past convictions, under the guise of determining credibility must be forbidden. The presumption of innocence demands no less".

But the book should be considered essential reading for all lawyers and students if for no other reason than Mr. Justice Freedman's comments on the law of admissions and confessions. The learned jurist also touches on the question of the compellability of spouses to give evidence against each other and what he has to say on this subject is most timely in the light of the proposals by a committee of the Law Reform Commission to make husbands and wives compellable witnesses against each other. To quote him:

> The objective of a criminal trial is justice. Is the quest of justice synonymous with the search of truth? In most cases, yes. Truth and justice will emerge in a happy coincidence. But not always. Nor should it be thought that the judicial process has necessarily failed if justice and truth do not end up in perfect harmony. Such a result may follow from the law's deliberate policy. The law says, for example, that a wife's evidence shall not be used against her husband. If truth and nothing more were the goal, there would be no place for such a rule. For in many cases the wife's testimony would add to the quota of truth. But the law has regard to other values also. The sanctity of the marriage relationship counts for something. It is shocking to our moral sense that a wife be required to testify against her husband. So, rather than that this should happen, the law makes its choice between competing values and declares that it is better to close the case without all the available evidence being put on the record. We place a ceiling price on truth. It is glorious to possess, but not at an unlimited cost. 'Truth, like all other good things, may be loved unwisely—may be pursued too keenly—may cost too much.'

Mr. Justice Branca, a practicing criminal lawyer for many years, will provide the reader with much enlightenment on a branch of the law that has always been a problem area, namely, what constitutes corroboration in law. This subject is explored thoroughly.

All in all, the editors of Studies in Canadian Criminal Evidence have succeeded marvelously in their stated objective to provide answers in these and in other problem areas in a criminal trial.

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HUMAN RIGHTS CASEFINDER:
1953-1969: THE WARREN COURT ERA: Edited by A. F. Ginger Meiklejohn, Civil Liberties Library, California. Pp. XV and 281. $25.00.

The United States produces annually a huge volume of reported cases. To aid in finding them publishers have developed elaborate tools such as West's Key Number Digests and Sheppard's Citations.

The Casefinder is another of these tools, designed to direct one to the cases on Human Rights decided during the "Warren era". This refers to the sixteen year period when the Honourable Earl Warren was Chief Justice of the Supreme Court of the United States. While the Court has nine members, a total of sixteen justices sat with Chief Justice Warren. At any given time, a majority were among those classed as "activist". The Court acquired this label because it expanded the scope of protection of the individual on many fronts and in the name of one or another of the constitutional safeguards. In other words it struck down legislation and practices that previously had either been free from attack or been

upheld. Depending on one's point of view this was either a laudable development in which the Court had to act to protect the individual in the absence of remedial action by Legislature and Executive or else it was an usurpation of power which justified the demand to "impeach Earl Warren".

In describing the Warren Court it is not enough to say that it was activist. At an earlier date the Court earned the same description when it struck down economic and social legislation that offended business interests. The Warren Court, on the other hand, gave its protection to the negro, the poor, the accused and to the protestor.

For example, the Court speeded the process of imposing on the State safeguards in criminal cases that originally applied only at the federal level. One much-discussed case is *Gideon* v. *Wainright* (1963) 372 U.S. 335, holding that even in a non-capital case a state must provide counsel for an indigent accused. Another is *Miranda* v. *Arizona* (1966) 384 U.S. 436, which requires the police to caution an accused person of his right to remain silent and his right to consult his lawyer before asking him questions.

In connection with freedom of speech and assembly, the Court tended to give wide scope to protestors, for example in *Edwards* v. *South Carolina* (1963) 372 U.S. 229 (protest on capitol grounds) and *Cox* v. *Louisianna* (1965) 379 U.S. 559 (protest near court house). *Tinker* v. *Des Moines* (1969) 393 U.S. 503 held that the wearing of black armbands by school children in protest against the Vietnam war was a proper exercise of freedom of speech. It also gave new scope to freedom of the press by restricting the scope of a libel action against a newspaper in *New York Times* v. *Sullivan* (1964) 376 U.S. 255 and by rejecting a claim for damages for breach of privacy brought against a publisher in *Time Inc.* v. *Hill* (1967) 385 U.S. 374.

In the realm of equal protection of the law, the school desegregation case, *Brown* v. *Board of Education* (1955) 349 U.S. 294 is one of the most significant in the Court's history; and the first of the "one man-one vote" cases. *Baker* v. *Carr* (1962) 369 U.S. 186, is another. The Court also gave equal protection to the poor in various ways. It held invalid a state poll-tax in *Harper* v. *Virginia State Board of Electors* (1966) 383 U.S. 663; and a state law requiring an indigent to be a state resident for a year before becoming applicable for public assistance, in *Shapiro* v. *Thompson* (1969) 394 U.S. 618; and required the State to give financial assistance of various kinds to an accused person to enable him to prepare his defense (*e.g., Griffin* v. *Illinois* (1956) 351 U.S. 12 and *Douglas* v. *California* (1963) 372 U.S. 353).

Outside the heads of protection named in the Constitution, the Court made a beginning toward establishing a constitutional right of privacy, though its precise content is hard to discern. Such a right, in support of the Fourth Amendment protection against unreasonable searches and seizures was employed in *Katz* v. *United States* (1967) 389 U.S. 347 in holding that the electronic surveillance of a man speaking over the telephone in a public booth was an unreasonable search. Again, in *Stanley* v. *Georgia* (1969) 394 U.S. 557, the court held that the First Amendment in securing free speech, protects the right to receive communications, including obscene films, and that a charge of private possession of the films is not only an infringement of the First Amend-

ment but an unwarranted intrusion on the right of privacy. The most notable case is *Griswold* v. *Connecticut* (1965) 381 U.S. 479. A state law made the use of contraceptives a criminal offence. In holding it invalid, the nine justices used various reasons, but the majority held that the statute was invalid in invading the right of privacy of married persons.

The Casefinder is not confined to Supreme Court decisions. It includes the reported cases in both State and Federal courts. Moreover the cited cases are not confined to those in the regular law reports. The editor has included a large number which were never reported but which have been collected in the fourteen volumes of a work called the "Civil Liberties Docket" and in a monthly publication called "Meiklejohn Library Acquisitions", and in one or two other collections.

The cases are classified by subject matter, and numbered in a decimal system. Any classification of human rights and liberties is difficult, and no two seem to be precisely the same. The Casefinder, of course, does not attempt to classify the rights and liberties in the abstract but rather in terms of the cases on constitutional rights and liberties that arose in the era of the Warren Court. There are three divisions:

I. Freedom of Expression and Association; embracing speech, press and assembly, religion, and association.
II. Due process and Related Rights; covering procedure in legal proceedings with emphasis on the criminal, searches and seizures, indictments, double jeopardy, self-incrimination, due process, speedy and public trial, right to counsel, confrontation, jury trials, cruel and unusual punishment, and due process for the poor, for the juvenile offender and for the incompetent.
III. Equal Protection (or anti-discrimination); which of course has many and diverse factual settings—elections, jury selection, education (16 pages of cases), housing (almost 5 pages of cases), transportation, and miscellaneous (recreation facilities, dining places, hospitals, government facilities and prisons), family matters (marriage, adoption, custody, *etc.*), employment, and native Indians.

To show the format of the casefinder, I shall take the case in which one Dr. Sheppard, while serving a sentence for murder, brought proceedings in which he alleged he had been denied due process at the trial because of unfair newspaper comment. The reference to this case is as follows: *Sheppard* v. *Maxwell, Warden,* 354.5; X, 42—xiii, 92; 346 F2d 707 (CA 6 1965), *rev'd* and *rem* 384 U.S. 333 (1966); MCLL; ACLU.

The first number shows that the case is listed under heading No. 354, the subject matter of which is due process in connection with "press releases and newspaper coverage". The figure '5' after the decimal point shows that the case is the fifth under the heading. The next two references, each beginning with a Roman numeral, are to volumes and pages in the Civil Liberties Docket. The next item is the citation of the judgment of the Federal Court of Appeals for the Sixth Circuit and then that of the Supreme Court, which reversed the Court below and remanded Sheppard for a new trial. The two sets of initials at the end refer to the Meiklejohn Civil Liberties Library and the American Civil Liberties Union, each of which have material on the case.

It seems clear that this research tool is useful to anyone concerned with learning about the expansion of civil liberties in the United States through judicial decisions in the Warren era. Of what value is it to a

Canadian interested in these matters? Leaving aside the value of any comparative study for its intrinsic interest, some of the topics are peculiarly American and have little direct relevance in Canada. The large section dealing with discrimination is an example; the portion dealing with the clause in the First Amendment which prohibits the establishment of religion is another; and the many cases dealing with loyalty oaths and other programs designed to check subversion and which have no counterpart in Canada are another. On the other hand we have some problems such as those relating to denominational schools and arising under section 93 of the British North American Act, that have no counterpart in the United States.

One important difference between the two countries has to do with jurisdiction over criminal law. In the United States the basic criminal law is in the hands of the several states. If abuses occur in the administration of a state's criminal law then the Supreme Court has power by virtue of the Bill of Rights to strike down an offending state law or hold invalid a judge-made rule or the procedure that has been followed in the particular case. The Warren Court was particularly active in scrutinizing state law and imposing on it the Court's concept of due process. Depending on one's point of view, he can regard this as a laudable step in securing to the individual his constitutional rights as against the states, or else he can consider it an unwarranted intrusion into state matters. It is perhaps hard for a Canadian to appreciate the public interest and controversy over many of the decisions. *Gideon* and *Miranda,* already mentioned, furnished examples. So, too, do some of the decisions on searches and seizures, though in *Perry* v. *Ohio* (1968) 392 U.S. 1 the Court upheld the right of a policeman to "stop and frisk" a person suspected of having offensive weapons.

In Canada, of course, criminal law is a federal subject. Many of the American constitutional safeguards are in the Criminal Code and others are part of the common law. In this country there was, until recently, very little discussion of "due process", though one likes to think that as a synonym for fairness, it has in fact been observed in the administration of our criminal law. The passage of Canada's Bill of Rights Act in 1960 declares that every person is entitled not to be deprived of "life, liberty, security of the person and enjoyment of property" except by due process of law. The consequence is that the courts are now frequently faced with assertions that an accused person has been denied due process and our courts are now trying to define its meaning. In so doing they face the difficulties that the American courts have long encountered.

Prior to enactment of the Bill of Rights Act, the phrase "equal protection of the laws" was rarely encountered. The Act declares the right of the individual "to equality before the law and the protection of the law". This clause has been invoked several times. In the important case of *The Queen* v. *Drybones* [1970] S.C.R. 282 the court held that a certain provision in the Indian Act is inoperative because of conflict with the equality clause, and two other provisions of the Indian Act are now before the courts.

In connection with the freedoms of religion, speech, assembly and association, and press, all enumerated in the Act, we had had cases that considered the powers of a province to restrict freedom of religion (*Saumur* v. *Quebec* [1953] 2 S.C.R. 299) and press (*Re Alberta Statutes*

[1938] S.C.R. 100) and speech (*Switzman* v. *Elbing* [*1957*] *7 D.L.R. (2d) 337).* Since passage of the Bill of Rights Act federal legislation can be scrutinized under the same heads, as *Robertson* v. *The Queen* [1963] S.C.R. 651 illustrates.

Late in 1972 the Alberta Legislature enacted the Bill of Rights Act based on Canada's, save that the provincial Act omits that portion of Canada's section 2 which deals with particular safeguards in judicial and administrative proceedings.

The existence of the Canada and Alberta Acts will inevitably require lawyers to pay much more attention to the concepts contained in the Acts than they did in the past. This being so, it is inevitable that recourse will be had to American authority. Our Appellate Division, in its first case dealing with due process in connection with a criminal prosecution, quoted from American authorities as to the meaning of that phrase (*Reg.* v. *Martin* (1961) 35 W.W.R. 384). In a recent case on entrapment, Greschuk J. quoted from a judgment of Chief Justice Hughes (*Reg.* v. *Sirois* [1972] 2 W.W.R. 149). Mr. Justice Laskin in his opinions dealing with Canada's Bill of Rights has frequently referred to American doctrines and cases. A notable example is the recent decision in *Curr* v. *The Queen* (1972) 26 D.L.R. (3d) 603. Mr. Justice Laskin discussed at some length American concepts and decisions in connection with the question whether the "statutorily-compelled giving of a breath sample" is an infringement of any of the safeguards in the Bill of Rights Act.

One can confidently predict that references to American doctrine will increase even though our courts will not necessarily accept all of those doctrines as applicable here.

The judge, solicitor or student wanting to pursue American developments in the last twenty years will clearly find the Casefinder of great assistance. This assumes of course that he has access to the American Law Reports, and it will be borne in mind that in Alberta there are few good collections apart from that in the Faculty of Law at The University of Alberta.

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CANADIAN NEGLIGENCE LAW.

By Allen M. Linden, B.A., LL.M., J.S.D., Professor of Law, Osgoode Hall Law School, York University. Butterworths of Canada. Pp. 575. $48.50.

Every tort lawyer in Canada is, or should be, familiar with the writings of Professor Linden on the subject. Over the years he has published a significant body of essays in leading periodicals, thereby building a well-deserved reputation for scholarly work of depth and understanding. At long last, he has produced a broader ranging discussion, in book form, which must inevitably take its place as a leading monograph. For this reason, it is unfortunate that the publishers have thought fit to charge such a large sum for this book, of the magnitude that will virtually render it impossible for law students, most law professors, and possibly many practitioners, to purchase and have available for constant reference as well as deep and lengthy study. Unquestionably, this is a book