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Book Reviews

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The Law Of Admiralty. By Grant Gilmore and Charles L. Black, Jr. Brooklyn. The Foundation Press, Inc. 1957. Pp. xli, 866. $10.00.

Professors Grant Gilmore and Charles L. Black, Jr., of the Yale Law School, have performed a magnificent service to the American Admiralty Bar, as well as to their own teaching profession, in the publication of their "Law of Admiralty". The last work in the field was written by Professor G. R. Robinson in 1939, and since then there have been fundamental changes brought about by statute and case law. Moreover, the great fleet of American war-built merchant vessels recently sold to private operators, and our own Government's policy of assistance to the American shipping industry have made admiralty problems more important as well as more complex. The text of the new work has been prepared with great industry and scholarly care over the last two years, and includes not only abundant note reference to supporting statutes and cases but also refers to the English language texts, literature, and law review articles bearing on the various subjects under discussion. It is thus not only a digest of the law, but also an index of reference works. An adequate general index, and an index of over 1700 cases cited, are included.

The style of writing is clear and also interesting. The authors are, of course, at pains to state the law on the great number of points discussed as it appears from the latest statutes and decisions. But the interest of the practitioner, the student and even the general reader is aroused by the background history of earlier authorities that is brought in wherever it can throw light on the development of the law and the trend of expected decisions to come. And like other "Monday morning quarterbacks", the authors can point to many instances where trends appear to run in opposite directions, or where the judicial progress slows to a standstill. The authors never hesitate to speak their minds and their comments are not always flattering to either judges or legislators. In considering the development of principles governing personal injury at sea, the authors say at one point:[1]

> "The only thing which the agency cases did make clear was the ease with which last term's dissent could become this term's majority opinion."

[1] GILMORE and BLACK, 381.

and again at another point:[2]

> "The argument . . . illustrates the process of fusion and confusion which is going on between the Jones Act theory and unseaworthiness theory."

The quips and froth that leaven the work, that might otherwise become ponderous, do not detract from the serious approach of the authors to their main objective — to show the development and present state of the law. For instance, there is the trend toward a harmonious and uniform admiralty pattern applicable in all ports and to all situations of a nationwide commerce. In the *Jensen* case[3] a State Compensation Act was held inapplicable to harbor workers on shipboard, since it "works material prejudice to the characteristic features of the general maritime law or interferes with the proper harmony and uniformity of that law in its international and interstate relations". And in the *Chelentis* case[4] the land law of negligence was held inapplicable to seamen for the same reason, the Court saying:

> "[N]o State has power to abolish the well-recognized maritime rule concerning measure of recovery . . ."

When *Chelentis* was decided the doctrine of uniformity restricted the seaman's rights for personal injury recovery, but with the constant trend to improve the rights of the admiralty courts' favorite wards (the seamen and ship workers) the same doctrine, in the *Garrett* case,[5] the *Mahnich* case[6] and the *Sieracki* case[7] greatly broadened their rights in the same field. These admiralty decisions subjecting State law to the supremacy of Federal maritime law were coming out, as the authors point out, at the same time that the Supreme Court was establishing the supremacy of State common law over the general Federal common law.[8]

There is necessarily so much in the eleven chapters into which the book is divided that it will only be possible to consider in detail some of the newer statutes and decisions that have affected maritime law since Robinson's text of 1939. It is regretted that the authors have not discussed the statutes and practice relating to arbitration of maritime

[2] *Op. cit. ibid*, 303.
[3] Southern Pacific Company v. Jensen, 244 U. S. 205, 216 (1917).
[4] Chelentis v. Luckenbach S. S. Co., 247 U. S. 372, 382 (1918).
[5] Garrett v. Moore-McCormack Co., 317 U. S. 239 (1942).
[6] Mahnich v. Southern S. S. Co., 321 U. S. 96 (1944).
[7] Seas Shipping Co. v. Sieracki, 328 U. S. 85 (1946).
[8] Erie R. Co. v. Tompkins, 304 U. S. 64 (1938).

cases, particularly as they point out[9] that arbitration has largely taken the place of litigation in construing charter parties, adding:

> "The infrequency of litigation does not, any more than in the marine insurance field, imply that the subject is unimportant to the admiralty lawyer."

The book also leaves the practitioner without guidance or discussion (except for a short note, page 575) of the statutes and practices relating to the transfer of title of ships and the recording of documents, matters most important to the practitioner in searching and certifying marine titles.

Chapter I describes the sources of admiralty law brought into our Federal courts by the Constitutional grant of power. The early lines of demarcation, which excluded ship construction contracts, ship mortgages, and cases involving ship damage to land structures from admiralty consideration, have been modified, at least in the two categories last mentioned, by Federal statute.

Chapter II on marine insurance is most welcome. Recent texts on admiralty have not treated this subject, although its importance to the average practitioner cannot be overestimated. As the authors point out:[10]

> "[A]ll important possibilities of marine loss or liability are normally insured against. . . . To consider the rules and concepts of maritime law without reference to the all pervading 'insurance angle' is a stultifying process indeed."

The authors give a satisfactory explanation of usual marine policy language and various clauses which are brought in and which are so often in the trade abbreviated to mere initials, such as F.P.A., F.C. & S., etc. In the recent *Wilburn Boat Company* case,[11] the Supreme Court, in dealing with warranties in marine policies, appears to desert the principle of uniformity. Although the insured vessel in that case plied an inland lake, the principle announced, as pointed out by Mr. Justice Frankfurter, might equally apply to the Queen Mary.

In Chapter III the usual business practices relating to carriage of goods by sea under bills of lading are discussed. There is a brief review of the structure, both business and legal, within which international commerce and banking

[9] *Op. cit. supra*, n. 1, 173.
[10] *Ibid*, 48.
[11] Wilburn Boat Co. v. Fireman's Ins. Co., 348 U. S. 310 (1955).

are conducted, including the strict requirements relating to letters of credit and documentary sales based on the transfer of negotiable bills of lading. Here also is reviewed the law relating to whether ship or shipper (or their respective underwriters) suffer for loss or damage to goods in ocean transit. This, of course, has been governed for many years by statutes such as the Harter Act of 1893,[12] the Pomerene Act of 1916,[13] and the Carriage of Goods by Sea Act of 1936.[14] Basic in this area is the age-old conflict between the ocean shipper and the ocean carrier, which brought about a change in our own national policy as we developed from a carrying nation to a predominately shipping nation in the last half of the 19th Century.

Chapter IV discusses the essentials of the three types of charter parties — the voyage and time charters under which the owner has responsibility to man and operate, and demise or bare boat charters where he does not.

The authors devote a separate chapter to salvage, general average and collision, including pilotage and towage; also to the American limitation of liability statute. The new International Rules of the Road of 1954 are reviewed. Recent collisions between submarines and operating trawlers[15] and radar-equipped vessels[16] show that neither rules nor science can assure absolute safety at sea. In considering the amounts awarded in salvage cases by the courts, the authors show that the general principles governing awards are clear, but that every case stands on its own facts. The authors refer to the excellent tabulation of American salvage awards in the six Digests of American Maritime Cases covering the period 1923-1952, a table compiled like the corresponding English table appearing in Lloyd's List Digest.

In discussing whether owners' insurance should be surrendered to claimants in limitation of liability cases, the authors aptly summarize the situation as follows:[17]

> "The battle of the insurance proceeds, like the battle of Waterloo in the Duke of Wellington's opinion, was 'a damned close-run thing'."

In 1886 by a 5-4 decision in *The City of Norwich* case,[18] the Supreme Court held the owner's hull insurance pro-

[12] 27 Stat. 445-6, 46 U. S. C. A. §§190-195 (1928), §196 (1956).
[13] 39 Stat. 538, 49 U. S. C. A. §§81-124 (1951).
[14] 49 Stat. 1207, 46 U. S. C. A. §§1300-1315 (1944), §1302 (1956).
[15] United States v. Woodbury, 175 F. 2d 854 (1st Cir., 1949).
[16] United States v. The Australia Star, 172 F. 2d 472 (2nd Cir., 1949).
[17] GILMORE and BLACK, 713.
[18] 118 U. S. 468 (1886).

ceeds need not be surrendered. In 1954, by the same close majority, limitation claimants were allowed to reach the proceeds of an owner's liability insurance, even though the policy provided that payment should be made only after the insured "shall have been" held liable in damages.[19]

The authors' discussion of maritime liens, including liens under preferred ship mortgages, is particularly well handled. To know whether a lien exists in any circumstances is of vital importance to the practitioner, and he must also know what is its priority rating. The authors introduce the subject as follows:[20]

> "The beginning of wisdom in the law of maritime liens is that maritime liens and land liens have little in common. A lien is a lien is a lien, but a maritime lien is not."

The subject brings up the disregard which Mr. Justice Holmes as Supreme Court Justice had for the speculations of Mr. Holmes as a scholar and writer. In his "Common Law" he had argued that a lien on a ship for her faults arose because the ship was to be considered as a person. In *The Western Maid* case,[21] the ship was at fault in a collision while owned by the United States. Neither the ship nor the Government could then be sued, and the question later arose as to whether the ship, subsequently transferred to private hands, was liable in rem for the collision lien. Mr. Justice Holmes pointed out that the idea of the ship as a person did not go this far and continued:

> "But that is a fiction not a fact and as a fiction is the creation of the law. It would be a strange thing if the law created a fiction to accomplish the result supposed."[22]

Judge Hough, a great admiralty Judge of the Second Circuit, in a comment several years later said:

> "When it comes to hurdling a legal difficulty Holmes, J. is '*hors concours*', but in this effort he has surpassed himself";[23]

adding in the words of an old song:

> "It ain't so much as wot 'e said,
> As the narsty w'y 'e said it."

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[19] Maryland Casualty Co. v. Cushing, 347 U. S. 409 (1954).
[20] *Op. cit. supra*, n. 17, 483.
[21] 257 U. S. 419 (1922).
[22] *Ibid*, 433.
[23] Hough, *Admiralty Jurisdiction — Of Late Years*, 37 Harv. L. Rev. 529, 543 (1924).

Finally, in the chapter on death and injury cases of seamen and maritime workers the authors trace the great changes that have recently been made in favor of maritime labor. For seamen the Jones Act of 1920 opened the way for recovery from the results of operating negligence, even of fellow servants, both in the Admiralty Court and on the law side with a jury. Under a recent decision the Act has been extended to apply to seamen's injuries even occurring on land.[24] Still later the hard rule requiring plaintiffs to elect between recovery under the old Admiralty Rule for unseaworthiness and recovery under the Jones Act for negligence set out in the *Peterson* case[25] was greatly softened in several circuits.[26] But the door has been opened even more widely for maritime labor recovery. Both seamen, and stevedores (even though not directly employed by the ship), are now able to recover for injury from any unseaworthiness, even resulting from operating negligence of the vessel's crew.[27] The authors point out that very little more help could be given by the courts to the maritime personal injury claimant, although the final rule has probably not been set as to where the ultimate loss should fall as between the shipowner and the employing stevedore company when a harbor worker is injured on board ship with the fault of both parties contributing. The development of this part of the law is set forth with detail and precision.

It takes no gift of prophecy to state that the new textbook will be promptly installed in the working libraries of the Maritime Law fraternity.

ROBERT W. WILLIAMS*

The Law Of AWOL. By Alfred Avins. New York. Oceana Publications. 1957. Pp. 288. $5.00.

The need or reason for such a volume might not be apparent to the average lawyer. However, the need for some knowledge of military law is becoming more widespread and the opportunity for utilizing such knowledge could well present itself to the average practicing attorney more often than might be supposed.

[24] O'Donnell v. Great Lakes Co., 318 U. S. 36 (1943).
[25] Pacific Co. v. Peterson, 278 U. S. 130 (1928).
[26] McCarthy v. American Eastern Corporation, 175 F. 2d 725 (3rd Cir., 1949); Balado v. Lykes Bros. S. S. Co., 179 F. 2d 943 (2nd Cir., 1950).
[27] Mahnich v. Southern S. S. Co., 321 U. S. 96 (1944), as to seamen; Seas Shipping Co. v. Sieracki, 328 U. S. 85 (1946), as to stevedores.
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Since the adoption of the Uniform Code of Military Justice in 1951,[1] the need for qualified counsel in the military system has been greatly expanded and civilian counsel is being called upon more and more to defend persons charged under the Code. In addition, with the great number of lawyers still holding Reserve Commissions the opportunity for many attorneys to be called upon to prosecute or defend cases under the U. C. M. J. is not unlikely.

This volume is devoted primarily to the military offense known as Absence Without Leave — AWOL. However, the author also touches upon the related offenses of desertion of which AWOL is a lesser included offense, failure to repair and the similar offenses so closely related.

The military offense known as Absence Without Leave has been the plague of military commanders throughout the centuries and has been a violation of military law apparently as long as recognized warfare. As the author points out — the greatest percentage of court martials arise from violation of Article 86[2] of the Code of Military Justice: Absence Without Leave. In fact, AWOL always has been a major problem in the armed forces and it has been estimated by the United States Bureau of Navy Personnel that such AWOL has cost the armed services over $100,000,000 a year in lost time and official action. During World War I slightly over half of all the offenses in the United States Army were AWOL cases and during World War II an even larger proportion of the offenses committed were AWOL. In view of the tremendous volume of such offenses, the need for a text on this subject becomes apparent.

This small volume should go far to fill such a need, particularly among military lawyers as well as officers not necessarily trained in the law, who may be called upon to prosecute or defend within the military system, the military offense known as Absence Without Leave and the related offenses to it.

Although the author has drawn heavily on other great military legal writers who have preceded him, particularly Colonel William Winthrop, his work represents a great amount of research into the early codes and treatises and effectively traces the history of this military offense down to the present day. The volume is not strictly a text book nor a case book — it partakes somewhat of both, and the author has drawn heavily on military precedents from our

[1] 64 Stat. 108 (1950), 50 U. S. C. A. §§551-736 (1951). Note that the U. C. M. J. is now contained in 10 U. S. C. A., "Armed Forces".

[2] *Ibid*, §680 (10 U. S. C. A. §886).

own Military Court of Appeals, the Court Martial reports dating back to Colonial Days, and the Court Martial records of Great Britain and the English speaking world whose military law actually stems from the common law as does our own. Numerous citations of cases from Australia, the Malay States and India as well as Great Britain and Canada, appear.

He has dealt fully with the offense of AWOL and other related offenses under the Military Code and the elements which must be proven in order to make out the offense, that is, the breaking off of military control, what constitutes *absence* in a legal sense, the duration of the absence and its termination. He has also dealt fully with the various defenses which are available in such cases including impossibility, mistake of fact, illegal orders, the "*de minimis* rule" and condonation.

Military lawyers should find the volume valuable as a quick and ready reference although not an exhaustive authority. A practicing lawyer should find it valuable for that occasional case he might be called upon to defend at some time during his practice or perhaps it could be of value in a "line of duty" determination in a claim against the government. It should also be of value to the non-legal officer administering non-judicial punishment under the Uniform Code of Military Justice or the Summary Court officer called upon to dispose of minor AWOL cases.

Difficult legal points have been dealt with in detail and while minor matters have been touched on lightly, it seems to contain sufficient discussion of the law to permit even a non-legal officer to decide a matter according to law and to do substantial justice in those cases where no review, or only a limited review, is provided for in the military legal system.

The book cannot be described as a text book but in some places it resembles a text book and in others it resembles a law review article. Some cases are set forth fully and others only in an abbreviated version. However, the author has left the subject somewhat in doubt on occasion by a poorly written abstract of the case at point.

The volume is well indexed and the citations are full and complete. The wide range of cases covering several centuries and several countries have been chosen with discretion to illustrate the points involved.

In addition the book should prove of interest to the average lawyer who has absolutely no knowledge of the military legal system and the manner in which cases are

tried and reviewed. Furthermore, the cases cited should be of interest to many average readers for their historical interest — if for no other. The volume deals with many of the famous court martials of history, including the trial of Colonel Fremont in 1847 in the Mexican territory, and the court martial of Admiral Schley during the Spanish American War, as well as those of the many officers and men throughout history from the Plains of Runnymede to the Korean Front, who have had occasion to go AWOL for one reason or another.

Although this volume represents no great amount of scholarship, and certainly not much original thinking, it should serve a useful purpose and prove interesting and valuable to the officer or lawyer dealing with the military system of justice and particularly violations known as AWOL and related offenses.

LEROY W. PRESTON*

Compulsion. By Meyer Levin. New York. Simon & Schuster. 1956. Pp. 495. $5.00.

The crime of the century was the murder of Bobby Franks by Leopold and Loeb in 1920. "Compulsion" is the story of this crime. One reads with a certain snake-eyed fascination of two teenagers deliberately and coldly planning and executing a shocking murder. By their confessions the criminals lead the District Attorney, and Mr. Levin leads the reader, from the time the murder is conceived to the time of its execution. This devious path is one of horror, and from the beginning points up the homosexual relationship which existed between the defendants. In telling the story of this crime, Mr. Levin produces an historical novel packing as much suspense and terror as a Hitchcock production.

The author also succeeds in telling a gripping story of the notorious trial of Leopold and Loeb. Solely because of his skill in narrating the essence of the trial of the century, "Compulsion" is well worth reading, but the reader should bear in mind that the author is a writer and had been a newspaper reporter. He is not a lawyer and "Compulsion" is not a law book; yet he has carefully selected the material for his account of the trial and has omitted tiresome parts of the legal record. His narrative of the trial is sufficiently accurate to please an appellate judge; yet is so free from

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legal terminology that it does not bore or confuse lay readers. A comparison of the included excerpts of the authentic closing arguments of the attorneys shows excellent choice.

There is something extraordinary about this book. One gets the impression that the author was compelled to write "Compulsion". He seems to have felt responsible for sending them to prison. After all, as the book discloses, Leopold and Loeb may never have been apprehended but for Mr. Levin's detective ability, nor have committed the crime had the author and other fellow students accepted them as normal boys. Furthermore, Mr. Levin pondered over the dramatic material of this book for a period of thirty years before he commenced to write. That is a long time to lapse between inspiration and production. From the shreds of evidence contained in the book it appears that Mr. Levin may have written "Compulsion" as a means of making restitution to Leopold and Loeb for the wrongs he fancied he had done them. He seeks to make this restitution by answering a question that society specifically asked in the Leopold-Loeb case and has been asking generally ever since; namely, why do intelligent and wealthy boys of cultured families, knowing the difference between right and wrong, with frightening frequency, deliberately select a career of criminal conduct and thereby forfeit prospects of a brilliant and fruitful future?

Mr. Levin is a member of the deterministic school of conduct and his thesis is that Leopold and Loeb were predestined to commit this crime. Judges who do not agree with Mr. Levin would hang Leopold and Loeb and retort that if they were predestined to commit murder they were also predestined to hang for it. The fallacy in Mr. Levin's theory is that it offers society no hope for preventing crime and presupposes that man can learn nothing from his own or others' experiences. But, on the other hand, it is paradoxical that judges who hang criminals on the theory the criminal was predestined to hang, generally feel that they themselves achieved their judgeship by the proper exercise of their free will, industry and ability. It is odd how vehemently we claim to achieve the good things of life by a timely exercise of free will, but whine that the evil days we suffer are pre-determined — unless success comes to the other fellow, in which event, such success was predetermined.

The author gives a convincing chain of circumstances supporting his deterministic theory of this crime. It is

assumed that the crime was the result of a joint venture and would not have occurred had not the defendants been brought together by the connivance of their doting mothers. It is assumed they would not have stayed together had not their personalities been complementary. These assumptions lead the author to reconstruct all of the forces that went into the formation of the personalities of the criminals. He discusses with insight the factors which made Leopold an active homosexual. Leopold's character is clearly delineated, but Loeb is shown only as a disgusting and dissolute person who accepts Leopold's sexual advances for the purpose of putting Leopold within his power. Leopold, on the other hand, has information of Loeb's criminal activities which puts Loeb within the power of Leopold. This reciprocal knowledge induced them to become partners in crime. After the formation of this partnership, they conceived of committing a "perfect crime". In their warped minds, perfection was equated with non-disclosure and equal guilt. It was insurance to both that neither would "squeal" about the murder. In addition, Leopold had insurance that Loeb would not disclose his homosexuality and Loeb was insured against Leopold disclosing his prior criminal activity. This was a twisted type of blackmail generated by their unholy partnership.

Darrow's job as defense attorney was to stop the shedding of blood, and to do this he called upon the medical profession for an understanding of Leopold and Loeb, and he pleaded for forgiveness of the boys. The defense psychiatrists testified to some pretty thin stuff about glands, dreams and Teddy Bears. A comparison of the psychiatric testimony given in 1920 in this case to forensic psychiatry today shows the great development that has taken place in that science. One may reasonably question if the law of criminal insanity has kept apace with the growth of psychiatry.

One suspects Darrow was at the pinnacle of his remarkable powers while delivering his argument during those three days when he alone stood between death and his clients. It has been thought that Darrow won the case because his clients were not hanged. This is only partly true. He won the case because he was able to give the essence of his experience of seventy years of living in an argument that will be considered a masterpiece as long as forensic literature is treasured. He said in part:

> "The easy and popular thing to do is to hang my clients. I know it. Men and women who do not think will applaud. The cruel and the thoughtless will ap-

prove. It will be easy today; but in Chicago, and reaching over the length and breadth of the land, more and more fathers and mothers, the humane, the kind and the hopeful who are gaining understanding and asking questions not only about these poor boys but about their own, — these will join in no acclaim at the death of my clients. These would ask that the shedding of blood be stopped, and that the normal feelings of man resume their sway. And as the days and the months and the years go on, they will ask it more and more. But, your Honor, what they shall ask may not count. I know the easy way. I know your Honor stands between the future and the past. I know the future is with me, and what I stand for here; not merely for the lives of these two unfortunate lads, but for all boys and all girls; for all of the young and as far as possible, for all of the old. I am pleading for life, understanding, charity, kindness, and the infinite mercy that considers all. I am pleading that we overcome cruelty with kindness and hatred with love. I know the future is on my side. Your Honor stands between the past and the future. You may hang these boys, you may hang them by the neck until they are dead. But in doing it you will turn your face toward the past. In doing it you are making it harder for every other boy who in ignorance and darkness must grope his way through the mazes which only childhood knows. In doing it you will make it harder for unborn children. You may save them and make it easier for every child that sometime may stand where these boys stand. You will make it easier for every human being with an aspiration and a vision and a hope and a fate. I am pleading for the future; I am pleading for a time when hatred and cruelty will not control the hearts of men, when we can learn by reason and judgment and understanding and faith, that all life is worth saving, and that mercy is the highest attribute of man."

All in all, "Compulsion" is a powerful book. It is a thriller that should not be read by an imaginative person alone at night. Although it never satisfactorily explains the causes of the murder, nevertheless, it is an honest and thoughtful endeavor to probe more deeply into the riddle of criminal conduct. It is a step, and not an inconsiderable one, towards Darrow's objective — understanding.

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