BOOK REVIEWS

LEGAL PROBLEMS OF PHOTOGRAPHY by Robert Veit Sherwin, Greenberg: Publisher, New York, 1957, Table of Contents, pp. 120, distributed by the Lawyers Cooperative Publishing Company.

Ever since Nicephore Niepce took the first picture back in the 1820's legal problems have cropped up to plague the life and career of the photographer. In the United States especially, where the photography craze has graduated into a highly commercialized art, it would seem from a reading of the cases that suits involving its votaries are as inevitable as the negative of their films, adding weight to the paradox that the photographer's best friend is proving to be his worst enemy. That such legal entanglements which not infrequently end up with the shutterbug paying damages could have been conveniently averted had he taken precautions to consult his lawyer before proceeding with his task does not require much argument. This procedure, however, may prove equally expensive, if not cumbersome in the long run. The enterprising photographer may take recourse in extrinsic aids like books dealing with the legal aspects of the subject but as far as his purpose is concerned, he may just as well abandon the project as he will discover to his dismay that often the treatment accorded the subject by these books is too incomplete to furnish him assistance. This dearth of vital information on the rights and liabilities of the photographer, coupled with his constant exposure to lawsuits, led the author to devise a handy guidebook well within his reach, if for no other reason than to point out danger zones in the field, legally speaking or otherwise, with suggested remedies for his protection and safety.

One of these danger zones is libel and a typical ground on which actions are brought under this head is the so-called "chastity libel." As its name suggests, it is an action by a female complainant charging one with having slandered her via the celluloid. With modern trends of advertising calling for "cheesecake" illustrations for the promotion of almost any kind of product, this is a specially vulnerable spot for photographer. Another danger zone is the right to privacy and its invasion., Under this topic, the author answers such interesting questions as: What is the divisible right of privacy? Does a celebrity have a right of privacy? May the right be surrendered May a photographer incur any liability in photographing people on a public street or at public events Or, what is the public street rule so called? A most frequent cause of litigations is a single term in the statute books which has caused many a photographer countless nightmares — "obscenity." While in other cases the lawyer could predict with a certain amount of accuracy the course of action to be taken by the court on a case simply through a reading of judicial precedents, this does not seem to hold true in cases falling under the prohibition. The difficulty lies in the fact that generally judges do not report fully the facts of the case, excusing the omission with the words: "The facts of this case are such that we do not intend to soil the legal records of this court by recording them here." The lack of uniformity in statutory definition of terms, what with statutes varying in different jurisdictions, and the multiplicity of standards employed are contributing factors to the preclusion of a clear-cut rule of law. In this state of affairs it is not surprising to find judges reversing themselves on the same set of facts, as amply illustrated by the author.

After discussing the danger zones, the book branches out to areas of importance generally to photographers, such as copyright requirements, contracts and releases, ownership rights, trade secrets, etc.

Mr. Robert Veit Sherwin is a member of the New York bar, a practising attorney, specializing in show business, psychiatry and law, and a photographer in his own right. There is no room to doubt his competence to write on the subject.

Researching law students may feel disappointed to note that court decisions reported in the book lack citations. The author excuses himself on this intentional omission by saying that "it is not the intention of the author to train photographers to be lawyers, especially their own lawyers. Therefore, where possible, long explanatory detailed description of legal elements which will help the photographer be aware of dangers to himself and therefore know when to seek legal aid—and that is the main purpose of this book."

ALFONSO A. MARTINEZ JR.*

* A.B., (Far Eastern University)

THE BASIS OF OBLIGATION IN INTERNATIONAL LAW by James Leslie Brierly. Oxford University Press. London. 1958. pp.

The book under review is a compilation of Brierly's essays and observations on the slow but inexorable development of international law. Synthesized into one compact volume by another great name in the same field of law, Sir Herbch Lauterpacht, Judge of the International Court of Justice, the analytical dissertations deal with such varied topics as the basis of obligation in international law, the shortcomings of international law, the judicial settlement of international disputes, the rule of law in international society, and with the hopeful attitude of a visionary look towards the realization of world community

Citizens of the world who endlessly find themselves in the midst of turmoil and petty bickerings of powerful nations cannot help but dream a world order founded upon law and brotherhood of mankind. Brierly discusses the possibility of Suarez's vision of a world community. He observes that

> "It is easy to assume that the growing interdependence of states in material things, the triumphs of modern science in reducing distances, in creating and satisfying new demands, for the products of other nations must automatically create new links of community and make the ideal of a world community easier to realize."

Nevertheless, there is ground to fear as Brierly himself admits, that the material progress upon which the hope of a world order is anchored, may be the very cause of its failure. In the past, when great distances separated nations, wars were waged on a small-scale basis. Hostile states were often content to resign themselves with the prospect of harmlessly communicating their enmities by dispatches. But with the shortening of distance between them, there resulted in an inversely proportionate increase of friction and warfare.

It is evident, therefore, that the realization of the world community presents additional problems of morality and statesmanship. Brierly suggests that inasmuch as "kindliness is far more habitual to man than enmity", the task of international law is to "construct institution through which this abundant natural human kindliness can find its practical expression." This task would properly fall upon the shoulders of the United Nations and all its numerous instrumentalities that operate throughout the whole world. These bodies are in the position to serve the common needs of mankind and disseminate the ideas of supranational cooperation Regional organizations, by their very nature, provide only limited means for the performance of the same task. Perhaps, they may even tend to produce a narrow concept of the world community.

When mention is made of statesmanship, a desperate picture of world leaders trying to outdo each other in every conceivable way comes to mind. There cannot be even a scintilla of doubt that the ordinary citizen of every state desires to live in an atmosphere of peace. Unfortunately, those who are in power never take this into consideration in the formulation of their policies. Almost every conflict in the international level has its root cause in the desire to expand the territories of a state. World leaders would do well enough to leave every nation, no matter how small to their own self-determination.

The apparent diversity in interests between states is a natural condition which need not be eradicated in order to arrive at a world order. It is admitted to be impossible. The breakthrough is to be achieved by exploiting the common interests which are far more numerous than the uncommon. When this is done, nations would become more acutely conscious of the need for supranational cooperation.

Brierly categorically states that the world community does not contemplate the banishment of national differences, nor the elimination of political divisions of states. These will inevitably continue since a centralized power is impossible of existence. He rejects the idea of a world federation which he believes are formed as a means of mutual protection against a common enemy whereas the world community has an entirely opposite purpose. He does not suggest a particular form of government but merely sets down the ends to be achieved.

Brierly has admirably stayed away from the vice of theorizing, devoting his efforts, rather, to the determination of the actual problems of the world. As to what degree mankind may achieve the world community envisioned by Suarez, we can only speculate.

TEODORO B. PISON*

* Administrative Assistant, Phil. L. J., 1959-60.

MARBLE PALACE, The Supreme Court in American Life by John P. Frank: Published by Alfred A. Knof, Inc. N.Y. 1958. Copyright 1958, Pp. xi, 301, index x.

More often than not, the first impression a law student in the Philippines holds when the subject of "Supreme Court and the Constitution" comes up is Mr Justice Holmes' classical ruling in Springer v. Government, i.e., "[we cannot lay down] with mathematical precision and divide the branches [of government] into watertight compartments not only because the great ordinances of the Constitution do not establish and divide fields of black and white but also because even the more specific of them are found to terminate in a penumbra shading gradually from one extreme to another."

For indeed the question of supremacy — be it judicial, executive or legislative — is more academic than actual or practicable. This notwithstanding, it cannot be denied that the Supreme Court is the ultimate arbiter of justice; as such it must wield an enormous power such as the power of life or death upon him who transgresses the law.

What role or roles, the Supreme Court plays on the life of the nation is beautifully pictured in ohn Frank's MARBLE PALACE — an expository survey of the U.S. Supreme Court and the men in whose hands rest the responsibility of carrying out the constitutional mandate.

Of course before the reader should attempt to evaluate any book, he must first determine the competency of the author to dwell into the subject matter. In this connection, no doubt is seriously cast upon Mr. Frank's appraisal because of his wide theoretical and practical knowledge of the Federal Supreme Court.

The author discusses judicial history in the light of international issues existing at the time. He then presents the environmental factor which may or may not influence judicial thinking on cases presented for deliberation. Clearly, the author does not alienate the human element involved in any undertaking.

In bringing home certain points, Frank authenticates his assertions with well-settled doctrines, leading cases and excerpts from previous works. For instance, in the chapter Methods Of Persuasion his reportorial erudition is characterized by the adjectives **clear, brief and simple.** In the famous **Darmouth College** and **Income Tax Cases** during the early 19th century, the writer devotes 10 pages conveying to the reader the description of the courtroom, the attitude of the justices, the audience and most important, the marked brilliancy of the arguments presented by Daniel Webster and Joseph Choate. To the young Filipino lawyer, this chapter is a "must" to quench legal thirst.

Not much has been said or written about judicial decorum in the Philippines. In the Federal Supreme Court, there had been instances where the critical eye would note that underneath the be-robed justices, there is the human element—the personal equation. For example, Mr. Frank observes Justice Miller once referred to his Chief Justice Waite as "mediocre"; or Justice Stone's frequent dissent whenever Justice Sutherland writes the majority opinion and vice versa; or the Chief Justice Vinson-Black controversy when the former was appointed to the Chief Justiceship in 1940. So also the "war" between Justices Reed and Roberts.

For reference purposes, the author incorporates a selected "judicial prose" to illustrate th lucidity in style and eloquence of logic some justices in the supreme court are noted for. Excerpts from leading decisions make good reading matter.

On the whole, the book pictures to the reader how the court is organized, how it does its manifold work, what its relations have been and may be expected to be to the main stream of American life. To the political science disciple, the answer to this question is forthcoming from the book: What contribution has the U.S. Supreme Court attempted to make or actually made to American life and culture?

To my mind, in the Philippines a working counterpart of this treasured work could be mentioned the series of Comments made on the juridical thinking of Supreme Court Justices in the issues of **The Philippine Law Journal.**

Ergo, the book is more than food for thought to the layman, law student and members of the bench and her.

ANTONIO D. CLAUDIO