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BOOK REVIEWS

The People's Right to Know: Legal Access to Public Records and Proceedings. By Harold L. Cross. New York: Columbia University Press, 1953. Pp. xxiv, 405. \$5.50.

This is a timely and worthwhile book: timely because it makes its appearance at a moment when such slogans as "public business is the public's business" and "the people have the right to know" are very much a part of the news; worthwhile because it is the first careful, comprehensive survey of a field of law which has heretofore received all too little attention by the legal profession and all too little analysis in the courts.

The field surveyed is the law of freedom of information—or more accurately, the right of the press to gain access to governmental records and to proceedings wherein governmental business is transacted. This is, of course, a large order. The legal considerations controlling a reporter's right of access to a city council debate over tax assessments may be quite different from those dealing with his right to sit in on the hearings of a congressional committee investigating atomic energy. The existence or non-existence of a reporter's right of access to a governmental proceeding may well have to turn, to some extent, on the type of proceeding and on the nature of the business transacted. The author does not devote too much space to a consideration of the problem as it applies to governmental proceedings where a strong case might be made for secrecy, *e.g.*, on grounds of security. He does dig deeply into the law—such little law as there is—which applies to proceedings where the case for preserving secrecy is certainly weaker. And especially comprehensive and useful in the discussion of the common law and statutory law pertaining to the "right" to inspect official records in the files of local or state governmental units. The author is frankly partisan (for the newspaperman whose interest he rather indiscriminately equates to the public's), and he hits hard at the infirmities of the existing law—problems which center about the definition of "public records"¹ and the

¹ See, *e.g.*, N. C. GEN. STAT. §§ 132-1, 6 (1952), the North Carolina statutes which bear on the problem. N. C. GEN. STAT. § 132-1 (1952) defines "public records" as "papers . . . documents [etc.] made and received in pursuance of law by the public offices of the State and its counties, municipalities and other subdivisions of government in the transaction of public business." N. C. GEN. STAT. § 132-6 (1952) gives a right to "any person" to inspect such records at "reasonable times" and under "supervision" of the custodian of the records. Mr. Cross asks whether such a definition of "public records" is not too limited. For a more comprehensive definition, see the Louisiana statute, LA. REV. STAT. § 44:1 (1950).

extent of the discretion to be lodged in the courts in deciding just who may inspect a "public record" and when he may do so.

Similarly, the author culls over decisions and statutes which do or do not recognize a "right" of access to the proceedings of municipal and state administrative bodies; he surveys the "right" to report legislative proceedings, but he fails—and here, at least, North Carolinians might raise an eyebrow—to devote much discussion to the matter of executive sessions of legislative committees.

Turning to the matter of secrecy at the federal level: the book contains a wealth of useful information and background authority for anyone who would really choose to investigate the problem; federal statutes and various rulings dealing with access to federal governmental records are set forth and discussed. But some vital aspects of the problem are not treated sufficiently, in the opinion of this reviewer. For example, there is no real analysis of the alleged deficiencies of the Truman security order;² nor is there any discussion of another problem which surely warrants reflection: the matter of the right to know something, something more than we do know, about the administration of the federal loyalty program.

Assuredly it is at the federal level that the "right to know" counts the most; and yet, it is also at that level that the need for secrecy is most apparent. The demands of security are obviously making drastic cuts into the flow of information. Unfortunately these restrictions seem to be here to stay. But the legal basis and the legal limitations—if there are any—on this relatively new and growing power of censorship demand concern. The government has reached imponderable proportions. It is doing today so many more things which deeply touch upon our freedoms and perhaps our lives than it did yesterday that we cannot afford to ignore the implications of the paradox which results from having a maximum of security in a country whose boast is a maximum of freedom.

As Mr. Cross maintains the "right to know" is an adjunct to the maintenance of our "first freedom"—the right to speak and publish. The First Amendment rests on the assumption that speech is not a privilege but a necessity in a scheme of government which puts such a large measure of responsibility on the citizen-elect. The free market of ideas is the surest way to expose error and determine truth, to find fresh inspiration and new ideas to cope with the awesome challenges of these times. In short, the First Amendment contemplates far more than a tolerance of speech; it assumes an affirmative need for a continuous flow of ideas of every sort and information about every subject, to the

² Exec. Order No. 10290, 16 FED. REG. 9795 (1951). It was criticized, revoked, and superseded by a new order by the new administration. See Exec. Order No. 10501, 18 FED. REG. 7049 (1953). It might be worthwhile to have had an exhaustive criticism of the Truman order, so as to judge better the merits of the new order.

end that the people, acting through the agency of government, may decide what is best for their future.³

If that is so, then the law should put a premium on the yet unrecognized "right to know." It is deserving of some constitutional dignity.

Of course, slogans and labels will not solve concrete cases: it is not enough to argue that "public business is the public's business" and demand that all doors be opened. Other considerations may sometimes be paramount—as in the case of the reporter who would demand access to the conferences of the Supreme Court on the segregation cases, or access to the meetings of the Joint Chiefs of Staff, to cite two obvious and extreme examples. But, as Mr. Cross says, "The First Amendment points the way"; secrecy should be the exception, and always well-grounded in some carefully defined, overriding public interest; the "right to know," as an integral part of free speech, warrants more recognition and protection than it has received at the hands of the common law and more than it received under many statutes and federal regulations. Mr. Cross' exhaustive and well-documented research teaches precisely that lesson.

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Psychiatry and the Law. By M. S. Guttmacher, M.D., and Henry Weihofen. New York: W. W. Norton & Co., 1952. Pp. 476. \$7.50.

In keeping with the advances in civilization we have observed an increased complexity in social institutions. The professions have moved steadily toward each other as a result of their expansion, so that many times it is difficult to define one in contrast with another. Two of these professions—law and psychiatry—have discovered many overlapping responsibilities. Both share a basic interest in the behavior of people. Both are sought after by people in trouble. Both have a common responsibility to try to make society a better place in which to live, by methods designed to make people more adaptable to a constantly changing culture. It is therefore natural that over the last few decades many writings concerning the legal aspects of psychiatry and the psychiatric aspects of law have appeared.

The book, *PSYCHIATRY AND THE LAW*, is neither of these, but is rather an attempt to present *both* aspects. It is a valuable contribution to the present-day trend toward mutual cooperation between social agen-

³ Cf. *Near v. Minnesota*, 283 U. S. 697 (1931).

cies and insitutions. The authors present observations made during an obviously thorough experience in which law and psychiatry have become involved with one another. The book should have much appeal to a large group of highly skilled people in important professions. It may well serve as a stimulus for significant changes in the methods and procedures of contemporary psychiatry and law. As such it would have major social significance.

The book begins with a simplified definition of the relationship between psychiatry and law. The first half of the book is devoted to a practical description of modern psychiatric diagnosis with many well-chosen examples of how individuals with these illnesses might behave in society and in court. The cases chosen as examples are not too extreme and are adapted to the purposes of the discussion. A short chapter on Personality Formation, which introduces the psychiatric material, enhances its understanding.

The last half of the book is given over to a discussion of various ways in which psychiatry and the law overlap. A listing of the titles of these chapters reads as follows: The Psychiatrist on the Witness Stand, Cross-Examination, Eliminating the Battle of the Experts, The Patient's Privilege of Silence, Hospitalizing the Mentally Ill, Mental Incompetency, Veracity, Mental Disorder and the Criminal, and Mental Disorder and the Criminal Law. Each of these chapters goes into considerable detail, using examples freely to illustrate points. Sensible suggestions are offered as to how problems encountered in these areas could be handled more effectively. The closing chapter makes a well-formulated plea for more emphasis to be placed upon the prevention of mental illness.

In reading this book one cannot help but look for even more definite solutions to the problems which are presented, though many suggestions are made. The simple exposition of these problems in a book such as this should go a long way toward helping us meet these problems more effectively.

It is the opinion of the reviewer that this book should be a "must" for psychiatrists and lawyers; it should also be placed high on the required list for physicians, dentists, public health personnel, social workers, psychologists, and others in public life.

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