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The Law Relating to Activities of Man In Space

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Current Literature

BOOK REVIEW

THE LAW RELATING TO ACTIVITIES OF MAN IN SPACE. By S. Houston Lay and Howard J. Taubenfeld. Chicago: The University of Chicago Press. 1970. Pp. 333. \$17.50.

When asked by a law journal to review a book, and you accept knowing that one of the two authors is that particular law journal's faculty advisor, you have some doubts as to your wisdom. What if the book is not what it should be? What if it is what you believe is good? In the one situation you throw mud at your host; and in the other you can be accused of praising a burnt roast.

Perhaps it is the Christmas season when this review is written, but fortune smiled, for the roast was cooked well and tempered with moderate seasoning. Or, to be more prosaic, the book is organized in proper legal fashion and is assisted by moderate writing tone and supported by extensive footnotes and excellent appendices. The appendices alone provide a reason for purchase giving an excellent one-place reference of United States military space programs, laws over outer space crimes, domestic use of communications satellites, international organizations and significant treaties and documents set out in full.

Quickly, lest praise come too readily, the book has a serious major fault. It lacks an adequate index. By the shortage of entries one can almost write that it lacks anything but a suggestion of an index. In fact, the scholar seeking to use the book for research would find himself hindered, hampered and handicapped every word of the way. For example, one of the prime space law inquiries is where space begins, if it does begin someplace. To most this is equated with a "boundary"; a boundary between air and space, or between sovereignty and a free area. But, there is no entry for "boundary" or akin words; no "b's" at all in fact. The boundary topic is discussed under "Sovereignty Based on an Extension of Territory Outward."

Another example of this fault is the topic of space stations or spaceports. These are the waystations proposed to ease the travel problem from earth to other celestial bodies. Nothing appears in the index, although in a sub-title (at page 87) is "The Legal Status of Artificial Bodies in Space and of Space Stations and Equipment on the Celestial Bodies."

If a properly prepared supplemental, and full, index could be prepared

as an insert and given with the book, its usefulness would accelerate dramatically.

The work is a bar association (American Bar Foundation) inquiry. It is stated to be an "expanded and comprehensive treatment of the law of outer space." The work is comprehensive, but the impression this reviewer received is that it is a combination of a law reporting and an espousal of a view. The introduction says it is an attempt "to study the law . . . as it exists now and as it may develop." The "may" lends some credence to the impression that the authors expressed personal preferences. The Antarctica Treaty is one example. Although the small major word "if" precedes a discussion of the analogy-value for outer space, this is obscured by a wish expression. Nations can find peace in space, allegedly, because they will be able to police effectively and breaches would involve little danger. This is not the situation. Antarctica is unique from space. The ice area has no publicized military value or possibility expounded, whereas the skies above and planets therein have had Buck Rogers fantasies approaching reality with hastening speed. This goes to the authors' conclusion that the political statement of a sea of peace can come to pass. This is not reality. We had earlier professorial writers who would end war on earth by literally having nuclear biggest-hole-in-the-moon contests to resolve earthy disputes and those who would confine war to space and not permit it on land. But, if war is to be, it will be in space as in air, on land, and on (and in) the sea. The question then is of the law that would apply. To this topic the work is silent. The interested can go to Verplaetse's new work.¹

Any attorney, or teacher, with outer-space interests will find some weaknesses in lack of emphasis. Two are noted. On the boundary question, mentioned as to index weakness in its absence, an omission of the tri-zonal theory of the late John Cobb Cooper glares forth. If nothing else, Cooper's view that there could be a sovereign zone, a quasi-sovereign area, which can be equated to the authors' functional control suggestion (at page 48) and finally open freedom, bears repeating and analysis. Another gap is the treatment of spaceports. The reviewer has written in the *Journal*,² and others,³ on space stations and hoped for the authors' views or reported law on the spaceport analogy to "anchored lightships and Texas towers," which the authors state but do not complete. Nor do the authors consider the "island" comparison, which offers analogies for space-law development.

For this review two strengths can serve as examples of particular aids.

¹ J. VERPLAETSE, *THE LAW OF WAR AND NEUTRALITY IN AIR AND OUTER SPACE* (1970).

² Wehringer, *The Moon, Spaceports and Law*, 36 J. AIR. L. & COM. 58 (1970).

³ Wehringer, *Spaceports—Waystations of Space*, 40 TEXAS L. REV. 371 (1962).

An interesting discussion of the bases of jurisdiction outside defined sovereign areas is given, neatly summarized as territorial, nationality, protective, universality and passive personality principles. This is clear and with imagination the reader can foresee possible guides to argument in future controversies. The other particular is the chapter on satellite communications. With its historical review and technological detail, it provides a summary of worth.

The space law scholar and the interested viewer can both read, enjoy, and study the book—but do add an insert of an adequate index.

Camron Kingsley Wehringer*

BOOKS AND PAMPHLETS

The following includes major domestic and foreign books, pamphlets and articles, pertinent to aviation and aerospace law, released since the last issue of the Journal. The articles appearing in leading domestic legal periodicals are digested.

INTERNATIONAL

Air Regulations and the Aeronautics Act. Sixth Edition. By the Department of Transportation, Civil Aviation Branch. 85 pages, 1970. Price \$1.25. The Queen's Printer, Ottawa, Canada.

Aerial Hijacking or Interference with Civil Air Travel. Report of the Sixth Committee to the United Nations General Assembly. 10 pages, 1970. U.N. Document A/8176, United Nations, New York.

Attitudes Taken with Regard to Amendments to the Warsaw Convention. By H. Beaubois. 58 pages, 1970. ITA Study 1970/8-E, Institut du Transport Aerien, Paris, France.

Federal Policy on International Aviation: Impact on Supplemental and Scheduled Air Carriers. By the Center for Political Research, Research Services Division. 58 pages, 1970. Price \$150.00. Washington, D.C.

FLIGHT DIRECTORY OF BRITISH AVIATION, 1970 (formerly Aeroplane Directory of British Aviation). 503 pages, 1970. Price 50s. Kellys Directories, London, England.

Guide du Fret Aérien. 236 pages, 1970. Bereny et Cie, Paris, France.

GUIDELINES FOR AIRLINES. By J. Seekings. 28 pages, 1970. Price 4s. Conservative Political Centre, London, England.

HELICOPTERS AND AUTOGYROS OF THE WORLD. Second Edition. By

* Member of the New Hampshire and New York Bars.

P. Lambermont & A. Pirie. 446 pages, 1970. Price 84s. Cassell, London, England.

Comments of the Institute of Air & Space Law of the University of Cologne on the Draft Convention on Unlawful Seizure of Aircraft (text in English and German). (Appearing in 19 ZEITSCHRIFT FÜR LUFTRECHT UND WELTRAUMRECHTSFRAGEN 338). By the Legal Committee of the ICAO (17th Sess., Montreal). 4 pages, 1970.

INTERNATIONAL LAW IN A CHANGING WORLD: CASES, DOCUMENTS AND READINGS. By E. Collins, Jr. 493 pages, 1970. Price \$8.95. Random House, New York.

Liability for Damages Caused by Objects Launched Into Outer Space. Report of the Committee on the Peaceful Uses of Outer Space to the United Nations General Assembly. 55 pages, 1970. U.N. Document A/AC.105/C.2/W.2/Rev. 5, United Nations, New York.

Report. By the Committee on the Peaceful Uses of Outer Space to the United Nations General Assembly. 42 pages, 1970. U.N. Supp. No. 20, United Nations, New York.

Problèmes juridiques de la navigation aérienne internationale. By L'Association Suisse de Droit Aérien et Spatial. 63 pages, 1970. Price Sw F 15. Zurich, Switzerland.

The Question of the Definition and/or Delimitation of Outer Space: Background Paper. By United Nations Secretariat. 65 pages, 1970. U.N. Document A/AC/C.2/7. United Nations, New York.

La responsabilité pur dommages dérivant du bruit et des détonations ballistiques provoquées per les aéronefs. By M. Litvine. 16 pages, 1970. Jean Jacobs, Brussels, Belgium.

Traffic, 1960-1969: Annual 1960-1969 & Monthly 1969. By ICAO. 500 pages, 1970. Price \$7.75. Its Digest of Stat. No. 151; Ser. No. T.-No. 29. Montreal, Canada.

Traffic Flow: December 1969. By ICAO. 400 pages, 1970. Price \$6.50. Its Digest of Stat. No. 152; Ser. TF-No. 48. Montreal, Canada.

Traffic Forecasts, Fleet Organization, Planning Within Enterprises. By Institut du Transport Aérien. 69 pages, 1970. ITA Study 1970/7-E. Paris, France.

TRANSPORTATION IN CANADA AND THE UNITED STATES: A BIBLIOGRAPHY OF SELECTED REFERENCES, 1945-1969. By O.P. Tangri for Manitoba Univ. Center for Transp. Studies. 2 vols, 1970. Research Rep. No. 5-6. Center For Transp. Studies, Winnipeg, Canada.

WORLD DIRECTORY OF AVIATION AND AERONAUTICS, 1970. Eighteenth Edition. By Interavia ABC. 1238 pages, 1970. Price \$16.00. Geneva, Switzerland.

DOMESTIC

ADEQUACY OF SERVICE. *Hearings on H.R. 2671 Before the Subcomm. on Transp. & Aeronautics of the House Comm. on Interstate & Foreign Commerce*, 91st Cong., 1st Sess. (Mar. 5, 1969). 27 pages, 1971. U.S. Gov't Printing Off., Washington, D.C.

AIR FARES AND CHARTER SERVICE. *Hearings Before the Subcomm. on Transp. & Aeronautics of the House Comm. on Interstate and Foreign Commerce on the Regulatory Practices and Procedures of the CAB With Respect to Group Travel and the Complexities of Air Fares*, 91st Cong., 2d Sess. (Aug.-Oct. 1970). 27 pages, 1971. U.S. Gov't Printing Off., Washington, D.C.

AIRLINES INDUSTRY OVERVIEW. By COUNCIL ON ECONOMIC PRIORITIES. 24 pages, 1970. Washington, D.C.

AIRCRAFT OPERATING COST AND PERFORMANCE FOR THE CALENDAR YEARS 1968 AND 1969. CAB. 130 pages, 1970. Price \$2.25. Washington, D.C.

ANALYTICAL STUDY OF AIR TRAFFIC CAPACITY IN THE NEW YORK METROPOLITAN AREA AND NEW YORK AIR TRAFFIC CAPACITY STUDY. FAA. 1970. Washington, D.C.

APPLICATION OF INVESTMENT CREDIT RECAPTURE RULE TO LEASED AIRCRAFT. SENATE COMM. ON FINANCE, S. REP. No. 91-1526, 91st Cong., 2d Sess. 6 pages, 1970. U.S. Gov't Printing Off., Washington, D.C.

AVIATION SAFETY AND AIRCRAFT PIRACY. *Hearings Before the Subcomm. on Transp. & Aeronautics of the House Comm. on Interstate and Foreign Commerce*, 91st Cong., 2d Sess. (Feb. 1969 & Dec. 1970). 488 pages, 1970. U.S. Gov't. Printing Off., Washington, D.C.

BUSINESS AVIATION PRACTICES. By E. P. Harkins. Business Policy Study No. 132. 122 pages, 1970. Price \$20.00. Supp. 26 pages. Price \$5.00. Nat'l. Indus. Conf. Bd., New York.

ESTABLISHED MULTISTATE AUTHORITY TO OPERATE WASHINGTON-BALTIMORE AREA AIRPORTS. *Hearings on S. 3128 Before the Senate Comm. on Commerce*, 91st Cong., 2d Sess. (June 1970). 127 pages, 1971. U.S. Gov't. Printing Off., Washington, D.C.

FAA STATISTICAL HANDBOOK OF AVIATION, 1969. FAA. 278 pages, 1970. Price \$2.75. U.S. Gov't. Printing Off., Washington, D.C.

FEDERAL AVIATION REGULATIONS, 1970. Price \$2.00. Aviation Bk. Co., Glendale, Calif.

FORECAST OF CHARTER POTENTIAL UNDER UPDATED RULES: AN INQUIRY INTO THE MATTER OF IMPAIRMENT OF SCHEDULED SERVICES. Nat'l. Air Carrier Ass'n. 78 pages, 1970. Washington, D.C.

FOREIGN POLICY IMPLICATIONS OF SATELLITE COMMUNICATIONS. *Hearings Before the Subcomm. on Nat'l. Security Policy & Scientific Developments of the House Comm. on Foreign Affairs*, 91st Cong., 2d Sess. (April 1970). 212 pages, 1970. U.S. Gov't. Printing Off., Washington, D.C.

STUDY GROUP ON LEGAL ASPECTS OF INTERMODEL TRANSPORTATION. By W. Guilliland. 8 pages, 1970. CAB, Washington, D.C.

PROVIDING FOR REGULATION OF PUBLIC EXPOSURE TO SONIC BOOMS. SENATE COMM. ON COMMERCE, S. REP. NO. 91-1385 to accompany S. 4547, 91st Cong., 2d Sess. 5 pages, 1970. U.S. Gov't. Printing Off., Washington, D.C.

ARTICLES

INTERNATIONAL

Aspects organiques et particularités juridiques du transport aérien au Liban, by Jabre. 24 REVUE FRANCAISE DE DROIT AÉRIEN 265-73 (1970).

Éléments de droit pénal aérien roumain (Le Code aérien de 1953 et les Codes pénal et de procédure pénal de 1969), by Patrascanu & Sachelarie. 24 REVUE FRANCAISE DE DROIT AÉRIEN 409-28 (1970).

La Libertá e la sicurezza del trasporto aereo impongono un' intesa in campo internazionale, by Carenini. 17 TRASPORTI AEREI 8-11 (1970).

Das Luftfahrtgesetzbuch der Sozialistischen Republik Rumänien, by Überblick & Niciu. 19 ZEITSCHRIFT FÜR LUFTRECHT UND WELTRAUMRECHTSFRAGEN 343-48 (1970).

Pirateria aerea, by Baldassini-Faini. 46 TEMPI: REVISTA DI GIURISPRUDENZA ITALIANA 591-601 (1970).

La piraterie aérienne, ses aspects actuels et futurs, by Sampio de Lacerda. 24 REVUE FRANCAISE DE DROIT AÉRIEN 281-84 (1970).

Rechtsfragen des internationalen Verkehrs mit Schwebefahrzeugen, by Francke, 19 ZEITSCHRIFT FÜR LUFTRECHT UND WELTRAUMRECHTSFRAGEN 297-337 (1970).

La révision de la convention de varsovie et la responsabilité du transporteur aérien, by Constantinoff, 24 REVUE FRANCAISE DE DROIT AÉRIEN 393-08 (1970).

Versicherungs und Haftungsfragen bei Flugzeugführungen, Sabotagehandlungen und bewaffneten Angriffen gegen ein Luftfahrzeug, by Meyer, 19 ZEITSCHRIFT FÜR LUFTRECHT UND WELTRAUMRECHTSFRAGEN 293-96 (1970).

DOMESTIC

Engstrom, *The Constitution and the Warsaw Convention: Are They Reconcilable?*, 6 FORUM 25 (1970).

The author examines the constitutionality of the Warsaw Convention and the Montreal Agreement, and weighs the treaty power of the Nation against the "spurious" policy arguments hypothesizing unconstitutionality.

Gotlieb and Dalfen, *Proceedings of the Inaugural Conference on the Legal Problems of International Communications*, 20 U. OF TORONTO L.J. 314 (1970).

This article presents the second report of the U.N. Working Group on Direct Satellite Broadcasting of October 1969. It identifies problems, discusses legal, cultural and social aspects of the problems and suggests appropriate international bodies for further study of direct broadcasting of TV signals to home sets.

Hirsch & Fuller, *Aircraft Piracy & Extradition*, 16 N.Y.L. FORUM 392 (1970).

In view of the problems presented by airline inability to apprehend hijackers prior to flight and the risk inherent in attempted in-flight apprehension of hijackers, the authors discuss and analyze solutions to the problems of air piracy and hijacking as they relate to extradition and international law. The possibilities for the return of hijackers discussed are the extradition pursuant to treaties, pilots' association boycotts, and international conventions such as the Tokyo Convention of 1963 and the possibility of a world tribunal.

Van Panhuys, *Aircraft Hijacking and International Law*, 9 COLUM. J. TRANSNAT'L. L. 1 (1970).

The author discusses the Draft Convention drafted by ICAO. He

compares hijacking of aircraft to the hijacking of ships and examines the aspects of the plea of political crime. The article suggests solutions to these problems.

Volpe & Stewart, *Aircraft Hijacking: Some Domestic and International Responses*, 59 KY. L.J. 273 (1971).

The article catalogues the approaches to solving air piracy and discusses what future action to take to eliminate it as well as international blackmail. It surveys the legal and scientific devices to detect piracy initiated in the U.S. and urges other countries to adopt them. The authors propose international co-operation such as the Tokyo Convention of 1963, The Hague Convention of 1970, and the draft convention now on the international agenda.

Kennelly, *The Trial of a Major Air Crash Case Against a Common Carrier Airline, the Seller-Manufacturer of a Converted Aircraft, a Contractor-Manufacturer and the Initial-Manufacturer*, 14 TR. LAWYERS' GUIDE 49 (1970).

The article relates the trial of an actual case and how the plaintiff establishes both probable cause and the defendant's liability. It includes pertinent excerpts of the trial, discovery procedure, pre-trial depositions, pleadings, jury selection, opening statements and testimony. It demonstrates the adversary trial system working even in complex litigation.

Kennelly & O'Connor, *Comments Regarding Jurisdiction and Venue, Vicarious or Strict Liability, Post-accident Changes and Summary Judgment Against a Common Carrier*, 14 TR. LAWYERS' GUIDE 7 (1970).

The article notes the trend to expand state courts' jurisdiction through interpretation of long arm statutes, thus utilizing state court rules to permit aggressive pre-trial procedure and expeditious discovery. The authors theorize that vicarious liability or strict liability should be imposed against a common carrier asserting that it flew passengers in a defective aircraft; that post-accident safety changes be admissible into evidence; that summary judgment is appropriate when the carrier's liability is indisputable since both parties are thereby benefited.

Klein, *The SST and Inverse Condemnation*, 15 VILL. L. REV. 887 (1970).

The writer explores the ramifications of the proposed SST and the accompanying sonic booms which will devalue property and induce inverse condemnation suits by irate property owners. He concludes that such suits should effect government's decision to proceed with development of the aircraft and force re-evaluation of its position.

Larson, *Improving Airport Environment: Effect of the 1969 FAA Regulations on Noise*, 55 IOWA L. REV. 808 (1970).

Mr. Larson examines the relationship of the FAA and local authorities, recent technology of noise reduction, the FAA's claim to regulation of noise, the substantive parts of the regulations, potential areas of noise reduction and the public reaction to the regulations.

Schoenbaum, *Municipal Immunity in the Maintenance and Operation of a Municipal Airport*, 20 DRAKE L. REV. 173 (1970).

The author surveys theories of municipal immunity in airport operation. The article provides an analysis of current Iowa law on municipal liability in airport operations.

Schrader, *Defense in Outer Space*, 49 MILITARY L. REV. 157 (1970).

The author discusses the 1969 U.N. Treaty on Principles Governing Activity in Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies. The article focuses on areas of insuring compliance, remedies for violations and the treaty in relation to U.S. defense policies.

Sullivan, *Avigation Easements*, 7 LAW NOTES 26 (1970).

The author defines "avigation easement," including a brief background discussion. Mr. Sullivan examines the present state of the law emphasizing problems such as establishing liability and proving damages in a trial.

BOOKS RECEIVED

AIRLINE REGULATION IN AMERICA: EFFECTS AND IMPERFECTIONS. By William A. Jordan. 352 pages (xvi), 1970. Price \$11.00. Johns Hopkins Press, Baltimore.

THE AMERICAN CORPORATION: ITS POWER, ITS MONEY, ITS POLITICS. By Richard J. Barber. 309 pages (viii), 1970. Price \$6.95. Dutton, New York.

AMERICAN GOVERNMENT AND BUSINESS. By H. H. Liebhafsky. 587 pages (xi), 1971. Price \$11.95. John Wiley & Sons, Inc., New York.

BUSINESS AVIATION PRACTICES. By Edwin P. Harkins. 122 pages (ii), 1970. With Supplement, 26 pages (i). Price \$20.00. National Industrial Conference Board, New York.

CASES AND MATERIALS ON THE REGULATION OF INTERNATIONAL TRADE AND INVESTMENT. By C. H. Fulda and Warren F. Schwartz. 796 pages (xliv), 1970. Price \$13.50. Foundation Press, Mineola, New York.

CONGRESS AND THE PUBLIC TRUST. By Special Comm. on Congressional Ethics, Bar Ass'n. of the City of New York. 351 pages (xxvii), 1970. Price \$8.95. Atheneum, New York.

THE COST OF ACCIDENTS: A LEGAL AND ECONOMIC ANALYSIS. By Guido Celabresi. 1970. Price \$10.00. Yale University, New Haven, Conn.

DEVELOPING LABOR LAW. By ABA Section on Labor Law, C. J. Morris, Editor-in-Chief. 1054 pages, 1971. Price \$24.85. Bureau of National Affairs, Inc., Washington, D.C.

EARTH SATELLITE, TELECOMMUNICATIONS SYSTEM AND INTERNATIONAL LAW. By Erin B. Jones. 167 pages (xii), 1970. Price \$7.50. University of Texas Press, Austin, Texas.

FACT-FINDING IN THE MAINTENANCE OF INTERNATIONAL PEACE. By William I. Shore. 183 pages (ii), 1970. Price \$15.00. Oceana Publications, Dobbs Ferry, N.Y.

THE GATT: LAW AND INTERNATIONAL ECONOMIC ORGANIZATION. By Kenneth W. Dam. 480 pages (xvii), 1970. Price \$15.00. Univ. of Chicago Press, Chicago, Ill.

INTERNATIONAL TELECOMMUNICATION CONTROL: INTERNATIONAL LAW AND THE ORDERING OF SATELLITE AND OTHER FORMS OF INTERNATIONAL BROADCASTING. By Delbert D. Smith. 289 pages, 1969. Price \$29.50. Sijthoff, Leyden.

LABOR-MANAGEMENT CONTRACTS AND TECHNOLOGICAL CHANGE. By Diebold Institute for Public Policy Studies. 348 pages (xxi), 1970. Price \$17.50. Praeger, New York.

LAW, SOCIETY AND INDUSTRIAL JUSTICE. By Phillip Selznick with the collaboration of Phillippe Nomet and Howard M. Vollmer. 282 pages (viii), 1969. Price \$7.00. Russell Sage Foundation, New York.

LEGAL STATUS OF COLLECTIVE AGREEMENTS IN ENGLAND, THE UNITED STATES AND CANADA. By B. Adell. 240 pages (xxxii), 1970. Price \$10.00. Industrial Relations Centre of Queen's University, Kingston, Ontario, Canada.

MANAGING THE INTERNATIONAL FINANCIAL FUNCTION. (Studies in Business Policy, No. 133). By Irene Meister. 122 pages, 1970. Price \$3.50. National Industrial Conference Board, New York.

MODERN TRANSPORTATION AND INTERNATIONAL CRIME. By Gordon Fraser. 108 pages (vii), 1970. Thomas, Springfield, Ill.

MULTINATIONAL CORPORATION IN THE WORLD ECONOMY: DIRECT INVESTMENT PERSPECTIVE. Edited by S. E. Rolfe and Walter Damm. 169 pages, 1970. Price \$10.00. Praeger, New York.

NATIONAL DIPLOMACY, 1965-1970. By Congressional Quarterly Service. 156 pages, 1970. Price \$5.00. Congressional Quarterly, Inc., Washington, D.C.

NEW FRONTIERS IN SPACE LAW. By Edward McWhinney. 134 pages, 1970. Price \$5.50. Oceana Publications, Dobbs Ferry, New York.

NOISE POLLUTION AND THE LAW. By James L. Hildebrand. 354 pages (viii), 1970. Price \$18.75. Wm. S. Hein & Co., New York.

THE RALPH NADER STUDY GROUP REPORT ON THE INTERSTATE COMMERCE COMMISSION AND TRANSPORTATION. By Robert C. Fellman, Project Director, and Others. 423 pages (xv), 1970. Price \$5.95. Grossman Publishers, New York.

TRADE UNION GOVERNMENT AND COLLECTIVE BARGAINING: SOME CRITICAL ISSUES. Edited by Joel Seidman. 304 pages, 1970. Price \$15.00. Praeger, New York.

U.S. GOVERNMENT FINANCES: A TWENTY-TWO-YEAR PERSPECTIVE, 1950-1971. By American Enterprise Institute for Public Policy Research. 61 pages, 1970. Price \$3.00. American Enterprises Institute, Washington, D.C.

