

1971

## Books Notes

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## BOOKS NOTED

DEFAMATION AND PUBLIC OFFICIALS: THE EVOLVING LAW OF LIBEL. By Clifton O. Lawhorne. Carbondale: Southern Illinois University Press. 1971. Pp. xvi, 356. \$15.00. Freedom of the press is taken for granted in this country. It has been and continues to be a hallmark of our society. The rationale for this freedom is that the public has a right to know about and openly discuss public officials and events. Invariably, this viewpoint has engendered legal battles between public officials who claim the right to a good name and private citizens who claim the right to know about and discuss the officials. The outcome of such conflicts have helped to shape the contours of what is commonly referred to as the law of libel. And it is the evolution of this law which Professor Lawhorne has chosen for the subject of his book.

The conception of this book is historical; yet its analysis is broad enough to bridge the gap between a constitutional law text and a book on the history of journalism. And although written by a professor of journalism ostensibly for students of that field, it is made especially relevant to lawyers by the inclusion and analysis of over 500 cases. Viewed from the perspective of history, the author concludes that the protection afforded to public officials by the libel laws has been consistently narrowed as the public's right to know has been broadened.

To say that the coverage and documentation of this book is comprehensive is to engage in understatement. The book thoroughly discusses our restrictive European heritage, the law as affecting and as affected by the Revolutionary War era, the reactionary sedition laws of 1798, and the reemergence of an unbridled press in the 19th century, and makes an extensive assessment of the contemporary libel laws. The revelation of this continuing drama is that the law of libel, like the law in other areas, is often simply a product of its time.

This theory is substantiated by the landmark case of *New York Times Co. v. Sullivan*, which arose in the heated context of the southern civil rights movement. The author's contention is that the Court felt that the need of the people to be made aware of repressive practices was greater than the personal reputation of the public official allegedly fostering the practice. *Sullivan* held that in the absence of actual malice, a newspaper should be free to publish whatever it wants even if defamatory. The importance of the imposition of a nationwide standard by the Court in *Sullivan* has been reflected in subsequent Supreme Court decisions. The most important of these have applied the *Sullivan* standard to protect statements about "public figures" in addition to those about public officials. In turn, the lower courts have extended "public figures" to include government employees, political party workers, union leaders, artists, athletes, business people, or anyone else in the public eye.

The author concludes his book on a sobering note. He feels that the latitude of recent rulings could lead to restrictive laws in the future unless publishers realize that the ethical confines of their profession are narrower than the legal confines. He is particularly sensitive to the possible repressive groundswell manifested in the attacks made on the media by prominent elected officials during the last election.

The book is well written and extensively documented. Concise summaries are included at the end of each section. In addition, it is thoroughly

cross-referenced and indexed. In short, it can be recommended to students and teachers interested in the first amendment, and to the practitioner whose practice is affected by the evolving law of libel.

**THE SCHOOL PRAYER DECISIONS.** By Kenneth M. Dolbeare & Phillip E. Hammond. Chicago: The University of Chicago Press. 1971. Pp. xi, 164. \$6.50. As every first year constitutional law student knows, a Supreme Court interpretation of the first amendment, as made applicable to the states by the 14th amendment, forthwith becomes the law of the land. In theory this is correct, but in practice, well . . . perhaps not. That a substantial gap often exists between a Supreme Court decision and its implementation is neither a startling revelation nor a novel theme, but nowhere is it better documented than in this fascinating little study made by a political scientist and a sociologist. The decisions studied were those handed down in 1962 and 1963 that declared unconstitutional the saying of prayers and the reading of the Bible in public schools. The scene of the study was four small towns and one large city located in the Midwest. The time was 5 years after the decisions were handed down. The finding was that there was a total lack of compliance with the mandate of the Supreme Court.

Although this study focused only on a narrow area of both law and geography, it raises questions which go far beyond the immediate subject of its inquiry. How can decisions rendered at the highest federal level be without effect at the local level? What factors determine the reception given at the local level to a rule of law imposed from above? How is it possible for the Constitution, as interpreted by the Supreme Court, to be so systematically violated? The search for an answer to these and other questions provides fascinating reading.

The authors concluded generally that local leaders (or "Elites" as they are referred to in the study) are the key to either compliance or noncompliance. In addition, the authors isolate and discuss the four critical factors in the matrix of social behavior which ultimately determine whether a given decision of the Supreme Court will be implemented or tacitly ignored at the local level.

Some will probably criticize both the conception of the study and the reliability of its findings. After all, isn't the Midwest a bastion of conservative religious thought? And couldn't noncompliance be expected where there is no official body charged with enforcing the mandate of the decision? Perhaps a similar study in a more cosmopolitan area would find strikingly different results. The authors themselves tacitly admit that their small study is but a start.

Nevertheless, this book will provide informative reading for lawyers and lawmakers alike. For if nothing else, the findings of this study should clearly forewarn an attorney that often winning a case is only the start; it is the ultimate acceptance and implementation of the decision that determines whether a court battle was actually won.

**CONTROLLING THE WEATHER.** Edited by Howard J. Trubensfeld. New York: The Dunellen Publishing Company, Inc. 1971. Pp. xvi, 275. \$10.00. The observations of Mark Twain to the contrary, there is a small group who have been doing something about the weather. Although the exact extent of weather modification cannot as yet be precisely determined, it is generally agreed that it can be done under certain limited conditions and circumstances. Because the potential effect of weather modification is so great, its impor-

tance to everyone should be obvious. Indeed, the very pervasive nature of the subject almost demands that it come under the increasing scrutiny of both the courts and the lawmakers. As the pace of weather modification has increased, so have the possible risks to society. An assessment of this embryonic science would therefore appear in order.

Recently, a task force operating under the auspices of the Institute of Aerospace Law at Southern Methodist University Law School undertook just such an assessment. Their objective was to project from past studies and make creative suggestions on how the nascent field of weather modification might best be regulated by society to advance the public interest. The task force was limited to people who had either done prior work in the field or who had some especially relevant expertise. The results of their collective efforts are contained in this book. It includes discussions and analyses of the legal, political, scientific, and social implications of man's efforts to modify the weather, and contains suggestions for appropriate regulation.

Of necessity, the book contains much pure conjecture, but this does not prevent it from being entirely relevant and topical. The nucleus of the book is the actual report of the task force, which includes recommendations on the legal aspects of weather modification activities, which in turn focus on suggestions for necessary administrative control. Using the report as a starting point, the book goes on to an examination of the current state of the art, concentrating specifically on precipitation augmentation, hail and lightning suppression, and fog clearance. Next is a section of particular interest to lawyers which discusses the problem of defining the public interest in the field and examines recent law suits and the problems of proving that a cause and effect relationship exists. This is followed by three sections dealing respectively with alternative plans of regulation administered at the federal, state, and local levels. The final section compares and contrasts the utility of using the presently constituted Atomic Energy Commission as an exemplar for a possible future weather control agency.

This book contains a scholarly evaluation of a youthful but potentially important area. As such, it is recommended to all who possess an interest in the public welfare. Those wishing to pursue a specific topic further will be helped by references given at the end of each section. By the same token, it would have been helpful if the editor had included an index. Such an omission is of small import, however, when measured against the positive features of this book.

