

conomic regulation has been well stated as existing "whenever any combination of circumstances seriously curtails *the regulative force of competition* so that buyers or sellers are placed at such a disadvantage in the bargaining struggle that a legislature might reasonably anticipate serious consequences to the community as a whole."<sup>16</sup> Mercantilism, however, seeks not to preserve the regulative force of competition but to destroy it. This happens when, regardless of the non-existence of either monopoly or unfair trade practices, the state seeks either to reduce the status of doing business from that of a right of free men to that of a privilege to be granted or withheld by the state, or to cripple the strong and efficient for the purpose of protecting the interest of the weak and inefficient in their competition for the public's dollars. Brandeis' views are indeed interesting and challenging, particularly as he spoke in 1933. But I question the desirability of their *ex parte* presentation in this book with no suggestion of the other side of the case.

In conclusion, I may state what must be the obvious inference to be drawn from the foregoing remarks: I would give this book a high rating for excellence. As further evidence of my appraisal, I may mention that in the course of reviewing this book, I reached the decision to adopt it for my own class next year.

RICHARD V. CARPENTER†

EFFECTIVE LEGAL WRITING. By Frank E. Cooper. Indianapolis: The Bobbs-Merrill Company, 1953. Pp. x, 313. \$5.00.

SURPRISINGLY little has been written in the way of direct advice to lawyers and law students to help them improve their legal writing.<sup>1</sup> Here is a new book that provides excellent material for at least one kind of legal writing course—one that calls for the composition of legal opinions, pleadings, briefs, contracts, wills and statutes. It will necessarily be of less value for a course that consists wholly or largely of writing projects involving original legal research, but even for such a course it is probably the most useful book that can be put into the hands of students to give them advice on "how to write."

The book itself contains most of the helpful hints and advice that can be given. It emphasizes the different objectives in different kinds of legal writing, and the uses of words and techniques for achieving these objectives. In the chapter on drafting contracts, for example, the student is told at the out-

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16. Dissenting opinion of Justice Stone in *Ribnik v. McBride*, 277 U.S. 350, 360 (1928) (emphasis added). Justice Brandeis concurred in this dissent.

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1. Professor Cooper's book contains a bibliography of books and articles on this subject, but it fails to include one of the best: Nicholls, *Of Writing by Lawyers*, 27 *CAN. B. REV.* 1209 (1949). Probably this was excluded, because it appeared in the *Canadian Bar Review*, and Cooper's bibliography is limited to American works.

set: "The skills of exposition and persuasion, indispensable to the brief-writer, play a much smaller part (by comparison, at least) in the drafting of most contracts. The difficulty of finding non-technical explanations of an involved legal point—a problem which is often encountered in writing opinions—seldom is met. In drafting contracts, *precision of statement* is what counts for most."<sup>2</sup>

The student is warned to avoid certain kinds of words and phrases: "weakeners," "weasel words," "and/or," and "legalese." (I wish the author had also inveighed against what Rudolf Flesch called "empty words," which have no value in advancing the train of thought).<sup>3</sup> Examples from judicial opinions illustrate the virtues of succinct precision, the judicious use of irony and humor and other writing skills. Less felicitous examples are provided to illustrate the pitfalls of overindulgence in legalistic abstraction, elaborate recital of a case's procedural history, in which the writer gets lost in the pleadings or in irrelevant details, prolixity, and the dangers of sarcasm and ridicule. The examples are usually not subjected to direct criticism by the author, but penetrating questions call on the student to make his own critical evaluation and frequently to re-word the passage to meet the criticisms suggested.

A valuable feature of the book is a group of three cases, each consisting of the complaint, transcript of testimony, opinion of the trial court, and excerpts from the brief on appeal. They cover some seventy pages. Exercises are provided in which these cases are to be used for assignments provided by the book in letter writing, pleadings, drafting, and brief writing. The fact situations and issues involved are nicely complicated and have a ring of realism and practicality. I think most teachers will welcome this material. One of the difficulties in providing students with realistic problems is that of providing the necessary bulk of material. A problem stated in a few sentences or paragraphs is too neat. Actual problems involve a mass of statements and papers. It is difficult for the individual instructor to acquire such materials (unless, as Professor Cooper obviously does, he has connection with actual practice), and it is difficult to get such materials reproduced in sufficient quantities for class use. Here are three excellent cases that can be used for several exercises each.

It may be helpful to compare this book with Professor Cook's *Legal Drafting*, which appeared two years earlier. The difference is largely one of emphasis and is suggested by the two titles. Cook furnishes much fuller information about specific clauses that may be included in drafting various kinds of instruments, the policies and problems involved, check lists of items to look for, and so on. It can serve as a useful reference book when one is faced with a drafting problem. Cooper's book emphasizes the rhetorical as-

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2. P. 168.

3. See FLESCHE, *THE ART OF PLAIN TALK* (1946); FLESCHE, *THE ART OF READABLE WRITING* 130-1 (1949).

pects of legal writing. It uses a Socratic method of putting questions to expose ways of achieving rhetorical ends and improving illustrative passages. Its text is largely the author's own production, whereas Cook's is composed mainly of excerpts from other writers and from cases. Cook's volume has more than twice as much material; the student will have to spend a large part of his course time reading *about* drafting. Cooper's is intended to be used in a course in which almost all the student's time will be devoted to writing.

Neither book is designed for the kind of course in which legal writing is used to provide training in the use of research tools and in the synthesis of the results of legal research—as well as training in writing in a narrower sense. Probably no book could provide much help for such a course, which necessarily calls for individual papers of the office memorandum or law review comment type, and individual tutorial criticism. Since I feel that this kind of skill-training is important and can be best taught in a legal writing course, I am using Cooper's book for about half the semester only, and then assigning more difficult individual research projects. In past years, I also used mimeographed case materials prepared for use in Professor Harry Kalven's course at the University of Chicago in skill-training in analyzing and synthesizing a mass of cases. But even for such limited use, Cooper's is a very useful book. I know of no better single source of instruction in legal writing, and students need some of the shorter exercises it provides before they embark on a major paper that will take several weeks.

The book is a slender one, but it has much meaty material in it—quite enough to keep students busy for a semester, even in courses that exclude some of the materials covered, such as statutes or pleadings.

HENRY WEIHOFEN†

THE STRUGGLE FOR POLAND. By H. Peter Stern. Washington: Public Affairs Press, 1953. Pp. 79. \$2.00.

THE freedom and independence of Poland were the issues over which the Second World War began; yet the War's aftermath left that unhappy country as a full-fledged Soviet satellite. Mr. Stern's little volume is an account of how this came about. Basing his account on Western materials, he follows step by step the purposeful moves of the Kremlin, the ineffective actions of the Western powers, and the contributions which members of the Polish Government-in-Exile themselves made to the final result. He has done a clear and succinct job.

Much of the Western writing on this subject has stressed "the betrayal of Poland." Mr. Stern is properly critical of these writers, for, as he points out, they "ignore the difference between what was desirable and what was possible."<sup>1</sup> His own study is more objective and is documented with care, but

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1. P. 8.