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LET'S TALK SETTLEMENT, by Joseph and David Sindell. Published by Matthew Bender & Co., Western Division, San Francisco. 420 pages, 1963.

As every experienced lawyer knows, and the beginner, often to his embarrassment, soon discovers: The court room is not his only battle field, the winning of the verdict not his only victory. The work of the settlement lawyer is frequently misjudged if not outright maligned. This book will go a long way toward rescuing his image from prejudice.

From their rich experience, which they generously share with their readers, the authors describe the functions of the "plaintiff's lawyer," the scope and conditions of his work, and the special skills which he brings to it. *Facts* are the all important elements: fact facts, law facts, medical facts; and thus the settlement lawyer has to know his law, the rudiments of medicine, and the art of investigation; he should never shirk the task of being his own investigator. The pivotal problems of each injury case are *liability* and *amount of injury*; weakness in one field may still be compensated for by strength in the other. "If you can't talk liability, talk injury" is one of the numerous and invaluable pointers which the book provides. On the other hand, the authors warn that overreliance on liability may wreck an otherwise "open and shut" case. While emphasizing the techniques of negotiation, they concentrate on trial methods too, knowing that settlement often follows the opening of a trial, or even the announcement of a verdict. Their book is not simply a manual for negotiators and investigators, but is a reflective summary of law work in its many aspects, especially attorney-client relations, professional ethics, the thorny problem of accepting the weak and rejecting the seemingly strong case. A Table of the various Statutes of Limitations and numerous reading references add to its general usefulness.

Written in an engaging and lucid style, the book will entertain, teach, and broaden our understanding of the attorney's responsibilities and potentials. It is unequivocally recommended to all lawyers, present and future.

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CONGRESS AND THE COURT, by Walter F. Murphy. Published by University of Chicago Press. ix and 307 pp. (1962).

Professor Murphy's survey of Congress-Court relations touches the tender nerve of our political system: the balancing of government power. The three way power split aims to prevent monopolies and to find, instead, an equilibrium. But total equilibrium means stagnation, and so, one force must finally tip the scale. Since the early days of our national life, the adjustment of the balance has been left to the Supreme Court, and still we do not unreservedly proclaim that the supreme tribunal is the supreme authority. Exercise of judicial review stirs up complaints of usurpation and often moves the Court into subsequent self-restraint. But would the critics of the Court accept the inference that the Legislature is supreme? In a significant break with our British antecedents we reject the idea of parliamentary domination. We ascribe, vaguely and mystically, supremacy to the People or the Constitution. The people, however, speak through the legislatures, and the Constitution itself is a legislative instrument; case law can be decisively changed by legislation—all this points strongly in the direction of legislative supremacy. Should not the legislative change of case law equally be applied to judicial interpretations of the Constitution? In other words, may Congress not be empowered to overrule Supreme Court decisions? The missing answer to this question is at the base of the eternal tug of war between Congress and Court. It is essentially a political issue, a jockeying for positions within the political system.

Keenly aware of the political connotations, Professor Murphy views the history-making *Marbury v. Madison* case[1] as an outgrowth of the Federal-Republican feud over the Judiciary Act of 1789. (Incidentally, he uses the term "Republican" indiscriminately throughout the book, leaving it to the reader to draw distinctions between Jeffersonian and current Republicans.) Tracing term by term the development of the Supreme Court and its relations to Congress and President, he sees the Court itself divided into "libertarian" and "conservative" forces, a label which, by his own admission, does not always fit or stick. The New Deal controversies and the more recent hassles over "due process" and individual freedoms receive lengthy treatment. The

[1] 1 Cranch 137; 2 L. Ed. 60 (1803).

Jencks Act[2] comes in for a good deal of attention, but one significant aspect is not sufficiently stressed. The act was passed to avoid incorrect interpretations of the original Jencks decision: [3] it serves as a perfect example of case law shaped by legislation, of Congress giving directives to the Supreme Court.[4] Professor Murphy's approach is mainly historical and political. To the political historian, his detailed summary of congress-court associations will be gratifying. To the lawyer it may seem that he overplays the political card. While the political significance of judicial review must be definitely recognized, its legal character should not be obscured. The *Marbury* decision may have been a "judicial coup d'etat," [5] yet Article III (2) of the Constitution overtly applies the judicial power "to all cases in law and equity arising under the Constitution" and to "the laws of the United States." Perhaps Marshall's interpretation was not without foundation in the text of the Constitution. Likewise, review of state law, as prescribed by *Cohens v. Virginia*,[6] seems authorized by Article VI (2) which binds to the Constitution "the judges in every State."

Professor Murphy, who writes as a political scientist and not as a lawyer, should not be too harshly blamed for neglecting the legal element. Nor does this omission destroy the appeal of his book to lawyers. He presents us with a quick moving and informative kaleidoscope of political events which left their mark on the judicial scene. If his book makes us aware of the links between law and political science, it has achieved some of its objectives. It certainly alerts us to one of the most pressing questions of our government system: Whose is the final power?

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[2] 71 Stat. 595; 18 U. S. C. sec. 3500 (1957).

[3] Jencks v. United States, 353 U. S. 657; 77 Sup. Ct. 1007 (1957).

[4] See Senate Report 981 of August 15, 1957; in U. S. Code Congr. & Admin. News 1957, p. 1861.

[5] Beveridge, The Life of John Marshall, v. III, p. 75 (Boston, 1919).

[6] 6 Wheat. 264; 5 L. Ed., 257 (1821).