

the part of the legal profession. Demand is being made that the legal profession abandon its exclusive concern with personal success in the business of practicing law and its accompanying neglect of the non-professional consequences, and that the work and success of the legal profession and of the courts and the legal system as a whole be measured, instead, in terms of their aims and purposes and justification as social institutions. Legal education with that ideal in mind must provide the material from which such evaluation can be made, and must insist that the student spend his time and his thought on this non-legal material as well as upon the legal. Legal ethics naturally comes within such a study, but no more so than corporations, criminal law, constitutional law, trusts, procedure, or other law school subjects. To think of the question only in germs of legal ethics is to miss the significance of the major problem.

Fourth, and finally, the book will find few schools where the atmosphere is favorable to the kind of reception the students must give the course if it is to accomplish anything more than developing a knowledge of the prevailing rules of ethics. Student points of view in the field of law are very largely influenced and molded by the dominant spirit of their law school. The newer approach that is now engaging the attention of law schools has not yet made itself felt to any degree in the daily work of the classrooms. The dominating purpose of practically all law schools is still to convey a legal knowledge and a technique that may be used in the lawyer's daily service to his client. This conforms perfectly with the principal reason for the students coming to the law school, to learn a respectable skill with which to earn a livelihood. With such mutual agreement between teacher and student, it is but natural that there should follow the current concentration on cases and casebooks, on principles and rules, and on the technique of applying them. It accounts, also, for the absence of any study of the broader implications involved in the law so learned, except for the discussions of them in the classroom, contributed by the instructor and received with proper somnambulant contempt by the students who lack the necessary background with which to appreciate or understand them. In such an atmosphere students will have scant interest or respect for an isolated course, especially one having to do with legal ethics that suggests to them the need for considering the public aspects of their future professional work and the criticisms being made of the profession in that regard. Against the solid opposition of the student body, such a course is not likely to make much headway.

In short, what is needed, if anything more than lip-service is to be rendered by the law schools to the public demand for a regenerated bar, is a revolution in their curriculum and in their outlook. An isolated course of the character contemplated by this casebook will not do the job.

These conclusions, reached with regret, are not meant to be taken as a condemnation of the author's work. It should not be necessary to repeat that it offers a brilliantly executed tool for courses in legal ethics, and a noble effort to accomplish the impossible. To demonstrate what cannot be done is often, as it is in this case, decidedly useful.

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**Practice and Evidence before the U.S. Board of Tax Appeals.** By Charles D. Hamel.  
New York: Prentice-Hall, Inc., 1938. \$6.00.

Because of the great increase in tax litigation in recent years, the reported decisions of the United States Board of Tax Appeals have become of ever increasing importance.

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On questions of the substantive law of taxation, these decisions have been digested with more or less adequacy by various text books and tax services, but in no work prior to the 1938 edition of Mr. Hamel's book has there been a successful treatment of the rules of procedure and evidence which govern the preparation and trial of Federal tax cases before the Board. A similar work published by Mr. Hamel in 1929 was long ago rendered obsolete by statutory changes and the rapid accumulation of reported decisions of the Board.

Founded in 1924 as an administrative board to settle disputes between the Commissioner of Internal Revenue and taxpayers with respect to the assessment of deficiencies in Federal taxes, the United States Board of Tax Appeals has come more and more to exercise all the ordinary judicial powers incidental to the decision of Federal income, estate, and gift tax cases. As these judicial functions have developed, however, they have been hedged about by special rules of procedure and practice prescribed in part by statute and in part by administrative necessity. Thus there has developed, not only a large body of substantive law, but also a set of rules of practice and procedure peculiar to the trial of tax deficiency cases. To the lawyer with little or no experience in Federal tax practice, a work dealing with these questions of adjective law is indispensable. And a reference work containing exhaustive citation to decisions of the Board on questions of procedure and evidence is of no less value to the tax practitioner. The author's peculiar experience, acquired both during his service as a member of the Board and in his long Federal tax practice, has enabled him to meet these needs with a simple and concise yet comprehensive reference work.

Mr. Hamel's book might better be entitled "Practice and Evidence in Federal Tax Deficiency Cases," since it treats of the problems of practice and procedure in cases arising by reason of Federal tax deficiency assessments made by the Commissioner of Internal Revenue, from the filing of protests against such assessments with the Bureau of Internal Revenue to the perfection of appeals from the decisions of the Board. Although the treatment of the procedural steps in the preparation and trial of a case before the Board is in most respects adequate, more attention might well have been given to questions concerning the filing of briefs and requests for findings of fact. Since it is customary to dispense with oral argument in Board cases, and since under the present crowded condition of the docket, any decision necessarily must be deferred for a considerable time after trial, great reliance is placed upon the briefs by the Board. Although no radical departure from the ordinary technique of appellate court brief writing is required in preparing a brief for the Board, skeleton outlines for presentation of typical cases would have been of valuable assistance to the novice.

It often is difficult for the attorney representing a petitioner before the Board to realize that in order to prevail he must do more than merely sustain the burden of proof required in the usual suit. The taxpayer desiring to overthrow the finding of a tax deficiency by the Commissioner of Internal Revenue commences his action at a disadvantage, because he also must overcome a legal presumption that the Commissioner's finding is correct. This necessitates a degree of persuasion substantially greater than that upon which the winning of a suit at law or in equity is ordinarily conditioned. In the portion of Mr. Hamel's book devoted to rules of evidence, the nature of this presumption and the amount and nature of proof required to overcome it are given a lucid exposition. Once the presumption in favor of the Commissioner has been overcome, the usual rules of evidence applicable in courts of equity of the District of Columbia are applicable in Board cases. The comprehensive collection of decisions,

both of the Board and of the Federal courts, applying rules of evidence to tax cases, is without question the most valuable feature of the book.

It is believed that a similar work dealing with the procedure in tax refund cases, arising as a result of denials of claims for refund of taxes already paid, instituted in the Federal district courts and in the United States Court of Claims, would be equally welcome to tax lawyers.

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*Spy Overhead.* By Clinch Calkins. New York: Harcourt, Brace & Co., 1937. Pp. 363. \$2.50.

A year ago at this time the newspapers were giving a great deal of front-page space to the more sensational findings of the Civil Liberties Investigation, familiarly known as the La Follette Committee. The activities of the Pinkerton & Burns detectives in industrial espionage (a very polite and misleading term) and their behavior on the witness stand had for a brief time all the vogue and publicity of the latest murder or kidnapping. But the general public knew little, and probably cared less, about the real implications of what was revealed in the long weeks of patient questioning. The newspapers did not reproduce the full savor of the lengthy and detailed testimony dragged under oath from the many witnesses; nor did they do justice to the extraordinary facts exposed by the subpoenaed records. This inquiry was carried on under Senate Resolution 266, calling for an investigation into violation of guaranteed rights of free speech and assemblage and the right of labor to organize for purposes of collective bargaining. Limited funds appropriated by Congress forced the Committee to narrow their inquiry to the subjects of labor espionage and strike breaking.

In *Spy Overhead* Clinch Calkins writes a panoramic study of the functioning of espionage and strike breaking agencies in American industry, taking the evidence in the files of the Committee as her case material. She likens the record to detective fiction—and as she says (and ably proves): “There has been unfolded before the United States Senate a true detective story . . . that can produce the same familiar tendency (as does fiction) to rise above the meaning of the evidence, to float in excitement above the scene of the crime, forgetful of its implication. The reader is glued to the record long after the record has yielded up the clue for which he sought.” But the author does not allow the reader to forget the implications of the evidence; and it makes her account all the more convincing when one realizes that only in this respect has she stepped away from actual recorded testimony. This is not an objective, dispassionate account, nor is it meant to be; and the bias of the author and her real feeling and sympathy for the victim—the wage earner in industry—make her book alive. She has reproduced with remarkable skill and fidelity the tension, interest, curiosity and excitement, the “good theatre,” on the hearing in the Senate Office Buildings. With sparing but telling use of quotations from the record and enough background supplied to explain the situations involved, Miss Calkins tells an unforgettable and appalling story. This, it must be emphasized, is not a scholarly or disinterested analysis. It is a vivid treatment of a subject as full of dynamite as any now before the public. It is an attempt and a successful one, to put in dramatic and consecutive form what happened at the hearings. It is more than that, for not

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