which the author set himself has been performed with remarkable success.

The reviewer acknowledges some pre-existing bias. He is a devout believer that limited world federal government is the only realistic hope for lasting peace in the modern world; and that is the thesis of the closing chapters of this book. He agrees with the author's statement that "world government is clearly not the sufficient cause of a good society; it is only the necessary condition for the survival of the present society, leaving it some time and energy to think of more interesting things than mere survival."⁶

The reviewer can claim such objectivity as is derived from disagreement with many specific statements made by the author, both in presenting the basic case for world government and in discussing the means by which it may conceivably be obtained. For example, the reviewer would not have accorded the emphasis to the movement for a peoples' world convention which is accorded to it by the author. Nor can the reviewer subscribe to all of the author's comments on either America or Russia. On the basis of at least that much objectivity, it is asserted without qualification that any thoughtful American who reads this book will find it stimulating and provocative. And many will find that agreement with the basic thesis is not impaired by disagreement as to some of the details.

The author, fully realizing the grave difficulties of our problem of world order, makes no glib predictions. He seems fully aware that the voices now insisting that complete political disunity is inevitable—or even wholly desirable—must be weighed against the voices speaking for a just and enforceable law common to all men. But he does see some signs of an awakening on the part of our contemporaries—in particular, some of our Western European contemporaries—to the need for a common government.

We may pray that there is some hope that Western Man will "continue his pilgrimage with faith, with high heart, and with deepened understanding." We may pray that the great wisdom, necessary if his continued pilgrimage is to be fruitful, will somehow be found that it will quickly be found in many places. In the uncertain life span of Armistice Two, it may well be later than we think.

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⁶ P. 350.