

## BOOK REVIEWS

**DISORDER IN THE COURT: REPORT OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, SPECIAL COMMITTEE ON COURTROOM CONDUCT.** By Norman Dorsen, Executive Director, and Leon Friedman, Associate Director. New York: Pantheon Books, 1973. Pp. 432. \$15.00.

In 1970, the Association of the Bar of the City of New York organized a special committee to study disruption in the courtroom. The inquiry was spurred by concern and controversy over the apparent rise in courtroom disorder after the Black Panther and Chicago 7 conspiracy trials. *Disorder in the Court* is the report of the Committee, but it is more than a factual summary of a perceived problem; it is an interesting, well-written, comprehensive analysis of the subject of disruption: its history, its causes, methods of handling it heretofore, and recommendations for management of the courtroom.

The book examines the use of the courtroom by criminal defendants as a forum to dramatize perceived injustices in society. Although registering their disapproval of such use, the authors condemn more harshly those who frequently have escaped criticism—the prosecutors and judges. In pursuit of order and dignity, the book attempts to define the proper role of each participant in a courtroom proceeding.

To gather accurate information on the nature and extent of courtroom disruption the Committee sent out extensive questionnaires, reproduced in the appendix of the book, to every trial judge of general jurisdiction in the country, both federal and state, to lower criminal court judges in New York City and California, to 93 United States attorneys, district attorneys in the 69 largest jurisdictions, 50 attorneys-general, and the presidents of the 89 largest bar associations. The conclusion of the committee was that “the incidence of courtroom misbehavior is low and relatively insignificant” (p. 8). Furthermore, among the participants in the courtroom, defense attorneys have caused the *least* disorder. The study thus factually refutes the popular belief that radical defense lawyers are destroying our system of justice.

The Committee begins its comprehensive inquiry by putting disorderly trials in historical perspective. In many countries, the courtroom intermittently has been the scene of disorder. The trial of Sir Walter Raleigh in 1603, trials in connection with the Fugitive Slave Law of 1850, the Dreyfus affair in the 1890's, the trials of Susan B. Anthony and of the Wobblies are discussed to show that courtroom disorder has occurred in the past, especially in times of political stress. The historical analysis is carried forward to more recent times with discussion of the Nazi sedition trial of 1944, the Communist conspiracy case in 1949, the Chicago conspiracy trials of 1969-70, and the Black Panther trial of 1969-71. The authors conclude that disorderly court proceedings historically occurred when one or a combination of the following conditions prevailed:

1. The courts are used to enforce or implement an unpopular policy of the government and thus become the battleground for the contending political forces of the time.
2. Individual opponents of the prevailing regime or members of dissident groups challenging basic government policies are brought before the courts for any reason.
3. The basic criminal procedures under which defendants are tried are thought to be unjust, discriminatory, or improperly invoked by the government. (p. 255)

The second of these patterns corresponds with the popular image of the disorderly trial. It is the so-called “political trial” in which those who oppose government policy

are tried for their dissidence under the guise of an indictment for ordinary criminal activity. In some cases the indictment is based on a law which makes certain political activity "criminal" or punishes indirectly behavior which is politically motivated. While the authors suggest that the term "political trial" is no longer meaningful, they acknowledge that political factors affect the judicial system. They believe that the problem lies in the discretion of prosecutors to indict for political reasons and the inevitable contribution which a judge's political beliefs make toward his decision. Recognition of these causes leads the authors to admonish that "[j]udges and prosecutors should have a better understanding of the sense of unfairness or outrage that many representatives of political outgroups feel when the criminal law is invoked against them for what they view as their political opposition to the government" (p. 89). The authors rightfully point out that the way to diminish disruption is not only to expect a better understanding of the desire of defendants to use the courtroom as a "gladiatorial arena," but also to devise mechanical and psychological methods for doing so.

The techniques recommended by the Committee to deal with disruption in the courtroom are carefully attuned to the rights of criminal defendants, who, it found, are the main source of disruption. For example, they suggest severing multiple defendants and conclude that preventive warnings are preferable to any action which might deprive a defendant of a fair trial, such as removal from the courtroom or physical restraints. It is essential that judges avoid prejudicing the jury through the use of any technique for curbing disruption. Some sanctions, such as revocation of bail, should never be used.

An entire chapter is devoted to the contempt power. The authors believe that contempt is a powerful and abused weapon of the judge. They argue that it should be curtailed and that summary contempt be eliminated altogether. Instead, the present system of allowing citation for contempt at the time of the misconduct with subsequent full due process hearing before another judge should be the exclusive method for exercise of the contempt power.

As foreshadowed, the Committee takes a hard line with judges and prosecutors. A judge whose courtroom presents a picture of chaos and coercion will inevitably cause a defendant to believe that his chances of a fair trial are nil. Arbitrary, biased, or vindictive remarks and bickering with counsel by the judge baits the defense and incites it to disrupt the proceedings out of frustration and anger. Prosecutors who indict for reasons other than enforcement of the law, who discriminatorily enforce the law or who take advantage of conspiracy charges and mass trials are condemned.

Remedies for improper conduct of judges, such as reversal and impeachment, are claimed to be inadequate. Statutory disciplinary procedures which do not require the level of misconduct necessary for impeachment have been effective in some states. Furthermore, the Committee advocates that more energetic investigations by Bar Associations with disciplinary power should be undertaken.

As for prosecutors, they appear to be virtually immune from disciplinary action, a situation which the authors find unjustifiable. The Committee asserts that prosecutors should be held to as high or a higher standard of good conduct than defense attorneys because a prosecutor's actions are potentially more prejudicial to defendants.

The authors conclude that while courtroom disorder has been a recurrent phenomenon, it is essential to maintain order in the court, "not merely the absence of disorder but the affirmative order of a properly organized and functioning system of criminal justice which acts to protect the rights of the people" (p. 15). Disorder is both the manifestation of perceived injustice and, when provoked by the prosecutor or judge, the cause of injustice. It is dangerous and undesirable in either case because the courtroom is a "morality play, in which deeply felt notions of justice, of rewards for good deeds and punishment for immoral acts, are reinforced through identification with one or more of the participants" (p. 16).

Seeking to replace disorder with order, the Committee attempted to identify the causes of disorder and to show that any effective remedy cannot merely quell the dis-

turbance but must also counteract its causes. The book's strengths are its practical suggestions for prevention of and sanctions for courtroom disruption. Nevertheless, the authors are keenly aware that to the extent that judges, especially in the lower courts, hand down insensitive, racist, or procedurally outrageous decisions and rulings, to the extent that prosecutors and legislators justify politically motivated trials and, indeed, to the extent that justice does not guarantee equality before the law, disorder will be with us.

THE LIMITS OF CORPORATE RESPONSIBILITY. By Neil W. Chamberlain. New York: Basic Books. 1973. Pp. 236. \$10.00.

Business is a process of providing desired goods and services. The argot of business—marginal revenues, elasticity curves, and production frontiers—evokes an image of a system exquisitely responsive to economic realities but quite unconcerned with the “non-business” aspects of society which are not readily translatable into dollar terms. Thus it might be assumed that the corporate system, the most efficient method of meeting the twin goals of satisfying the consumer wants and producing a profit, is a socially benign system of organization. Yet even the strongest defender of this system would admit that corporate officers sometimes stray into prohibited zones while pursuing greater profit, quickly adding, however, that when such abuses as attempts to subsidize subversion in a foreign country or the purchase of a politician at election-time occur, the truth will inevitably emerge, and legal chastisement will follow.

The principal concern of Neil Chamberlain is not, however, with the relatively rare political activities of corporations which transgress the boundaries of criminal law. Instead, in *The Limits of Corporate Responsibility* he examines the social implications of the corporate system, where behavior is unconcerned with society's well-being. Mr. Chamberlain retains a scholarly and dispassionate stance throughout his work, and avoids the shrill rhetoric which plagues most indictments of the corporate world. Nevertheless, he pessimistically concludes that the corporate system is not only locked into a competitive posture which necessitates relative obliviousness to the banes of society, but more dismally, that the corporate presence has fostered many of these ills. The ever-increasing size and pervasiveness of the corporate system is destined, in Chamberlain's eyes, to kill (or at least profoundly sicken) the golden goose which laid the corporate egg: workers are progressively dehumanized in return for a greater slice of the pie, the ecosphere is ravaged in a treadmill race paced by ever-increasing consumer wants, and government is outflanked at every turn by a corporate system determined to be master of its own destiny.

Mr. Chamberlain, the Armand G. Erpf Professor of the Modern Corporation at the Graduate School of Business of Columbia University, examines the various interfaces between corporations and the societies within which they operate, focusing on the United States but frequently advancing foreign examples to buttress his arguments. His postulate is that corporations are trapped in a business system of their own making, where the degree of latitude that any individual corporation has in attacking a given social problem is limited, first, by the imperative of showing a favorable profit picture at year's end and, second, by the necessity of maintaining a size or rate of growth capable of sustaining such required corporate functions as personnel procurement and research and development.

Not only is the individual corporation restrained from acting in a socially responsible manner, but the corporate system as a whole is equally inhibited. It has neither a unifying framework for action nor a consensus among interested parties as to what action

should be taken if such a framework were to be self or government imposed. Even in those rare instances when government becomes sufficiently motivated to impose some system-wide constraints, as occurred in the New Deal, reforms are never designed to significantly alter the corporate system. And this, suggests Mr. Chamberlain, is neither surprising nor unreasonable, given that the public conceives its welfare to be based on the successful operation of the corporate system.

Having laid the foundation for an examination of the implications of corporate activity, Mr. Chamberlain considers a number of major social problems and concludes in each instance that corporations resemble bulls in the social china shop. Among the topics discussed, two struck this reader's eye: the first, the relationship between corporations and the consumer; the second, the impact of corporations on the physical environment.

Regarding consumer relations, Mr. Chamberlain notes that because the ultimate rationale for the existence of business is service to the consumer, it might seem that the business world would "assiduously cultivate" the relationship. But the history of abuse of the consumer by business belies this assumption, and the rise of the consumer movement in the 1960's, demanding such basic assurances as honest business practices and safe products, demonstrates that business often fails in its primary purpose. Chamberlain asserts that even when an alliance of consumers and legislators has breached the wall of laissez-faire, the victory is inevitably short-lived. Deeply rooted constraints virtually assure that the lawmakers will not enact stringent measures, and in those rare instances where the statutory scheme is tough, the regulatory agencies are underfunded and understaffed. Since the assumed *sine qua non* of national happiness is ever-increasing productivity, the political system, although free to regulate the gravest abuses that result from pursuit of the consumption ethic, will not question the propriety of the attempt itself. Thus, credit schemes which allow public assistance recipients to purchase color televisions are quite acceptable so long as the interest rates are not unconscionable, and no one questions the wisdom of advertising which stresses the desirability of a new car over a durable one.

Chamberlain convincingly argues that the phenomenon of consumption is a spiral wherein consumer demands are created and manipulated by the very machinery which exists to satisfy those demands. In a vacuum, there is little more than an arguable philosophical objection to this circular logic, but the real world externalities of this process are quite debilitating to society. Foremost among these injuries to society is the accelerating degradation of the physical environment. After briefly discussing the three most commonly mentioned contributors to pollution and the depletion of the earth's resources—the increase in population, the spread of affluence, and the impact of technology—Mr. Chamberlain notes that although government, with surprising rapidity, has passed laws and established regulatory agencies to deal with environmental problems, corporations have been equally quick to reduce the impact of such legislation on their profit structure.

The analysis of corporate reaction to environmental regulation is the most chilling portion of the book, as Mr. Chamberlain narrates the shift in corporate attitudes. Beginning with a defensive posture, the opposition of corporations has shifted into massive public relations campaigns, and in some instances, into a willingness to live with "practical" environmental controls. Unfortunately, the "practicality" of environmental constraints means delayed implementation schedules and emasculation of any stringent provisions. Remember the deadline for meeting automobile emissions standards?

Despite the expansive language of environmental statutes, the understaffed regulatory agencies are no match for the problems they face. But the regulatory agencies are not the weak link in an otherwise strong chain. Just as the common law reflected common sensibilities in refusing to mold actions in nuisance into an effective tool for restraining industrial abuse of the environment, so the regulatory agencies cannot forge new directions without losing their political constituency. Environmental planning involves

a good deal of long-range thought, but as John Maynard Keynes once said, in the long-run, we are all dead. This insight helps explain the public's unwillingness to forego immediate gratification for the promise of a less despoiled world fifty years hence. Because environmental catastrophe may not occur in one's lifetime, prohibitory regulation (such as the "zero discharge" provisions of the Clean Water Act) and economic regulation (such as internalization of social costs via "pollution taxes") seem to be a deprivation without commensurate immediate benefits. Given the arrangement of values in the consumer mind, there is great utility in risking environmental breakdown in order to satisfy present material wants. If the utility is great for the middle and upper classes, who have always enjoyed the benefits of living in a materialistic world, it is even greater for the poor, whose economic "well-being" is most threatened by environmental programs which curtail production and darken the employment horizon. Against this backdrop, corporations are guaranteed a relatively free hand in disregarding any environmental consequences occasioned by their efforts to meet ever-growing consumer demands.

*The Limits of Corporate Responsibility* is a readable exposition of the inherent dangers of large corporations, well but not tediously documented, analytical but not ponderous. The presence of corporations in our society is undeniably pervasive, and if, as Mr. Chamberlain asserts, that presence is an insidious disease, few subjects are more worthy of public scrutiny.

KIND AND USUAL PUNISHMENT. By Jessica Mitford. New York: Alfred A. Knopf, Inc. 1973. Pp. 340. \$7.95.

A chronicle of a three-year odyssey through American prisons, *Kind and Usual Punishment* telegraphs its conclusions by its title. The book grew out of an article on prisoners' rights that the author was asked to write by the American Civil Liberties Union. She deliberately avoided compiling a catalogue of brutalities, from gang rapes to mass murders, and instead examined the large, efficient and well-funded prison systems that have as their stated policy rehabilitation rather than punishment. In this context the conditions she encountered become perhaps more sinister than the conventional debasement to which prisoners are subjected by forced labor or solitary confinement.

The author searches many of the more popular methods of "rehabilitation," devoting a chapter each to the indeterminate sentence, psychological treatment, behavior modification, inmate employment and parole. She discusses the ideal each method hopes to achieve, then shows the great disparity between the actual result and that ideal. The goal of the indeterminate sentence, for example, is to facilitate the release of a prisoner as soon as the prisoner had been rehabilitated. Instead, as Mitford demonstrates, the indeterminate sentence has become a tool for controlling and manipulating inmates. The inmates she interviewed condemned it as the most oppressive aspect of prison life; in California (the state she uses as an example), the median time served by felony first offenders has risen from twenty-four months to thirty-six months under the indeterminate sentence, a statistic scarcely consistent with the goal of release as quickly as rehabilitation is achieved. The use of other "rehabilitation" methods appears similarly suspect.

The author underscores her general condemnation of the prison system with comments from both prisoners and prison officials. The quotations from both groups are telling. The prison officials so often hang themselves with their own words that the reader is left with the uneasy feeling that perhaps the prisoners are not the ones who are most dangerous to society. This is an impression the author actively tries to create. She

goes to great lengths to characterize prisoners as a cross-section of the American public, certainly no worse than any group of people you might find walking on Main Street in your home town. For the guards and prison officials, however, she has little charity. They are the villains of the book, psychological cripples who manipulate and exploit the inmates, often for their own financial gain.

This bias considerably weakens *Kind and Usual Punishment*. The author's abhorrence of the prison system and her sympathy with inmates are so thorough as to raise the suspicion that all prison officials are not so diabolic as she depicts them, that there are other purposes for prisons than to make money for those who run them, and that some rehabilitation programs must work. The result is an unfortunate reluctance on the reader's part to accept the author's heavily loaded point of view.

The most effective chapter is "Women in Cages." As part of the District of Columbia Crime and Corrections Workshop, under the sponsorship of the National College of State Trial Judges, all conferees were required to spend a day and a night behind bars as prisoners. The women, including the author, were sent to the D.C. Women's Detention Center. The author paints the proverbial picture that is worth more than a thousand words—in this case, her carefully chosen statistics and quotations in the rest of the book. The indignity of being ordered to strip, "bend over, spread cheeks" in a search for narcotics (p. 16) and having heads examined for lice is recounted without the strained efforts characteristic of other chapters. The rest of her stay is told with equal simplicity: punishment for breaking rules with no chance for procedural safeguards, the screams from the solitary confinement cells, a juvenile who is there because of a mistake of the Juvenile Court and, perhaps worst of all, the unrelieved inactivity and boredom.

Ms. Mitford's premise that the present system is more for the financial enrichment of the state than for the rehabilitation of the prisoners is probably partly correct. Certainly she provides adequate documentation to support it. But just as certainly she detracts from her case by overstating it. The author is expected to muckrake and she fulfills that expectation. She makes a compelling argument that no prisons are needed, and she may be right. But she cannot stop there. She must imply that while we would be safe with murderers and rapists among us, we may not be with prison guards. Her case would be much stronger had she balanced it and kept her bias in check. The corruption of the prison system speaks eloquently with its own tongue.