

The Appearance of Justice

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BOOK NOTES

THE APPEARANCE OF JUSTICE by John P. MacKenzie, New York: Charles Scribner's Sons. Biblio.; appendix; index. 1974. Pp. 304. \$7.95 cloth.

In December 1974, Congress approved a revision of 28 U.S.C. § 455, a statute that deals with judicial disqualification. Prior to its passage, the House Judiciary Committee specifically stated that the statute was designed to remove the conflict between the law and the Judicial Code and was based on the A.B.A.'s newly revised Code of Judicial Conduct. Both the new statute and the Code advocate the "appearance of justice" as the standard for the removal of a judge from a case.

In light of the above statute, John MacKenzie's book about judicial conduct, *The Appearance of Justice*, makes a timely debut. Examining and analyzing specific instances of judicial misconduct, MacKenzie points out the damage not only to the litigants but also to the judicial system itself. MacKenzie shows that judicial confidence reached its low point when Fortas' financial deals became public knowledge. He illustrates the loss of respect for the Supreme Court and its justices by telling the story of Douglas' innocent involvement with a spurious foundation. Abstracting the Senate confirmation hearings of Haynsworth and Carswell, he shows that the worst damage to the judicial system is created by the judges' inability to recognize the ethical and moral conflicts that confront them in a court room. MacKenzie emphasizes that public confidence in the efficacy and fairness of our judiciary is essential to the very functioning of our court system.

However, MacKenzie does more than point out judicial misconduct and relevant truisms. In examining critical ethical situations he shows us the reasons behind the revision of the Judicial Code. Yet, MacKenzie is a realist; he knows the pressures that an attorney faces when confronting a judge who ought to recuse himself. He illustrates how the subtle influences of the "velvet blackjack" work to avoid the issue of disqualification.

MacKenzie does not stop with the realities of courtroom life and praise for the new Judicial Code. He makes us realize that even the new Code's standard of the appearance of justice is inadequate and he makes specific recommendations for its improvement. He poses questions that we may

not be able to answer, but they are queries for every attorney and judge who must satisfy the "appearance of justice" in the court room.

Sharon Turkish Jacobson

CONSUMERS IN TROUBLE: A STUDY OF DEBTORS IN DEFAULT. by DAVID CAPLOVITZ. New York: The Free Press. Chapter notes. 1974. Pp. xiv + 352. \$10.95 cloth.

Most of this book is devoted to reporting the results of 1,331 interviews with debtors in New York, Philadelphia, Detroit and Chicago who had had default judgments entered against them. Professor Caplovitz's purpose was to support by documentation the charges of consumer advocates that courts, in consumer credit transactions, serve merely as collection agencies for creditors and not as arbiters of disputes or dispensers of justice. Statistics supporting this hypothesis abound. For example, only 54% of the New York debtors reported actual receipt of a summons notifying them of the suit. Perhaps the well-known reputation of New York for "sewer service" accounts for this figure, but even in Detroit where service was reportedly most effective, only 84% received a summons. Despite the fact that in the aggregate nearly 75% of the debtors were served with process, and approximately 19% of them accused their sellers of some form of fraud or deception, the attrition rate involved in the legal process was so high that apparently only seven cases were brought to trial on the merits.

The current legal doctrines which Professor Caplovitz attacks are holder-in-due-course, garnishment, repossession followed by deficiency judgments, and confession of judgment clauses. In all cases he points to the harsh effects upon the debtor of these creditor-oriented remedies. Garnishment, for instance, resulted in 19% of the garnishees losing their jobs. As the author aptly suggests, garnishment may defeat the creditor's self-interest since the unemployed are much less likely to be able to repay their debts. On the question of deficiency judgments, Caplovitz presents proof that people do not know or understand the law. Fully 54% of all debtors whose merchandise was repossessed thought that the repossession automatically extinguished the debt. He notes instances where the debtor encouraged the repossession for the very purpose of terminating the debt.