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## Book Reviews

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## Book Reviews

THROUGH THE COURTROOM WINDOW. By the Honorable Charles S. Desmond. St. Paul, Minn.: West Publishing Co., 1959. Pp. v, 256. \$5.00.

The author of this book is a member of the New York Court of Appeals, the highest court of that state. He has made it a hobby to study the court's records of bygone cases for legal curiosities and extraordinary factual occurrences. The first literary fruit of this research was a book summarizing cases which had a startling outcome as a result of legal technicalities.<sup>1</sup> The main purpose of the present book is to digest cases wherein strikingly extraordinary facts were involved. The title is derived from the following statement made by another judge: "We in the court see life through a thousand windows—a thousand windows that bring us in touch with as many facets of human experience."<sup>2</sup> Part of the book is obviously meant to illustrate the incidental proposition of the author that "truth is stranger than fiction."<sup>3</sup> However, he takes a different approach to murder cases, with regard to which he writes: "Murders in life spring from sudden rage or brooding hate or lust, jealousy, greed, thievery or drunkenness. Obscurely motivated, deviously planned and brilliantly conceived crimes are rare."<sup>4</sup> In the same sense he says: "Fictional murders are much stranger than murders in fact. The complex motives, intricate planning and devious methods with which our writers of detective stories tease and confuse us are missing from the record of real murders."<sup>5</sup>

The author's own statement that the book "makes no claim to profundity, legal learning or felicity of style,"<sup>6</sup> does no injustice to what he presents and the manner in which he does it. It should be of great interest to lay readers for whom it seems to be primarily destined. It can, however, also make pleasant bedside reading for lawyers.

MAXIMILIAN KOESSLER\*

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1. DESMOND, SHARP QUILLETS OF THE LAW (1944).
  2. This is the motto on the title page, said to be "from a speech by Judge Stanley H. Fuld." DESMOND, THROUGH THE COURTROOM WINDOW i (1959) [hereinafter cited as DESMOND].
  3. DESMOND 53.
  4. DESMOND 1.
  5. *Ibid.*
  6. DESMOND iii.

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FELIX FRANKFURTER REMINISCES. Talks recorded by Harlan B. Phillips. New York, N. Y.: Reynal & Co., 1960. Pp. ix, 310. \$5.00.

Personalities and predilections of United States Supreme Court Justices have become such a matter for table talk among laymen as well as lawyers in recent years that FELIX FRANKFURTER REMINISCES was bound to attract scores of readers in both groups. It has. At this writing the book has been on the best sellers' list of the *New York Times Book Review* for more than half a year. Accounting for its universal appeal is easy.

First, few men have engaged in as many of the social upheavals of their eras as Justice Frankfurter. His appointment to the Supreme Court in 1939 terminates the period retraced in this volume. But by then he had been an advisor to President Theodore Roosevelt, a legal handyman to Secretary of War Henry L. Stimson, a confidant of Justices Holmes and Brandeis, a moving force behind the founding of *The New Republic*, a pamphleteer on behalf of his beloved mistress The Law, a delegate to the Paris Peace Conference, a ranking public official in his own right, an advisor to President Franklin D. Roosevelt and supplier of manpower to the New Deal, and, of course, first, last, and between times, a professor in the Harvard Law School. The people and events about which Justice Frankfurter speaks continue to touch our lives in so many ways and at so many places that no one interested in twentieth century American social history will want to miss this book.

Secondly, if few men are so closely connected with major events and people, fewer still could—or would dare—speak of them with Justice Frankfurter's precision of language, exuberance, and abandon. Here a word about the book's form is appropriate. It consists of transcripts of—well, "interviews" is an inept word because it suggests two-sided conversations; these are explosive monologues detonated by short, and sometimes innocuous, questions—monologues tape recorded by a member of Columbia University's Oral History Research Office. Although arranged, more or less, in the chronological sequence of the events discussed, they are too episodic and unconnected to constitute an autobiography. But there are compensating advantages. The spontaneity of the monologues reveals a vivid personality that fairly leaps from the pages. Justice Frankfurter is an arrogant intellectual; he wears his intellectualism on his shoulder as a bully wears a chip.<sup>1</sup> Modesty, false or otherwise, is not part of his makeup.<sup>2</sup> He has a penchant for calling persons "creatures." This is a piddling sample of the personality nuggets waiting to be mined. Whether they assay as attractive or repulsive is for each reader to decide. Nowadays it is no mean feat to have a distinctive personality of any kind.

Justice Frankfurter's artistry with English makes the book a delight. Most of us would be proud to write on the tenth draft half as well as he speaks on the spur of the moment. Recalling a conference with President Woodrow Wilson, for example, he says, "Even his speech was copper-plated like his handwriting."<sup>3</sup>

As if all this weren't enough, special treats are offered to lawyers. His thoughts

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1. *E.g.*, see p. 139.

2. See especially pp. 147, 255.

3. P. 130.

on following precedent,<sup>4</sup> on the place of legislation in a case law system,<sup>5</sup> on the proper role of lawyers in society,<sup>6</sup> on arguing cases before appellate courts,<sup>7</sup> on the relationship between social change and law,<sup>8</sup> and on the differences between American and English trials,<sup>9</sup> while never novel, are yet provocative.

Many lawyers will be struck by the seeming inconsistencies between what Justice Frankfurter says and what he does. Of Henry L. Stimson he says,

This was an incredibly effective and wholly scrupulous man. When he went out to raid a place with a search warrant—not only wouldn't he do it without a search warrant, but he'd send youngsters like me . . . to see to it that the raiding officers kept within the limits of the search warrant. . . . If you read some of my opinions with regard to criminal prosecutions, that's where it all comes from. In one opinion I actually said this, that maybe this was a bias derived from having served under a United States Attorney who observed these standards and won his cases.<sup>10</sup>

What are we to think when Justice Frankfurter then writes an opinion authorizing a city inspector to barge into a private dwelling without a warrant, even though, since the city was Baltimore, a warrant presumably could have been gotten with no difficulty?<sup>11</sup>

Again, speaking of lectures he delivered as Eastman Visiting Professor at Oxford, he talks of the problems caused by federalism.<sup>12</sup> But he doesn't tell us why, as Justice of the Supreme Court, he aggravates those problems<sup>13</sup> instead of helping to alleviate them.

Finally, most lawyers know of the animosity that has occasionally flared from the supreme bench. They will be intrigued by the startling juxtaposition of these thoughts:

. . . I do believe that what I mean by manners—courtesy, regard for the other fellow, considerateness, the opposite of aggressive self-assertion; all these things I call manners—if they are not morals, produce the same result. I suppose I have a general predilection against pedantic, didactic,

4. Pp. 72-73.

5. P. 95.

6. Pp. 128-129.

7. P. 140.

8. P. 197.

9. Pp. 272-274.

10. Pp. 48-49.

11. See *Frank v. Maryland*, 359 U.S. 360 (1959). Justice Frankfurter did distinguish between searches to seize evidence of crime and searches made to enforce sanitary codes. The reviewer concurs with dissenting Justice Douglas that the distinction is more fanciful than real.

12. Pp. 270-272.

13. In *Gallegos v. Nebraska*, 342 U.S. 55, 68 (1951) (concurring opinion), petitioner had been illegally detained in Texas and then illegally transferred to Nebraska, where he was illegally detained a further period. In finding that petitioner had not been denied due process, Justice Frankfurter treated the state of Nebraska like a person charged with a crime, and refused to consider the events that had occurred in the state of Texas. Numerous other cases could be cited to support the generalization in the text.

formalized, so-called ethical principles. I distrust, I certainly distrust people who are preoccupied with their own nobility.

My wife says there can be few people who know as little about themselves as I do. . . .<sup>14</sup>

All in all, a stimulating tour de force by a major controversial figure of our time.

JULES B. GERARD\*

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14. Pp. 12-13.

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