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BOOK REVIEWS

Guilty or Not Guilty. By Francis X. Busch of the Chicago Bar. Indianapolis: The Bobbs-Merrill Co., Inc. 1952. Pp. 287. \$3.50.

Francis X. Busch, Dean Emeritus of De Paul University Law School, is entitled to a "Well Done" for his recent volume, "Guilty or Not Guilty."

This does not profess to be a legal treatise such as Mr. Busch's scholarly "Law and Tactics in Jury Trials" published in 1949. "Guilty or Not Guilty" was written for the entertainment of laymen as well as lawyers. Eminent trial lawyer that he is, the author dedicates his book "To the ideal in the administration of criminal justice: A verdict courageously rendered by a jury after a conscientious consideration of the law and the evidence," and proceeds in non-technical language to an account of four outstanding American criminal cases.

There has been no effort to give a tedious courtroom blow-by-blow description of each trial. With a commendable fairness and objectivity the author has, in each instance, given the factual background of the alleged crime, the investigation and apprehension of the prisoner, after which he has taken the reader into the courtroom and obligingly furnished a front row seat, or perhaps more accurately, a thirteenth juror's chair. The evidence, the arguments of attorneys, and the judge's charge are summarized and commented upon in a fresh and entertaining manner. These are followed by the verdict of the jury, and the punishment in case of conviction.

The first of the four trials is that of Leo Frank, charged in 1913 with the murder of Mary Phagan in a pencil factory in Atlanta. The trial probably would have attracted little attention outside of the State of Georgia had not some of Frank's friends in New York, where he had formerly lived, raised a defense fund on the appeal that "Frank, an innocent man, was being persecuted because he was a Jew." The issue was vigorously presented by the Southern press on one side, and the Northern press on the other.

The evidence tended to show that thirteen-year-old Mary Phagan had been criminally assaulted and then strangled to death. The reader goes with the police into the preliminary investigation, and then through the trial itself, which lasted almost a month, during which time more than 300 witnesses were used.

There was a verdict of murder in the first degree and a sentence

of death by hanging. This was followed by Frank's long fight through the Supreme Court of Georgia, an appeal to the Supreme Court of the United States, an unpopular commutation of the sentence to life imprisonment by the Governor of Georgia, all climaxed by the pre-dawn seizure of Frank while in prison and his hanging by a mob in August, 1915.

If Dean Busch had any personal feeling as to whether Frank was guilty or not guilty he avoided any hint to the reader. He probably felt that the trial was influenced by racial and sectional prejudices, although he is so careful to be fair in his account of each of the trials that one unfamiliar with the case could only guess at the verdict up to the time of its rendition.

The second case, *State of Indiana vs. D. C. Stephenson*, was selected by the author because of the defendant's prominence as a citizen of Indiana and his position as former Grand Dragon of a then newly created organization built upon the name of, and styled after, the Ku Klux Klan.

Stephenson's rise in the northern branch of the Klan was meteoric, and he soon became head of the organization whose membership was said at one time to have numbered over 500,000. There can be no doubt of his political influence, and his claim that the more prominent of the state officials, including the governor, owed their election to him was no idle one. He felt and frequently boasted, "I am the law."

After his rise to prominence he met Madge Oberholtzer, a worker in the Indiana State Department of Public Instruction. Stephenson sent for her to come to his home one night to discuss a matter pertaining to her welfare. Her later testimony, taken in the form of a dying declaration, was to show that she was drugged, taken on a train to Indianapolis, and while in a drawing room on the train was badly mutilated and criminally assaulted. She was helped off the train at Indianapolis and carried to a hotel in which a room had been previously reserved by Stephenson's orders. Next day she was permitted to go to a drug store in company with one of Stephenson's employees. Unwatched, she purchased bichloride of mercury tablets. On her return to the hotel she swallowed a number of these. Stephenson, from the adjoining room heard her groan, and discovered what had happened. Miss Oberholtzer was given a bottle of milk to drink as an antidote, and seemingly made some recovery. Later, one of the wounds on her breast, received while on the train, became infected. She died within twenty-nine days after taking the poison. There was a question as to whether she died from the infection or from the effects of the self administered bichloride of mercury.

After a desperately fought case Stephenson was convicted of murder in the second degree and given a sentence of life in the state prison.

Mr. Busch next gives an account of the trial of Samuel Insull, charged in the Federal Court in Chicago with using the United States mails to defraud. While there is less in this trial to satisfy the murder and sex story reader seeking the spectacular, the enormity of the ramifications of the Insull empire make the cause for selection of this case obvious. It is probably no exaggeration to say that the present Federal Securities & Exchange Act grew out of the fall of the Insull financial empire. The skill and vigor with which the case was both prosecuted and defended make its study worth while in spite of a maze of figures and statistics.

The high spot of the case was reached when Insull took the witness stand in his own defense. His willingness to assume the blame for the "mistakes" of his associates as well as his own, but his categorical denial of any willful or intentional deceit, certainly raised a reasonable doubt of his guilt in the jurors' minds. He was acquitted after a trial lasting from October 2nd to November 24, 1934. The Insull financial empire had been wrecked, but Insull was found not guilty of using the mails to defraud.

The last of the four cases, and one of recent importance, was the trial of Alger Hiss for perjury. Hiss, a man from a prominent Baltimore family, had attended Harvard Law School, had been a secretary to Supreme Court Justice Holmes, and later one of the attorneys in the United States Department of Agriculture, from whence he was transferred to the State Department. He then became a Presidential Adviser, and was one of the signatories of the so-called Yalta Agreement. He also helped prepare the United Nations Charter and became Secretary General of the San Francisco Conference to form the United Nations Organization.

On August 3, 1948, while testifying before a Senate committee, Whitaker Chambers casually stated that he had been a Communist and that Alger Hiss had been one of his friends and fellow Communists. The fat was in the fire. Hiss denied ever having known Chambers and likewise denied ever having been a Communist. Each testified before the Senate Committee under oath, both in Washington and a New York hotel room where the committee was holding sessions.

An indictment against Hiss charging him with perjury was returned by a grand jury and the case was tried in New York. Chambers repeated substantially his previous testimony detailing how Hiss had procured secret documents from the files of the United States State Department, had them copied on a Woodstock typewriter, and then

delivered them to Chambers for transmission to the Soviet Government. Chambers made many damaging admissions as to his own previous life and character and his former Communist connections. His story, told without any apparent attempt at evasion, wove a strong case around the defendant.

Hiss, taking the stand in his own defense, denied all of the charges, including that of procuring documents of the State Department, and any affiliation with the Communist Party. Testimony about the famous pumpkin microfilms was brought in and played a prominent part in the case. After a trial lasting weeks the jury hung and a mistrial was ordered. At a second trial, which is also summarized, there was a verdict of "Guilty on all charges." Hiss was sentenced to five years' imprisonment.

For anyone who likes an accurate and graphic account of great courtroom battles, stripped of difficult legal jargon, and told by an experienced lawyer with an eye for human interest and the dramatic, "Guilty or Not Guilty" is a distinctly worth-while book.

VICTOR S. BRYANT.

Member North Carolina Bar
Durham, North Carolina

Marital Property in Conflict of Laws. By Harold Marsh, Jr. Seattle: The University of Washington Press, 1952. Pp. 250, index. \$4.50.

As correctly stated on the paper jacket, this book is the first comprehensive study of choice-of-law questions involving marital property in the United States. A glance at the two most widely used one-volume treatises on Conflict of Laws in this country shows that the subject of marital property has been given rather brief coverage. Goodrich¹ devotes 19 pages of a 642 page book and Stumberg² 8 pages of a 465 page book to the topic of marital property. The treatise by March is an exhaustive, analytical study of a definite but narrow segment of the field of Conflict of Laws. This book may well be the forerunner of other studies in conflict of laws, which will be similarly limited in scope, but thorough and intensive.

One of the difficulties in writing about marital property in the United States is obviously the fact that we have two systems of marital property law, the community system in eight states and the common law-statutory system in the others. As pointed out by the author, common law lawyers have little understanding of the community prop-

¹ GOODRICH, *HANDBOOK OF THE CONFLICT OF LAWS* (3d ed. 1949).

² STUMBERG, *PRINCIPLES OF CONFLICT OF LAWS* (2d ed. 1951).

erty system and vice versa. Such great differences are not present in other fields of law, but, for marital property, any discussion of Conflicts of Laws problems must be based on a knowledge of both systems. Mr. Marsh has had experience in both systems, having studied law and been a teacher of property law in both common law and community property states. The present volume comprises his dissertation for a doctorate of the Science of Law from Columbia University.

Analysis of Marital-Property Laws in the United States is the title of Chapter Two. Following a section on definition, there are historical accounts of both systems of marital-property and then a detailed analysis and comparison of marital property laws of the 48 states and the District of Columbia. This analysis is in terms of "immunity", "power", "privilege", and "disability", use of which makes for clarity and conciseness, particularly in describing property interests. While the reader, who is not trained in the use of the Hohfeldian legal terminology,³ will have some difficulty in following the definitions and analysis of the author, he will find it worth while to take the trouble to study and understand these fundamental legal conceptions. By following the definitions and analysis of the author, he can determine what the law of any state is (as of 1951) on an item of marital-property interests. There are full and accurate references to statutes and decisions, as a check of the North Carolina citations demonstrated. In short, there is here presented a panoramic picture of the marital property laws of the United States. The analysis is original and comprehensive, and the chapter is an excellent presentation of the existing law of marital property rights in the United States. The author's comparisons are interesting, for instance, pointing out that common law and community property states frequently reach the same result by different methods, as in the case of the "family car" or "family purpose" doctrine which is a common law way of holding a husband's acquisitions liable for the wife's torts in certain cases.

This is followed by a chapter on the Basic Aspects of the Choice of Law Problem, in which the author defines and explains the three logical steps to be followed in the solution of any choice of law problem, (1) characterization, (2) selection and (3) application. Here there is heavy reliance on Falconbridge⁴ and Rabel⁵ and the European jurists. American Conflict of Law experts, such as Beale, Goodrich and Stumberg, are largely neglected, perhaps necessarily, because they do not use either the language or the analytical methods of the Euro-

³ HOHFELD, *FUNDAMENTAL LEGAL CONCEPTIONS* (1919).

⁴ Falconbridge, *Characterization in the Conflict of Laws*, 53 L. Q. REV. 235 (1937); FALCONBRIDGE, *ESSAYS ON THE CONFLICT OF LAWS* (1947).

⁵ 1 RABEL, *CONFLICT OF LAWS* (1945).

pean jurists in the field of Conflict of Laws. This is understandable because the American experts were examining the laws of the 48 states and the District of Columbia and were not confronted with the great differences in legal systems, which prevailed among the nations of Europe. One approach is national, such as the Restatement of Conflict of Laws; the other is international and universal, and this latter path is the one taken by the author. So the common law lawyer reading this book must familiarize himself with language which is to a large degree strange in order to understand an analysis which is also different from what he is accustomed to.

The last three chapters are devoted, in order, to problems of Characterization, Selection and Application and demonstrate the use of these three logical steps in the solution of choice-of-law problems involving marital property interests. Many interesting problems are presented where the author demonstrates the usefulness of his theoretical categories in arriving at solutions. Problems involving community property interests seem to preponderate, and the author handles them expertly. He does much to clarify our thinking about the use of such a phrase as "separate property", which has a number of different meanings in the common law, statutory and community property systems and different meanings within the same system.

To read these chapters will bring our common law lawyer face to face with such concepts as "characterization", "secondary characterization"; "mutability of the matrimonial regime" with the variations of "full mutability", "immutability", "partial mutability"; "barrable" and "non-barrable" shares; "acceptance" and "rejection" of renvoi, etc. All this means additional effort for the lawyer who is seeking an answer to a particular problem. This reviewer is inclined to agree with Cavers⁶ that the entire procedure developed by European jurists, and set out in this book, for the solution of choice-of-law problems is unrealistic and theoretical. Nevertheless, this book is a valuable study which will reward the careful reader, not only with answers to particular problems of marital property interests, but with a better understanding of an important approach to the solution of problems concerning marital property and Conflict of Laws.

ROBERT H. WETTACH.

University of North Carolina
School of Law
Chapel Hill, N. C.

⁶ Cavers, *A Critique of the Choice-of-Law Problem*, 47 HARV. L. REV. 173 (1933).