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BOOK REVIEWS

HANDLING AUTOMOBILE WARRANTY AND REPOSSESSION CASES BY
ROGER D. BILLINGS, JR.,* LAWYERS CO-OPERATIVE
PUBLISHING CO., 1984, 479 PP., \$67.50.

REVIEWED BY ANN LOUSIN¹

At last, some help for the practitioner who receives a call from a client saying, "I've bought a lemon. What can you do about it?"

One of the most common problems faced by the general practitioner is the problem of the car that is a "lemon." Clients frequently buy cars that do not perform up to expectations or that are repossessed by the dealers. Until now, there has been no guide for the lawyer who is not an expert in the "law of the automobile"—the motor vehicle cases decided under Articles 2 & 9 of the Uniform Commercial Code, under the nine-year-old Magnuson-Moss Warranty Act, and under the nineteen or so state "lemon laws."

Professor Billings's book admirably fills this gap. The author's purpose is clear:

This book had its beginning when the author discovered that a disproportionate number of cases decided under the Uniform Commercial Code involved the sale and repossession of automobiles. No product is the subject of more litigation than automobiles. They are "big ticket" items and consumers increasingly use the law to assert their rights with regard to them.²

The best way to begin using this book is to identify the precise issues presented by your client's situation. The excellent table of contents will help you do this. Then use the index of topics at the back of the book to find less obvious references to those issues.

When researching the statutes described by Professor Billings, the lawyer should remember that almost every automobile problem is governed by both federal and state law. The most important federal laws are the Magnuson-Moss Warranty Act, which governs warranties, and the federal Odometer Act. Many lawyers forget to use federal acts in tandem with the state statutes. This is regrettable. As a practical matter, the statutory attorney's fees established

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1. Professor of Law, The John Marshall Law School. Professor Lousin teaches courses in both Sales Transactions and Secured Transactions.

2. R. BILLINGS, *HANDLING AUTOMOBILE WARRANTY AND REPOSSESSION CASES* vii (1984).

by Magnuson Moss make it a worth-while tool for that reason alone.

The state statutes include more than the Uniform Commercial Code. Many states have unfair and deceptive trade practice acts, repair of automobile acts and odometer statutes. All states now have certificate of title acts, which are very important in cases involving automobile thefts and deceptions of secured creditors. At least nineteen states also have lemon laws to protect purchasers of cars with hard-to-repair defects.

Professor Billings has provided the reader with extensive annotations for further research on each topic, citations to cases from almost every state, discussions of seminal cases and legislative trends in the text and summary of the state statutes on each topic. This gives the lawyer for either the seller or buyer a complete guide to conventional legal research.

There are also three additional and rather unusual features. First, Professor Billings describes the arbitration and mediation services available, such as those provided by the manufacturers and under Magnuson-Moss. Surely the funniest story on mediation is Chapter 4.1, "My Car Won't Start When I Buy Vanilla Ice Cream." I won't tell you about it because you won't believe it until you read the chapter.

Second, he analyzes sample clauses in contracts, almost all drafted by the manufacturer's lawyers, and even suggests ways the buyer's lawyer can negotiate his way out of them.³ Finally, there are sample pleadings—from interrogatories through jury instructions—graciously provided by Douglas Roberts of the Ohio bar. Even a lawyer practicing in another state ought to be able to use his pleadings. Pleadings concerning the Magnuson-Moss Warranty Act are, of course, equally good anywhere in the country.⁴

I have often suggested to my students that automobiles are treated differently from all other goods under the U.C.C. Now Professor Billings has gathered into one sourcebook all the statutes and cases concerning automobiles. His contribution to consumers and lawyers is unique and valuable. He achieves his goal:

to make possible for all lawyers a more orderly resolution of disputes involving defective and repossessed automobiles, and to facilitate litigation as a last resort.⁵

3. See generally *id.* at Chapter One and Chapter Six.

4. *Id.* at §§ 7.62 and 7.63.

5. *Id.* at viii.

THE COURT OF LAST RESORT, MENTAL ILLNESS AND THE LAW BY
CAROL A.B. WARREN,* WITH CONTRIBUTIONS BY STEPHEN J.
MORSE, JACK ZUSMAN, THE UNIVERSITY OF CHICAGO PRESS,
1982, 265 PP., \$8.95.

REVIEWED BY CONSTANCE FRIEDRICH
FISHER¹

The Court of Last Resort is the result of Carol Warren's seven-year study of decision-making in a California mental health court. Although the hearings were held under California's Lanterman-Petris-Short Act,² the author's observations and analysis apply throughout mental health practice in the United States. Because they can be broadly applied, the conclusions the author reaches offer insight into mental health practice for lawyers unfamiliar with the area of law, as well as reinforce the findings of mental health advocates, particularly those who represent recipients of mental health services.

For most lawyers, however, there will be one difficulty with the book: its language. Although clearly and logically presented, the author must discuss the sociological/mental health models upon which her study is based. At times the language, particularly that in Chapter 3,³ may be difficult for the attorney who is unfamiliar with the sociological and/or psychological terms. The reader must be patient, however, for his or her patience will be well-rewarded.

This book is especially important to the private practice attorney who only occasionally ventures into mental health practice. His or her contact with the mental health system may come through commitment hearings, or guardianship proceedings, or habeas corpus release hearings: "Please, Mr. Jones, my husband threatens to kill our child, convict him;" "grandma cannot feed herself or maintain personal hygiene and forgets to take her medication every day, please let me be her guardian and put her in the nursing home;" "my son is *not* crazy, the police should have brought him home to me rather than taking him to the mental health center. Get him out!"

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2. CALIF. WELF. AND INST. CODE § 5150 *et seq.* (West 1972 & Supp. 1978).

3. C. WARREN, *THE COURT OF LAST RESORT* 44-68 (1982).

Although the observations may often appear skewed in favor of the individual, rather than the decision makers, the author is pro-treatment, pro-involuntary commitment. Her posture presents fairly the multiple considerations included in the decision-making process. The author's observations are, from personal experience, right on target. *The Court of Last Resort* presents in a few pages insights that may take the mental health lawyer years to gain.

In the practice of mental health law, the author relates, the patient advocate, as well as the state's attorney, must struggle with/for/against the two historic justifications of state control of the mentally ill. The first justification is *parens patriae*, the power of the state to protect and care for its citizens. Second, the state wields police power, the power to control the people. How these two justifications for the involuntary commitment of the mentally ill or gravely disabled are applied determines how just the treatment of the committees or wards is.

Among the forces the author found working against just treatment is the fact that the decision makers impose a middle class value system upon socially and economically deprived individuals. Usually under the guise of protective paternalism, the decision makers participate in a "labelling" process. They determine which of us shall be labelled "crazy" and "sane," or at least "not crazy." Labelling theory, the process of imposing labels, says the author, is not a reliable indicator of who is mentally ill, but does accurately reflect society's reactions to mental disorder.⁴

Middle-class cultural values are heavily involved in what constitutes grave disability, danger or bizarre behavior. . . . Notions of appropriate food, clothing or shelter, and of inappropriate violence vary with the class and ethnic background of the individual.⁵

Thus both a white male who threatened his mother with a knife and a middle-aged black man found "lurking" in a white neighborhood were found "dangerous." Both a completely disoriented patient and one with nowhere to go if released remained hospitalized because they were viewed as "severely disabled."

The author observed that most of the petitioners in the mental health court were poor and/or otherwise culturally deprived. Of course not only poor people suffer from mental illness but, since they have less of what the author terms "social margin," they are more likely to be labelled "crazy."⁶

Since the labellers—the judge, the state's attorney, and the psychiatrist—are the dominant actors in mental health court drama, the author made some predictions: that non-Anglos would be com-

4. *Id.* at 44-50.

5. *Id.* at 14.

6. *Id.* at 50-53.

mitted more than Anglos; that women would be committed more than men; that children and the elderly would be re-committed more than the middle-aged; and that those appearing socially and economically deprived would be released less often than those appearing middle class.

The author's findings do support these predictions to some degree. They are accurate in the sense that those with greater "social margin" (Anglo, male, middle aged, middle class) received less disabling labels than those with little or no "social margin" (non-Anglo, female, juvenile aged, or poor).⁷ One of the most significant factors in determining whether the judge will grant a patient's writ for release, for example, is whether the patient has a place to live immediately upon his or her release. Where the patient has friends, family, or a permanent address, the probability of release is high in the absence of gravely disabling behavior.

As a consequence, one may be labelled "gravely disabled" and in need of further hospitalization merely because our society has no facilities for former mental patients without resources. The recent rise in the number of "street people" in our cities is directly related to the lack of facilities for those released on writs and for those cast out by the nationwide push to deinstitutionalize mental health patients.⁸

Warren addresses the shift from institutional care of marginal Americans to "welfare/entrepreneurial" care, noting that nursing homes reap profits caring for former mental patients. The question becomes whether, or to what extent, the rights of disabled citizens are subservient to the entrepreneurial, free enterprise system.⁹ The author does not answer the question, but it is crucial that she raise it.

Most recently the American Catholic bishops have published a first draft of a Pastoral Letter on the economy. The letter, simply stated, proposes that we as a society should care for our poor and disabled. The letter's critics within the Catholic community suggest that the letter does not reflect the consensus of the American people. The critics charge that the social welfare policies the letter presents would create "more government" at a time when the people have indicated they want "less government."

It is precisely those individuals in our society that appear as patients in the court of last resort that find themselves at the center of controversy, while simultaneously slipping from public view.

7. *Id.* at 158.

8. *See id.* 203-213.

9. *See id.* 203.

While the mentally ill and disabled remain powerless, they also remain invisible.

Warren has made visible the invisible and has cast a critical eye upon the process our society employs to determine who among us is fit and free or crazy and confined. In so doing she has given lawyers and others an informative, provocative, helpful analysis of the court of last resort.