BOOK NOTES

CRIMINAL PROCEDURE. By Ambrosio Padilla*. Manila: P.C.F. Publications, 1955. Pp. xviii, 922. ₱25.00, $10.00.

Criticism is supposed to be disinterested. In fact, it "is the only disinterested form of publicity that there is,"[1] or so dramatic critic for Time magazine would have us believe. But when the object to be criticized is the book of a man whose deep learning in the law and ripe experience in practice have earned for him a membership in that select group called *"juristas,"* it would be dishonest of the critic to pretend that he can treat the book as if it were by an unknown writer. Thus confronted, your reviewer has to admit that some partiality to Dr. Padilla's *Criminal Procedure* might have come into play.

Hallmarking this book is the virtue of perspective. At a glance, the reader gets a bird's-eye view of the interlocking provisions that are the bone and sinew of criminal procedure. Following the familiar pattern in the author's *Criminal Law*,[2] the provisions of Rules 106 to 122-A of the Rules of Court have been made as the nuclei of his comments; and clustered around them are pertinent provisions from the former Code of Criminal Procedure, General Orders No. 58, the Revised Penal Code, the Constitution of the Philippines, the Revised Administrative Code, the Judiciary Act of 1948, the New Civil Code, and some other Acts of Congress. When the reader settles down for a minute study of the comments, he finds for his ready use the history of each rule on criminal procedure, an asset so very valuable in those fields of law where, in the words of Justice Holmes, "a page of history is worth a volume of logic."[3] To complete the picture, almost all the rules have been amply provided with illustrative cases,[4] all leading decisions of the Supreme Court and the Court of Appeals (including the latest Supreme Court decisions of the *Lacson* and *Castelo* cases); these cases have been digested, edited, and hand-rubbed to a finish by Dr. Padilla in both their facts and principles.

Another virtue that studs this work is readability. Unlike the proverbial

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[1] Kronenberger, *On Critics, Pedants and Philistines*, in HIGHLIGHTS OF MODERN LITERATURE 91 (Brown ed. 1954).

[2] PADILLA, CRIMINAL LAW (1953 ed.)

[3] CARDOZO, *The Nature of Judicial Process* in SELECTED WRITINGS 128 (Hall ed. 1947).

[4] The cases are intended not only to explain the legal provisions but also to show the trend and development of judicial decisions on these provisions.

metaphysician who, upon writing on the secret of Hegel, was congratulated for his success in keping the secret, Dr. Padilla has not forgotten the duty that every writer owes his readers. In his comments, the sentences are short, pithy, and to the point; the constructions, simple and shorn of fancy legalisms.

A third virtue would be harmony. Conflicting provisions of law and opposing judicial decisions have been happily reconciled. For example: In *People v. Red*,[5] the Court held that the posting of bond does not amount to a waiver of the right to preliminary investigation; later, in *People v. Ricarte*,[6] it was held that when bond is given, the right is presumed waived. Prof. Padilla maintains the view that what is waived — upon the filing of bond — is not the right to preliminary investigation, but of the defect, if any, in the issuance or service of the warrant of arrest.[7] Or take another example: In *U.S. v. Montiel*,[8] our Supreme Court declared that there is no jeopardy until the trial has actually began, that is, until the accused has been arraigned and the first witness called; but subsequently, in *People v. Ylagan*,[9] it ruled that there is jeopardy as soon as the accused has been arraigned, whether the trial has begun or not; Dr. Padilla believes that the *Ylagan* case has modified the doctrine in the *Montiel* case, for jeopardy attaches even before the first witness has been called, but it attaches only when the other requisites — besides arraignment — are also present.[10]

Still another virtue of this book is its pioneering boldness. Some of the opinions therein advanced are a step beyond established jurisprudence. It has been settled by the case of *People v. Martinez*[11] that, in cases of defamation, a complaint filed by the offended party is absolutely indispensable only when the defamation consists in the imputation of a crime which cannot be prosecuted *de officio*.[12] Former Justice Moran,[13] Sen. Francisco,[14] and Judge Kapunan[15] seem to be of the belief that the imputation must be of a "crime" only; but Prof. Padilla says: "The defamatory imputation need not always be a crime, for it may be a 'vice, defect, real or imaginary,

[5] 55 Phil. 706 (1931).

[6] (CA) 49 O.G. 974 (1952).

[7] At 169, 203.

[8] 7 Phil. 272 (1907).

[9] 58 Phil. 851 (1933).

[10] At 455. "A defendant in a criminal prosecution is in legal jeopardy when placed on trial under the following conditions: (1) In a court of competent jurisdiction; (2) upon a valid complaint or information; (3) after he has been arraigned; and (4) after he has pleaded to the complaint or information." At 450.

[11] 76 Phil. 599 (1946).

[12] "The crimes which may be prosecuted *de oficio* are adultery, concubinage, rape, seduction, abduction, acts of lasciviousness (Art. 344). Defamation which imputes any of the above crimes must also be prosecuted by complaint of the offended party (Art. 360, par. 4, R.P.C.)." At 31.

[13] 2 MORAN, COMMENTS ON THE RULES OF COURT 601 (1952).

[14] 1 FRANCISCO, CRIMINAL PROCEDURE AND FORMS 280 (1951).

[15] KAPUNAN, CRIMINAL PROCEDURE 34 (1950).

or any act, omission, condition, status or circumstance.' "[16] The same stroke of boldness reveals itself in connection with the case of *U.S. v. Fortaleza*,[17] in conformity with the doctrine enunciated there, Justice Moran[18] and Sen. Francisco[19] are both agreed that an "order" or "request" made by an agent of authority is an essential condition before a private person can come to the aid of such agent of authority while the latter is making an arrest; but Dr. Padilla comments that an "order" or "request" is not necessary[20] because it is not required by Law.[21] Just for good measure, let us take a look at one more bold opinion. A municipal president cannot be found guilty of "illegal and arbitrary detention" when he makes an arrest without a warrant, because he has all the powers of a police officer if the crime was committed in his presence.[22] Justice Moran[23] and Sen. Francisco[24] again share the same opinion, but again, Dr. Padilla thinks differntly; to him, "authority to arrest should not be confused with the legal obligation to surrender or to deliver the arrested person to the proper authority."[25]

One last consideration. This book is a thorough revision of the author's mimeographed work on the same subject, and has the edge of completeness—in comments and citations — over the previous one. Incorporated now in the appendix are General Orders No. 58, and the Revised Bail Bond Guide. To facilitate research, the cases have been alphabetically tabulated, and the subject-matter properly indexed.

As the reader may have gathered, the reviewer thinks this is an excellent piece of work. It is.

THE ART OF ADVOCACY. By Lloyd Paul Stryker.[1] New York: Simon and Schuster, 1954. Pp. xiii, 306. ₱13.00.

There are according to a twentieth-century legal wizard named Louis Nizer, two main types of prominent attorneys: one is the scholar and brief-writer; the other is the trial advocate, whose skill lies in persuading the judge or the jury. "Rarely are these two types combined in one man," added this counsel whose legal parries are worth $1,000 an hour, "but when they are, the combination is irresistible___ there is no surer access to clients and fame." He also said that there are very few in America today who possess the combination, probably no more than four or five.[2]

What he did not say is that many are not even capable of top-notch performance at one or the other. Take brief-writing, for instance. While it is true that "lawyers are students of language by profession,"[3] it is equally true that quite a number have succeeded in studying all but intelligible English.[4] And with respect to trial advocacy, as Judge Medina laments, that noble art has suffered a decline;[5] Judge Jerome Frank likewise despair: our "leading schools graduate most of their students with but the foggiest notions of what occurs in nisi prius courts."[6]

Luckily, however, the more successful among the brotherhood of the Bar have refused to leave the less fortunate to their fates. Mr. Lloyd Paul Stryker, for one, has refused to let advocacy toboggan down the slopes of neglect and disreputee. His contribution: *The Art of Advocacy*.

As aptly stated by its subtitle, the presiding theme of this book is — *A Plea for the Renaissance of the Trial Lawyer*. The "present low estate" to which advocacy has sunk has compelled the author to plead with his brethren the world over, and to show what can be done, to restore it to the "art" that it is. In corroboration, Judge Medina also encourages the cultivation of this difficult art, if only for "the pecuniary returns which inevitably come to trial lawyers of reputation and renown."[7]

Referring to the excitement that seethes in the cauldron of the courts, Clarence Darrow once remarked: "Everyone knows that the best portrayals of life are tame and sickly when matched with the realities."[8] And the reader cannot help but chuckle, "How true," after he has dabbled over the first few pages of Mr. Stryker's reenactment of actual courtroom battles. The first part reads as grippingly as a novel, even for the layman. There, the reader undergoes a rich adventure. With superlative skill and style, Mr. Stryker affords you an insight into the inner man of the advocate when he is at work at feverpitch. Making lavish use of graphic illustrations from his own experiences as well as from history's famous trials, he takes you

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[16] At 31. See also art. 353 REVISED PENAL CODE.
[17] 12 Phil. 472 (1909).
[18] 2 MORAN, *op. cit. supra* note 15, at 709.
[19] 1 FRANCISCO, *op. cit. supra* note 16, at 50.
[20] At 243.
[21] Art. 149 REVISED PENAL CODE, see not 22.
[22] U.S. v. Vicentillo, 19 Phil. 118 (1911).
[23] 2 MORAN, *op. cit. supra* note 15, at 701.
[24] 1 FRANCISCO, *op. cit. supra* note 16, at 34.
[25] At 227.

[1] Lloyd Paul Stryker is reported to be the archtype of a vanishing breed: the great trial lawyer. "As the victor in ninety-seven per cent of the several hundred cases he tried when he was general counsel for the New York State Medical Society, as a man whose clients have included judges, district attorneys, political leaders, prominent figures in the world of government, business and society, as a man who has represented people in all walks of life (and whose career has attracted nation-wide and even international attention), as one of New York's and the nation's top-flight lawyers — Mr. Stryker should know." *Publisher's Note* at 285.

[2] Esquire, Jan., 1955, p. 77.
[3] PHILBRICK, LANGUAGE AND THE LAW p. v (1949).
[4] Gerhart, *Improving Our Legal Writing: Maxims From the Masters* in 40 A.B.A.J. 1057 (1954).
[5] At p. ix.
[6] CUTLER, SUCCESSFUL TRIAL TACTICS p. v (1950).
[7] At p. x.
[8] Darrow, *Attorney for the Defense in* BEST OF THE BEDSIDE ESQUIRE 236 (Gingrich ed. 1954).