BOOK REVIEW

THE RIGHTS OF YOUNG PEOPLE: THE BASIC ACLU GUIDE TO A YOUNG PERSON'S RIGHTS. By Alan N. Sussman. New York: Avon Books, 1977. Pp. 249. $1.50.

HARPER HAMILTON'S LAW FOR THE LAYMAN SERIES: HOW TO WIN LANDLORD-TENANT DISPUTES; HOW TO WRITE YOUR OWN WILL; HOW TO FORM YOUR OWN CORPORATION; HOW TO PREPARE YOUR OWN PARTNERSHIP AGREEMENT; HOW TO HANDLE MECHANICS' LIENS CLAIMS; HOW TO PREPARE BUILDING AND CONSTRUCTION CONTRACTS; ESTATE PLANNING AND WILL WRITING GUIDE. Boulder, Colo.: Hamilton Press, 1977. $6.95/each.

SUPER THREATS: HOW TO SOUND LIKE A LAWYER AND GET YOUR RIGHTS ON YOUR OWN. By John M. Striker and Andrew O. Shapiro. New York: Rawson Associates Publishers, Inc., 1977. Pp. xi, 316. $9.95.

Legal self-help is a predictable consumer response to the bewildering state of legal institutions, the high cost of legal services and the widespread skepticism of professional trustworthiness. Small wonder that a market should exist for the "do-it-yourself" lawbooks that are now available in trade bookstores. Notwithstanding the need for legal consumerism, however, the self-help books are of limited practical utility. They cannot, in many cases, substitute for a lawyer's help in handling unique, complex problems of which the layperson may not even be aware. The self-help library may make the reader more familiar with the legal lexicon, but it cannot emancipate him from the legal profession. Other remedies, such as increased accessibility of legal services and the demystification of the law,[1] offer far better ways of coping with our behemoth legal institutions.

The legal "how-to's" currently published are of varying degrees of usefulness and reliability. They fall into three general groups. The first category includes books that do not purport to furnish readers with blueprints for self-reliance; rather, they seek only to summarize the rights that readers should have and to indicate how those rights might be realized. Several desk encyclopedias of this kind have appeared in recent years. The most effective of these are the volumes edited by the American Civil Liberties Union.

The second category includes those volumes which purport to instruct the reader in the step-by-step mechanics of making contracts, settling disputes, and litigating claims. Since the reader of these books is actually performing the work of an attorney, these works are potentially the most misleading. As the examples below indicate, the books in this category are of divergent quality.

1. For a recent and controversial example of this development, *see* N.Y. GEN. OBLIG. L. § 5-701(b) (Consol. Supp. 1977) (residential leases and agreements by consumers for personal, family, or household purposes must be written in "non-technical language and in a clear and coherent manner using words with common and everyday meanings").

Finally, there is the unique *Super Threats*, a book that counsels readers in the art of legal charades. In contrast to the scholarly surveys and the books of legal forms, *Super Threats* teaches readers to sound more sophisticated and lawyer-like *before* they ever reach the stage at which a lawyer's skills may be necessary.

The ACLU publications are narrowly focused handbooks which cover the rights of specific groups such as prisoners, women, poor persons, and aliens. Quite properly, the ACLU cautions readers against relying on the handbooks too heavily, given the potential intricacy of the law and the variety of possible jurisdictions. The authors of the series, an impressive array of scholar-activists, make an effort to address pragmatic questions without losing the academic's awareness of complexity and contradiction.

One of the latest volumes published in this series is Alan Sussman's *The Rights of Young People*. Thoroughly documented, as are most of its companion volumes, the book is as valuable for the practitioner as it is for young people themselves. Indeed, in some instances it appears to be directed at the practitioner, such as where it makes unclarified references to "hearsay." (pp. 70, 103). Generally, the book is written in straightforward prose that is simple without being simplistic. In a question and answer format, Sussman surveys the unique rights and disabilities of minors as distinguished from adults. He examines various statutory provisions that affect minors' capacity to contract and to obtain certain benefits from parents, employers, and the state, and he summarizes the nature of the specialized treatment given minors by law enforcement agencies and the courts.

Although the standard preface to the ACLU handbooks in the series warns that authors may sometimes express an opinion that is not necessarily that of the ACLU, Sussman's book is almost completely, sometimes frustratingly, free of pedagogy. Nevertheless, from the questions asked (for instance, whether indeterminate sentencing to correctional facilities is constitutional (p. 127)) one can sometimes detect the editorial bias of the author. Occasionally, when the jurisdictions are in conflict, Sussman will stress the most progressive developments, and where the law is unclear, as in training school inmates' right to self-expression (p. 136), Sussman may posit the most sanguine alternatives. This is not a defect in the book as much as a weakness inherent in the concept of analyzing "rights" in the rarified setting of a treatise, for the rights which legal precedent and common sense tell us should exist are often ignored in the streets. While a court might vindicate the right of a training school resident to wear a black armband as a form of symbolic speech, that right might be realized only after great struggle and suffering.

This problem of presenting abstract "rights" is characteristic of encyclopedias of the law, and one which the editors of the ACLU series fully appreciate. While providing a useful overview of the field, and touching on relevant legal, political, and social factors, these legal wonderbooks are of little utility when it comes to solving practical problems. For instance, Sussman often indicates that states differ in a given area, but frequently fails to specify which jurisdictions follow which rule. Such comprehensiveness would require major research, and even then the exigencies of publication schedules would

render the task impossible. And query whether a truly comprehensive work is even desirable: such a presentation might induce undue reliance on the book as an attorney-substitute in a time of crisis.

More pragmatic but often less authoritative than the ACLU handbooks, is the second category of legal self-help books. Prominent in this group are expensive pamphlets and formbooks that offer invaluable help in forming a corporation, writing a will, or obtaining a divorce. The lineal ancestor of these volumes is the popular *How to Avoid Probate!* by Norman Dacey.[2] Dacey, who was not an attorney, claimed that the public was being fleeced by the legal profession, which concealed the availability of the inter vivos trust in order to preserve its stranglehold on estate planning and probate administration. He wrote: "The inter vivos trust . . . is exempt from probate. Most attorneys derive a substantial proportion of their income from seeing the estates of deceased clients through probate. Seriously, now, do you expect them to tell you how to avoid probate?"[3] At least one local bar association attempted to enjoin the sale and distribution of Dacey's book on the ground that it constituted the unauthorized practice of law.[4] But the New York Court of Appeals held that in the absence of evidence that Dacey had a personal attorney-client relationship with the readers of the book, there was no unauthorized practice involved.[5]

Today, over a decade after Dacey's book was published, several self-help manuals of varying quality are available. When the legal area is narrowly defined and the reader is sufficiently patient, some of these works provide a definite public service. *How to Get a New York Divorce for Under $100*[6] (the author, a layperson, did it for $97.11) is one example, with its forms for obtaining a divorce in New York State. It is more often the case, however, that the reliability of these books is inversely proportional to their purported usefulness. The most notorious example is the *Law for the Layman* series published privately by John Cotton Howell, under the nom de plume of Harper Hamilton. These slim, expensive, handsomely paperbound editions are overly ambitious in their objective and sometimes contain incomplete, and consequently misleading, advice.

Howell has prepared handbooks on handling landlord-tenant disputes, planning estates, drafting partnership agreements, forming corporations, preparing construction contracts, and dealing with mechanics' liens claims. Although he occasionally issues a mild disclaimer warning against total reliance on the

2. N. DACEY, HOW TO AVOID PROBATE! (1965).

3. *Id.* at 13.

4. *In re* New York County Lawyers' Ass'n v. Dacey, 28 App. Div. 2d 161, 282 N.Y.S.2d 934, *rev'd*, 21 N.Y.2d 694, 234 N.E.2d 459, 287 N.Y.S.2d 422 (1967) (*mem.*).

5. *Compare id. with* Grievance Comm. of Bar of Fairfield County v. Dacey, 154 Conn. 129, 222 A.2d 339 (1966), *appeal dismissed*, 386 U.S. 683 (1967) (Dacey was found to have been engaged in the unauthorized practice of law. He was not a duly licensed attorney and was working directly with clients, with whom he supplied copies of a booklet on the "Dacey trust." He also supplied forms which provided that upon death, the testator's estate, with the exception of tangible personal property, would go to a trust comprised of substantial holdings in the Wellington Fund. The securities were to be purchased from Dacey, who received a 6% commission from the Wellington Fund for sales of Fund shares.)

6. C.M. ALLEN, HOW TO GET A NEW YORK DIVORCE FOR UNDER $100 (1973).

legal advice given in the series, the substance and tone of the books invite the reader to venture where the layperson should fear to tread. For example, in his discussion of the implied warranty of habitability in *How To Win Landlord-Tenant Disputes*, Howell writes:

> It is reasonable to assume that all of the other states will have adopted these new law rules [regarding the doctrine of implied warranty of habitability] by the time you read this or will do so within the near future. It would be safe to proceed on that basis, and if your state has not yet adopted the rule, your case might be a "test" case on the issue. The odds are extremely good that you will win; however, one court has held that the issue was a legislative question. . . . (p. 13)

Likewise, in *Estate Planning and Will Writing Guide*, Howell notes: "In truth, and in fact, a vast majority of the people can—with the information contained in this book—write their own wills, execute them in accordance with the requirements of their state statutes and save time, money, worry, and frustration." (p. 1).

By glossing over the subtle variations in the rules of different jurisdictions, Howell's books may create serious problems for readers who conscientiously heed his advice. In the volume *How to Write Your Own Will*, for example, Howell lists several states in which "[a]ny person generally competent to be a witness may act as a witness to a will and the will is not invalid because the will is signed by an interested witness. . . ." (p. 26). Although the statement itself is indisputable, there is no qualification to the effect that while such interested witnesses will not render the will invalid, substantial gifts to interested witnesses could be evidence of undue influence and spur unnecessary litigation. Similarly, in his treatise on the formation of corporations, Howell assures the reader that by incorporation he will escape all personal liability. (pp. 12, 50). But where will Howell be when the shareholder of a small New York corporation that is not publicly traded—the very sort of shareholder most likely to rely on the legal self-help books—discovers to his dismay that the ten largest shareholders of an unlisted corporation are jointly and severally liable for all debts, wages, or salaries, including employer contributions to pension and annuity funds, due and owing to employees of the corporation?[7]

The final category of layperson lawbooks belongs to *Super Threats*. The authors have created a novel approach to the problems of tenants, consumers, and small businessmen. Like the authors of the ACLU handbooks, Striker and Shapiro stop short of standing in the shoes of an attorney; indeed, implicit in their scheme of legal posturing is the prospect that if a certain amount of sophisticated griping fails to achieve success, a lawyer's services may be required to carry out the threat. Essentially, the authors propose that outraged consumers adopt a harmless degree of misrepresentation by acting and sounding like attorneys. After polite but futile requests to recalcitrant businessmen, landlords, and government agencies, the consumer is advised to launch the super threat: a carefully worded letter freighted with legalistic jargon, case

7. N.Y. BUS. CORP. L. § 630 (McKinney 1963).

names, and statutory citations that are certain to pulverize the enemy. No hair-splitting distinctions or "Blue Book" form are necessary here, and rightly so. For what soul could withstand the compelling authority of this letter received from a peeved neighbor (even though the same letter written by a young associate might bring his career to a rapid end)?

> Your possession of a [insert type of animal] constitutes a condition which is dangerous and may cause serious injury or death. Pursuant to *Maxwell v. Fraze*, 344 S.W.2d 262 (Mo. App. 1961), this letter constitutes notice of the dangerous propensity of your animal . . . . You are now on notice of the dangerous characteristics of your animal. Your failure to accept the reasonable demands contained herein will expose you to liability in the event your animal causes any injury. See *Groner v. Hedrick*, 403 Pa. 148, 169 A.2d 302 (1961) ($17,000 award). This liability may be substantial in the event your animal causes serious injury or death. (pp. 62-64).

Of course, to the extent that an aggrieved party succeeds in making his super threat sound authoritative, he risks driving his adversary to intransigence. He also risks having his opponent call the bluff. Where the complaint is not well-founded, resort to the super threat may be a far less productive remedy than simple compromise.

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