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## Book Review

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## BOOK REVIEWS

EVIDENCE OF GUILT: RESTRICTIONS UPON ITS DISCOVERY OR COMPULSORY DISCLOSURE. By JOHN MACARTHUR MAGUIRE. Boston: Little, Brown & Co. 1959, Pp. xi, 295. \$12.50

This book deals with an extremely important area of the law—that relating to legal restrictions upon the discovery or compulsory disclosure of evidence of guilt. It is a challenging and often baffling subject, the intricacies of which are highlighted in the book. The law discussed, particularly that relating to the privilege against self-incrimination, had its origins in the common law. From that beginning it has been expanded in the United States through constitutional provisions, statutory enactments, and court decisions to an impressive system of legal rules. These serve as a mighty bulwark against the arbitrary exercise of powers by officialdom, and they also serve at times as impediments to law enforcement. It is unfortunate at the present time that it is the abuse of the protective measures on self-incrimination which is drawing popular attention. The author considers in turn, in separate chapters, privilege against self-incrimination, involuntary confessions, the *McNabb-Mallory* doctrine, and illegally obtained evidence. While each chapter presents a separate topic for discussion, a cross-reference scheme facilitates the use of the book as a comparative study.

Professor Maguire has taught evidence in the Harvard Law School for many years and is a productive and respected scholar in that field. This book is a measure of the man. He never deals in empty generalities. He does not hesitate to express his views, but when in doubt he makes no pretense about that. The book bears evidence of the fact that he must have read all of the judicial opinions in this field of the law for the last third of the century or more. In fact, the detailed consideration given to cases, often distinguishable one from the other only in minute details, makes difficult at times the discovery of definitive rules.

The author follows the procedure, particularly in debatable areas, of presenting the arguments for and against the admission of evidence. An example is apropos. The traditional view, still supported in many states, was that illegality in the acquisition of evidence did not bar its admissibility. In 1914 the Supreme Court held in *Weeks v. United States*<sup>1</sup> that evidence secured by federal officers through illegal search and seizure made that evidence subject to

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<sup>1</sup> 232 U.S. 383 (1914).

exclusion in the federal courts. Later came the question whether the exclusionary rule adopted by the Supreme Court imposed a constitutional duty binding on the states. In *Wolf v. Colorado*<sup>2</sup> the Supreme Court decided that while the fourth amendment declared a concept basic to a free society, it did not follow that evidence secured by illegal search and seizure *was necessarily* subject to exclusion. In short, the Court held a state did not have to follow this particular route in enforcing the basic right. Why then the exclusionary rule? Is it a punitive device? Those who defend it contend that this action is necessary to restrain unlawful enforcement of the law through unreasonable search and seizure. Against this view, others contend that the government should be more versatile in establishing punitive measures against lawless acts of its officers; that what we are doing through the exclusionary rule is to strike indirectly at an evil and often, when relevant and material evidence is excluded, at great sacrifice to law administration.

The reasons that influenced the majority of the Supreme Court to exclude evidence secured through illegal search and seizure are akin to those that tipped the scales in the *McNabb* and *Mallory* decisions. For years the law on the admissibility of confessions was closely interwoven with that relating to the hearsay rule. A confession, it was said, had the indicia of trustworthiness and therefore was admissible into evidence under an exception to the hearsay doctrine. Consonant with this, if a confession was induced by force, threat of force, or promise of leniency, it was not trustworthy and was barred from admission. In 1943 the Supreme Court decided the case of *McNabb v. United States*.<sup>3</sup> In that case the Court developed a supplementary doctrine when it held that a confession was subject to exclusion if made during an illegal detention resulting from failure to take a prisoner promptly before a committing magistrate. Under this doctrine, if a confession is secured during a period of undue detention, it is excluded from admission into evidence whether or not it was obtained by force, physical or psychological, or promise of leniency. The *McNabb* case was followed by the *Mallory* decision<sup>4</sup> and by many other cases which have given rise to a plethora of distinctions and refinements. This development, again, is not a constitutional determination, and state decisions, with some exceptions, have not followed the federal lead.

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<sup>2</sup> 338 U.S. 25 (1949).

<sup>3</sup> 318 U.S. 332 (1943).

<sup>4</sup> *Mallory v. United States*, 354 U.S. 449 (1957).

The areas under discussion in this book deal with fundamental rights and also, from case to case, with minute distinctions. It is noteworthy, at a time when there is much popular ferment and discussion on the procedures and objectives of a democratic society, that the public often is not in sympathy with individuals who claim that their personal liberties have been invaded by the acts of officialdom, and that it is the courts, and particularly our highest courts, which are standing firm on the basic concepts. This is an excellent book for the reader who wishes to gain understanding of and perspective on these issues. The would-be reader is cautioned not to lay it aside for light reading.

*Albert J. Harno\**

THE FEDERAL ESTATE AND GIFT TAXES: A GUIDE TO THE LAW. BY RICHARD B. STEPHENS AND THOMAS L. MARR. New York: The Tax Club Press. 1959. Pp. xviii, 426. \$9.00.

One method of reviewing<sup>1</sup> a book is to compare it with related works. The cover of this book indicates that it is a companion volume to Stanley and Kilcullen, *The Federal Income Tax: A Guide to the Law*, published by the same publisher.<sup>2</sup> But apart from the similar arrangement by Code section and the same general format, the pages inside reveal that it is more than a "guide." The discussion of each section is thorough, lucid, and penetrating. Yet the book is not intended to be a comprehensive treatise for use as a research tool.<sup>3</sup>

The most nearly comparable volume would be Lowndes and Kramer, *Federal Estate and Gift Taxes*,<sup>4</sup> which appeared some years ago. But even here there are substantial differences. For example, in discussing section 2037, Lowndes and Kramer devote a chapter of twenty-two pages to the fascinating (to taxation instructors) story of "transfers intended to take effect in possession or enjoyment at or after death," while Stephens and Marr cite a few law journal articles and state that the "administrative, judicial, and legislative proliferation of this language involves a story too long and complex to be presented here even in broad outline."<sup>5</sup> Or, again, where Lowndes

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<sup>1</sup> For other reviews of this work see Barlow, 46 A.B.A.J. 414 (1960); Joseph, 64 Dick. L. Rev. 186 (1960); Lowndes, 12 J. Legal Ed. 619 (1960); Stockton, 13 U. Fla. L. Rev. 143 (1960).

<sup>2</sup> Noted, 10 Sw. L.J. 341 (1956).

<sup>3</sup> Cf., e.g., Mertens, *Federal Gift and Estate Taxation* (1959), a five-volume treatise.

<sup>4</sup> For an excellent review of this work see Bromberg, 11 Sw. L.J. 266 (1957).

<sup>5</sup> P. 92.

and Kramer spend approximately one-fifth of their pages on "Tax Planning for Estates," Stephens and Marr confine their planning discussions to side remarks as they proceed through the analysis of the Code.

Law students will welcome the appearance of a "hornbook" for federal estate and gift taxation. Taxation instructors and specialists will admire the simplified, yet scholarly, presentation of the complex body of law woven by the Commissioner, the courts, and Congress. General practitioners will appreciate a bird's-eye view of a segment of law with which they may not be wholly familiar, but which increasingly affects their daily practice. Texas lawyers will commend the clear exposition of the rules with regard to the estate<sup>6</sup> and gift<sup>7</sup> taxation of community property, an item so often neglected by writers on estate planning in common law states.

The book has a complete table of contents, table of cases, and index. As in the case of Stanley and Kilcullen, the publishers will presumably provide pocket parts in the future, so as to retain the book's utility in the years to come.<sup>8</sup>

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<sup>6</sup> Pp. 212-17.

<sup>7</sup> Pp. 391-92.

<sup>8</sup> Cf. Lowndes and Kramer, *supra* p. 559, whose value depreciates with the publisher's failure to update the work.

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