

# Rothblatt: Successful Techniques in the Trial of Criminal Cases

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even with a legal manuscript requiring utmost precision and faithfulness to the original. The European-type structural organization and analysis of Dr. Everling's book, on the other hand, seem perfectly consistent with the fact that it was initially written as a work on European law intended for European readers. As a general survey of the establishment system, it will doubtless prove to be an invaluable aid to American students and lawyers working in the Common Market field. Its practical usefulness is further evidenced by the fact that Dr. Everling's book is the first monograph devoted to the still under-developed body of law dealing with establishment.

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*Successful Techniques in the Trial of Criminal Cases.* By HENRY B. ROTHBLATT. Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1961. Pp. 242. \$15.00.

The attorney who is charged with the defense of a man accused of crime is invested with a burden unmatched in the practice of law. No client needs his attorney's help more nor is more dependent upon his attorney, than the man accused of crime. His most important rights, *i.e.*, his right to life and liberty, are in jeopardy. It is most important that he not be wrongfully convicted or unjustly sentenced. The law recognizes this importance by granting such person certain rights, and by requiring the state to prove the charge by the highest degree of proof. However, the guarantees provided by the law are valueless to the accused, unless such rights are skillfully and diligently protected by the attorney for the defendant. Our adversary system of law places this burden almost entirely upon the defense attorney.

Criminal litigation, in addition to its great societal importance, also affords the attorney the opportunity to engage in an activity far more interesting and exciting than any other phase of law. The drama and excitement of criminal trial practice is attested to by the many books which have been written about criminal trials. It is, therefore, surprising to find how few books have been written about criminal trial technique, particularly when compared with the plethora of books and treatises written about personal injury trial practice. An attorney who turns to the library of his local bar association might find no books on criminal trial practice, or only a few ancient editions. He is indeed fortunate if he has access to the dated but classic works of Francis L. Wellman.<sup>1</sup>

The scarcity of such books is only matched by the scarcity of attorneys who engage in criminal trial practice. The scarcity of one appears to be both the cause and effect for the scarcity of the other. Despite the compelling reasons for practicing in the field of criminal law, attorneys shy away from criminal defense work. Small fees and low esteem within the profession are only some of the reasons. Undoubtedly another reason is the foreign nature of criminal trial work and the paucity of written material about such practice. The expert advice which can be drawn upon from books in other fields of trial practice, is largely unavailable in criminal law. As a consequence, un-

<sup>1</sup> THE ART OF CROSS EXAMINATION (1929); DAY IN COURT (1910).

less an attorney has had experience as a prosecutor, he must defend his first few criminal cases on a hit or miss basis.

Henry B. Rothblatt in his book *Successful Techniques in the Trial of Criminal Cases* attempts to remedy this situation. How well his book fills this void is the purpose of this analysis.

The jacket cover of the book bills it as "A complete guide with vital information for every lawyer—veteran or beginner—who must defend a criminal case." A complete guidebook it is not. The book, for the most part, does not concern itself with criminal procedure or criminal evidence. It is basically an outline of what should be done at various stages of the trial in various situations. Unfortunately, the book fails to cover many of the important stages of defending a criminal case.

The book does not concern itself with criminal discovery practices, pre-trial motion procedure or with methods of investigating a criminal case. It is inconceivable to this reviewer, how an attorney could competently try a case without employing one or more of the aforementioned practices. In many cases, the acquittal of the defendant is wholly dependent on the outcome of the motion to suppress evidence. Denial of the motion being tantamount to a finding of guilty.

A chapter on the "Evaluation and Strategy of Entering a Plea" should have been included. In almost all jurisdictions, the great majority of cases are disposed of by a plea of guilty. The novice defense attorney, I am sure, would find most helpful a chapter which would discuss the art of negotiating with a prosecutor and the various strategies to be employed before pleading a client. Proper strategy in pleading often results in a reduction of the crime charged or a lenient recommendation to the court by the prosecutor.

Although Mr. Rothblatt does not discuss the strategy of pleading, he does devote a chapter to preparing the plea in mitigation. In this chapter he fails to discuss the proper procedure for the presentation of evidence in a mitigation hearing. Such presentation of evidence should be given careful attention, particularly in the jurisdictions which provide for appellate review of the sentence itself.<sup>2</sup>

The book cannot be accurately defined as a work on criminal trial technique. It tells you what to do, but seldom illustrates how to do it. It is, however, an invaluable aid to the attorney inexperienced in criminal defense. It is a short book, literally jammed with hundreds of rules and suggestions covering many areas of trial practice. The book's chief asset is its organization. It is divided into twenty-one chapters which follow the chronological progress of a criminal trial. Each of these chapters is subdivided into various sections. The attorney who is presented with a particular dilemma can quickly ascertain the solution suggested by Mr. Rothblatt. As a result, the book is a valuable tool to both the novice and the more experienced attorney. The more experienced attorney will find it useful as a quick reference check on his own approach. This reviewer has often turned to the book simply because its suggestions are easily ascertainable.

In short, the book, although incomplete as a guide to criminal trial practice, has the important asset of being highly functional in the areas it does cover. To this reviewer's knowledge, it is the only one volume work of its kind.

<sup>2</sup> ILL. REV. STAT. ch. 38, § 121-9(b) (4) (1963).

It should be a part of the library of every attorney who expects to defend a person accused of a crime. Anyone else would probably find it ponderous reading.

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*The Federal Bulldozer: A Critical Analysis of Urban Renewal, 1949-1962.*

By MARTIN ANDERSON. Cambridge, Mass.: M.I.T. Press, 1964. Pp. xi, 272. \$5.95.

*The Federal Bulldozer* is a blistering indictment against the federal urban renewal program. The author, Martin Anderson, who is only twenty-eight years old, has a background of engineering and business. He is at present an assistant professor of finance at Columbia University Graduate School of Business. The case for the prosecution was prepared by Mr. Anderson for a Ph.D. thesis under a fellowship at the Joint Center for Urban Studies of M.I.T. and Harvard University, and was published by the M.I.T. Press as part of the Joint Center's series of urban studies.

Using a vast array of statistics, opinions, beliefs, and guesses, he charges that: "The Federal urban renewal program had admirable goals. Unfortunately it has not and cannot achieve them. Only free enterprise can."<sup>1</sup> His allegations are as follows: (1) the program is destroying far more low-rent housing than it is constructing; (2) it is causing great hardships on those who are displaced; (3) businesses dislocated from a project frequently cease doing business; (4) the length of time necessary to complete a project is too long; (5) private redevelopers are disenchanted with the programs; (6) the rehabilitation program has failed; (7) the program is unconstitutional; (8) the quality of housing is being substantially improved by private enterprise—no thanks to urban renewal. The sentence which he recommends to the court of public opinion is the immediate repeal of the urban renewal program.

Anderson apparently believes that capital punishment is the only means of securing adequate retribution for these heinous crimes.

As might be expected, the defendant claims that this is a distortion. Commissioner of Urban Renewal, William L. Slayton, in a letter to James A. Wilson, Director of the Joint Center, stated that the work was not an accurate treatment of the program and that there was not a reasonable relationship between the facts and the conclusion. This of course is understandable, for we are dealing with a book which not only attempts to take bread out of Mr. Slayton's mouth, but would seem to nominate his organization for a place in history alongside the Third Reich and the Huns who followed Attila.

It is surprising, however, to find the book berated by the head of the organization which sponsored it. Mr. Wilson, Director of the Joint Center, has been reported as saying that Anderson's work meets only the minimum standards of scholarship that the center applies to its studies. He went on to say that had a poll of the center's personnel been taken on the book's conclusions, it would undoubtedly have revealed that the vast majority of the faculties of the two institutions concerned with the center's program and

<sup>1</sup> ANDERSON, *THE FEDERAL BULLDOZER: A CRITICAL ANALYSIS OF URBAN RENEWAL, 1949-1962*, 230 (1964).