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Review of “Pay the Two Dollars: Or, How to Stay out of Court and What to Do When You Get There,” By Alexander Rose

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ethical strand in this fabric. Perhaps three points made by the author, however, are worth summarizing: (1) since Soviet morality is in the service of industrial productivity, it combines "elements from the ethics of Calvinism and Puritanism, enlightened absolutism and liberalism, nationalism, chauvinism, and internationalism, capitalist and socialist values"; (2) Soviet ethics are instrumentalistic and ethical values are regarded as "external" to any specific individual action or thought, the latter being instruments for attaining an ethical goal which is that of society"; (3) the preoccupation with technological values forces Soviet writers to attack such diverse exponents of "bourgeois irrationalism" as Nietzsche, Schopenhauer, existentialists and Freud. With qualifications, Marcuse offers the prediction that ideological pressure in the sphere of ethics "seems to tend in the same direction as technical-economic pressure, namely, toward the relaxation of repression."

Clearly, Marcuse's evaluation of Soviet Marxism is sufficiently provocative to invite protracted debate, and the issues do not readily lend themselves to condensed analysis. But there is much, for all serious students of Soviet society, to ponder in this volume. Few books legitimately can stake off the same claim.

MERLE KLING†

PAY THE TWO DOLLARS: OR, HOW TO STAY OUT OF COURT AND WHAT TO DO WHEN YOU GET THERE. By Alexander Rose. New York: Simon & Schuster, 1957. Pp. 225. \$3.50.

Unbelievably, this delightful book, written by a non-lawyer, is at once entertaining to the layman, invaluable to the inexperienced prospective witness, amusing to the seasoned trial lawyer, and both interesting and instructive to the law student. A genuinely witty book rather than a reprinting of hackneyed gags, it abounds with highly practical, earthy advice for layman, witness, and leaglet.¹ It is also appropriate for a lawyer's waiting room.

The curse of the author being a non-lawyer is removed when it is noted that he served for more than twenty years as a court reporter ("for courts ranging from New York Magistrates to the United

† Associate Professor of Political Science, Washington University, St. Louis, Missouri.

1. Another reviewer characterized the book as informative and entertaining, "a lighthearted, do-it-yourself legal primer." *N. Y. Times*, Oct. 6, 1957, p. 28. The self-help suggested is, however, largely of the preventive law variety and limited to that appropriate for prudent laymen. Hereinafter, unless otherwise indicated, page references are to the book being reviewed.

States District Court").² He therefore is not without legal training and experience of a highly practical—although limited—sort, which greatly enriches this book. On the other hand, the book does not purport to be a law book. Its occasional references to formal legal principles are usually oversimplified into terms palatable to laymen.³ An unfortunate example reads:

If you go into a diner for a cup of coffee and say to the man on the adjoining stool, "Mister, it's people like you who give this country a bad name," and he suddenly pulls a murderous knife and goes after you—you are *not* defending yourself, you are merely finishing up a little transaction that you initiated and you are strictly on your own. (See chapter on Silence and Longevity—under the subheading Your Mouth and What It Means to You.)⁴

The foregoing quotation is preponderantly wrong when compared with judicial pronouncements on the point,⁵ and considerably excessive as an expression of the actual operation of the legal rule.

The value of the book to the law student lies principally in its pertinent but pertinent examples of the right and, even more important, wrong ways to examine witnesses. In a lesser degree, its discussion of judge and jury is also helpful.⁶

The title is editorial, rather than promotional (the book lists at \$3.50) as the author counsels against rushing fool-long into litigation.⁷ His emphasis, however, is on how to stay out of court and what to do (including what for-Gosh-sakes not to do) in court and before reaching court. More effectively than a weightier tome could, the book

2. From the publisher's blurb on the book jacket. The publisher's publicity department advised this reviewer that the author had never attended law school, was not a member of the bar, had served also as court reporter for the Federal Trade Commission and Board of Tax Appeals, and, from 1936-38, had written a weekly column "Ring Around the Rose" in the Plainfield, N. J., Sunday Post.

3. See, e.g., his discussion of the fine print provisions in insurance contracts (pp. 190-202), typified by his statements that a policy provision insuring against "all stated hazards" means "only stated hazards," and that "fidelity insurance pertains to your cashier, not your husband." His discussion of the fine print in an apartment lease makes its point entertainingly, but glosses over the statutory and judicial restrictions against the lessor's omnivorous words. Pp. 203-06.

4. P. 87. The final sentence is another whimsy of the author. Similar sham cross references appear when he mentions drunk driving ("See chapter on Booze and Your Future") (p. 85) and giving away money like drunken soldiers ("See Statistics on Military Personnel, Revised") (p. 41). See also pp. 174, 180.

5. 1 Wharton, Criminal Law and Procedure 503 (12th ed. 1957) ("The mere use of language does not forfeit the right of self-defense, except that in South Carolina and Texas, where they are designed to provoke a combat . . ."). Cf. Prosser, Torts 88-91 (2d ed. 1955).

6. C. 4.

7. Pp. 34-37 (traffic ticket), 212-24 (the law's delays).

explains to laymen why to read-before-signing,⁸ how to pay a debt in cash without getting a receipt or losing a friend,⁹ how to give a clerk or cashier a ten dollar bill,¹⁰ and that in a minor automobile accident, the question of (immediately ascertaining) the extent of damage or injuries may be far more important than the assessment of fault. The motorist is advised that if the other driver, while still at the scene, refuses to sign a written memo of the nature of the damage, a policeman should be asked to notice the extent of the damage. The author forecasts this colloquy:

“What’s goin’ on here?”

“Officer, we’ve just had a little—”

“You got this party’s number?”

“Yes, but—”

“Then on your way. You’re blockin’ traffic.”

“But, Officer, I want someone to have a look at the damage.”

“Is that what you called me for?”

“Exactly. You see, sir—”

“Look, mister, I ought to pull you in. I’ll bet you’re one of them taxpayers says we ought to be out chasing thieves. You got this party’s number. What more do you want? Now, get them vehicles outa here, the both of you.”

(Well, the officer has a point there, but if you can keep your shirt on and convince him you are merely trying to prevent an unwarranted claim for property damage or personal injury, he may at least look the situation over, however briefly. Then you can subpoena him at the trial and even his reluctant testimony will help a lot to defeat an outlandish claim.)¹¹

The greatest usefulness of the book lies in its instructions to prospective witnesses. They are told how to make a good impression,¹² how to avoid various mantraps, and how to answer questions resembling: “Have you discussed this case (or your testimony) with anyone?”¹³ “Are you being paid to testify?” and “Have you quit beating your wife?”¹⁴ Typical of such advice is this illustration of a witness discrediting herself by exaggerating:

Q: Mrs. Strech, do you mean to tell us that you remember every word of this conversation?

A: Every word.

Q: A fifteen-minute conversation!

A: Eighteen minutes.

8. C. 6.

9. P. 20.

10. Ibid.

11. Pp. 11-12.

12. Pp. 187-89.

13. Pp. 165-68.

14. Pp. 158-61.

Q: Why, at an average of 150 words per minute that would be 2700 words. You remember every word?

A: Every word.

Q: Getting back to the injuries for a moment, the plaintiff was hurt pretty badly?

A: He was practically killed.

Q: He was bleeding?

A: From every pore.

Q: Come now, not from every pore! Surely that's just an expression—

A: From every single pore. I was there and I saw it.

Q: What about the car—

A: Wrecked.

Q: Well, you mean the front end, the left front—

A: I mean the whole car. A complete wreck. I know a wreck when I see one. This car was wrecked. There was no car.

Q: Well, surely some of the parts—

A: No parts, no car. A wreck.

Q: Why, Mrs. Strech, you heard these other witnesses say that right after the accident this car was driven—

A: All lies.

Q: Eleven witnesses?

A: All of them . . .¹⁵

In 1941 the author published a book for prospective witnesses.¹⁶ It was a good book. This one is better.¹⁷ It supersedes the earlier book but is not merely a revision, although containing a great deal of the same material.¹⁸

Thirty-nine hilarious drawings by Paul Coker sprinkle the book. The best one depicts litigants in a small-claims action, in which a lady sued a barber for \$4.50, "contending that he was active in many directions and had sold her a defective device; the barber denying this claim and counterclaiming for \$5 for piccolo lessons given the lady on the side."¹⁹ Four runners-up picture a lawyer browbeating a wit-

15. Pp. 152-53. This reviewer changed the gender of the witness, correcting either an obvious error or excessive timidity.

16. Rose, *So You Are Going To Be A Witness!* (New York: Institute Press 1941).

17. The later book polishes some of the phrases and drops some attempts to explain principles of law—e.g., patent searches (pp. 96-101 of the earlier book).

18. The following pages in the work now being reviewed correspond with, or reprint, the pages (shown in parentheses) from the earlier book: pp. 18-21 (144-47), 31-33 (137-39), 46-48 (48-52), 51-68 (149-66, 201.04), 71-77 (205-07, 187-91), 111-13 (94-95), 131-36 (176-82), 138-46 (81-89), 148 (13), 158-77 (14-21, 36-44), 186-89 (59-62), 212-24 (217-23).

19. P. 19. By showing the barber holding a violin, the drawing might seem to imply that he had been fiddlin' around. The author probably substituted "piccolo" for "violin" after the illustration was drawn, the earlier book having said "violin." Rose, *op. cit. supra* note 16, at 145.

ness,²⁰ smiling at the witness he is about to demolish (two versions),²¹ and looking hyperotic after receiving an annihilating answer to the incautious question "Why?"²²

A table of contents lists the seven chapter titles and most of the subheadings, and in two instances places the subheadings under the right chapter titles.²³ The book contains no other tables and no index, appendix, footnotes, or preface. None is needed.

The book has been criticized as seeming to suggest "that a defendant in need of a defense should simply make one up."²⁴ A better statement is that the author (1) stresses the importance to the litigant or other witness of giving responsive answers rather than evasions;²⁵ (2) stresses the perils both of the unrehearsed lie and the memorized lie;²⁶ and (3) concludes facetiously by suggesting that if one is determined to lie, his best chance is to memorize three different versions, all agreeing on the main essentials but each varying adequately in less important details.²⁷

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THE OFFENDERS. By Giles Playfair and Derrick Sington. New York: Simon and Schuster, 1957. Pp. viii, 305. \$3.95.

In this small volume of 305 pages, the authors advocate the overthrow of a foundation thesis of Anglo-American criminal law—that one must be punished who intentionally does an act forbidden by law.¹

20. P. 120.

21. Pp. 40, 132.

22. Pp. 169-70. Similarly, Joseph H. Choate reportedly asked a witness, "Isn't it true that you are the modern Munchausen?" and received the angry retort, "You're the second blackguard that has asked me that in a week." *The Choate Story* Book 41 (1903). In a murder trial in England a prosecuting attorney saw the accused whisper to the attending policeman, and unwisely insisted that the policeman divulge the remark. The latter refused; then, after being sternly commanded by the judge, haplessly admitted that the prisoner, referring to the judge, had whispered, "Who is that hoary heathen?" *Morton & Malloch, Law & Laughter* 56 (1913).

23. Subheads listed under chapter 4 belong to chapter 5; those listed under chapter 5 belong to chapter 6; those listed under chapter 6 belong to chapter 4 (p. viii).

24. 25 *Kirkus* 507 (1950).

25. "Whether you are lying or telling the truth, the surest way to be a good witness is to answer the question directly." P. 149.

26. Pp. 181-83. Cf. p. 96.

27. P. 183.

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1. "Historically, our substantive criminal law is based upon a theory of punishing the vicious will. It postulates a free agent confronted with a choice between doing right and doing wrong and choosing freely to do wrong." Pound, *Introduction to Sayre, Cases on Criminal Law* (1927).