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Book Reviews

TRIALS OF A PHILADELPHIA LAWYER. By *Laurence H. Eldredge*.† Philadelphia: J. B. Lippincott Company, 1968. pp. viii, 257. $5.95.

This is a fascinating book, of interest alike to the law student, the practising lawyer, and the layman. With a gift for the short story, one of the more difficult of the writing arts, the author deftly recounts a dozen or more of the trials in which he has been counsel for one party or the other. He does this with all the suspense element of the writer of fiction, but he is not just spinning yarns: these cases actually happened, and a number of them are recorded, at the appeal stage, in the Pennsylvania appellate court reports. The reviewer must agree, as the author states in the preface, that "these are unusually interesting cases."[1]

The court room dramas are framed by three beginning chapters, largely autobiographical, and a final chapter giving some of the author's philosophy as to the role of laws and men in these troublous times. Here one glimpses the dilemma of a thoughtful, sensitive person, steeped in the history of our civil rights, confronting the cataclysmic changes of the mid-20th century. Like so many of us, particularly in this election year, Eldredge is "disturbed by demagogic appeals to emotion and a playing upon deep-seated prejudices."[2] But he continues to seek the ever-elusive answers to this question:

> In this time of conflicting views, how can a person hold fast to beliefs he thinks are fundamental and eternal and at the same time preserve an open mind and show a decent respect to those opinions of mankind which he, initially at least, rejects?[3]

Eldredge's pursuit of truth "as the noblest of man's works" is perhaps a higher and harder quest than that of the Marquis de Lafayette, whose statement of it is inscribed in marble at the author's alma mater, Lafayette College:

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1. L. ELDREDGE, TRIALS OF A PHILADELPHIA-LAWYER, vii (1968).
2. *Id.* at 255.
3. *Id.* at 254.

> I read, I study, I examine, I listen, I reflect, and out of all this I try to form an idea into which I put as much common sense as I can.

That the author has picked up a lot of common sense, that most valuable tool of the lawyer, in his search for truth is manifest in this book.

Returning to the main part of the work, the old saw that "truth is stranger than fiction" is proved again in this collection of cases, spanning an active trial practice of forty years. Mr. Eldredge makes the most of some of the situations. If he had not continued in the practice, he might have run stiff competition to another lawyer turned story teller, Erle Stanley Gardner.

The opening to the story of "A Case of Libel" shows the author's flair for getting and holding attention:

> Mary Jane Macrae sat on the floor of her New York City apartment, propped up by pillows and with her legs stretched out before her. Mary Jane was wearing the yellow party dress she had worn the night before for her nineteenth birthday dinner party in the apartment with her roommate and a boy friend. An open book was on the floor beside her. Mary Jane was dead. . . .[4]

Unlike Perry Mason, however, Mr. Eldredge does not *always* win his cases, although this book does not recount the losses. As he states with candor:

> I am not one of those lawyers who have never lost a case or made a mistake or given bad advice. I have done all of these things. I would hate to tally up how many trial judges and juries, and appellate courts too, have found my arguments totally unconvincing.[5]

There follows a recital of Mr. Eldredge's "most dreadful mistake which has come to light so far,"[6] the omission as a young man to look at a relevant authority in giving an opinion to his senior, which would have resulted in an opposite conclusion and saved acute embarrassment, if not money. What lawyer is there who could not, if he would, recall a similar experience, or who does not sometimes lose some sleep in wondering when his unknown sins, of omission or commission, will find him out? At another point, in quoting from the testimony at a trial, Eldredge introduces some further cross-examination of a witness by him with this frank statement: "Then I unfortunately asked some foolish questions which enabled the witness to improve on his devas-

4. *Id.* at 171.
5. *Id.* at 5.
6. *Id.*

tating direct examination."[7] Any lawyer who has tried cases can identify with the author in this situation.

The title of the Eldredge book recalls the autobiography of George Wharton Pepper, which he called simply *Philadelphia Lawyer*.[8] The Foreword contained a disarming statement as to his motive in writing. "Ostensibly," wrote Senator Pepper, "it has been written for the pleasure of my friends who urged me to record my experiences. Actually, of course, the dominant motive has been self-gratification."[9] One suspects that a measure of this same motive has crept into the Eldredge work. But the author's quiet boasting is never in bad taste, and is amply justified: he is, without doubt, a darned good lawyer, advocate, and teacher.

The reader of this book is almost as glad as the author when justice triumphs—glad both for the client and for his lawyer, Mr. Eldredge. This is equally true in the one case in which Eldredge was himself the client, but wherein he was wise enough not to be his own lawyer. This was what he calls "The Strangest Case of All," *Musmanno v. Eldredge*.[10] Eldredge here had the distinction of being sued, in his capacity of official reporter of the decisions of the Supreme Court of Pennsylvania (a position he has held since 1942), by a justice of that court to compel him to publish that justice's dissenting opinion in a case. The Chief Justice, speaking for the other six justices, had ordered Eldredge not to print it. Eldredge was thus really a pawn in this dispute within the Supreme Court, but it became a bit personal before it was over. Eldredge, and through him the court, had distinguished counsel in the persons of Owen J. Roberts, recently retired justice of the Supreme Court of the United States, and George Wharton Pepper, dean of the Pennsylvania Bar, and (when Roberts became ill) Robert T. McCracken, another leader of the profession. Eldredge's chapter is a forthright narrative of the rather bizarre circumstances of this "case for the books."[11]

In another case here reported ("The Case of Many Facets") Eldredge was pitted against Senator Pepper. In an interesting by-play, Eldredge appears to get the better of the master, who had accused Eldredge of doing "an unpardonable thing"[12] in writing a letter to a justice of the

7. *Id.* at 99.
8. G. W. PEPPER, PHILADELPHIA LAWYER (1944).
9. *Id.* at 5.
10. 1 Pa. D. & C.2d 535 (1955), *aff'd*, 382 Pa. 167 (1955).
11. L. ELDREDGE, TRIALS OF A PHILADELPHIA LAWYER 119 (1968).
12. *Id.* at 152.

Supreme Court instead of filing a formal answer to a petition by Pepper. Eldredge was able to point to a precedent set by Pepper himself in the same case two years earlier, which Pepper had apparently forgotten. An apology promptly followed, as would be expected from this great man. One may remain dubious, nevertheless, of the propriety of writing letters to any court when a formal answer or other pleading is available.

Beyond exhibiting justifiable pride and disarming humility as he recounts these courtroom battles, mentioning mistakes and misfortunes as well as triumphs, Eldredge's book is instructive to the would-be trial lawyer. The life of a good trial lawyer is a hard life. The keystone to success is preparation, as Mr. Eldredge emphasizes in the first case he details, and this means work—largely nondelegable work. And even much work cannot prevent an expert witness from changing his opinion in the middle of a case ("A Case of Medical Malpractice") or another witness from committing perjury ("Nothing But the Truth"). There are many good admonitions to the young man who would try cases—and in this writer's opinion that should be everybody, at least for a while. If not original, these are at least well said. Witness the following examples, among many others:

> Far more cases are lost than won by cross-examination.[13]
>
> No American trial lawyer who is worth his salt would think of calling an important witness to the stand . . . without first reviewing with him . . . just what his testimony will be.[14]
>
> Emphasize to your witnesses that they must tell the truth . . . .[15]
>
> . . . evidence should not be pleaded. However, in an equity case, I have found it helpful to plead the facts in considerable detail, and even to plead evidence.[16]
>
> The truth cannot be determined and Justice done . . . unless the people who know the truth come forward. . . .[17]

There are, of course, points in the book with which one can properly take issue, and some questions which are not answered. One finishes the book, however, with great respect for the resourcefulness, the

13. *Id.* at 68.
14. *Id.* at 76.
15. *Id.* at 81.
16. *Id.* at 132.
17. *Id.* at 155.

energy, the tenacity and the integrity of this veteran of the Pennsylvania bar, and looks forward with anticipation to his promised next volume.

*T. W. Pomeroy, Jr.**

MELVILLE WESTON FULLER, CHIEF JUSTICE OF THE UNITED STATES 1888-1910. By *Willard L. King*.† Chicago: University of Chicago Press, 1967. Pp. xvi, 337. $2.95.

This book[1] represents a painstaking effort by the author to eliminate a previous dearth of information concerning the life of Melville Weston Fuller, who presided as Chief Justice of the United States from October 8, 1888, until his death on July 4, 1910. His tenure was, with the exception of Marshall and Taney, longer than that of any other Chief Justice in our history.[2]

Chief Justice Fuller's main contributions to the historical development of our nation's highest tribunal were in the fields of administration of our Federal Court System and his quiet promotion of collegiality among the individual members of the Supreme Court. It was mainly through his efforts that the Circuit Courts of Appeals came into existence in 1891, thus relieving an intolerable backlog on the Supreme Court docket. He was also considered by the Court as its expert in federal practice and procedure. Interspersed throughout the chapters relating to his life as Chief Justice, are notes between Fuller and Associate Justices concerning his successful efforts to keep opposing views on the court from becoming acrimonious. His gregariousness and personal modesty aided him greatly in dealing with the intellectual pillars of the Court during his tenure, *viz.*, Justices Miller, Field, Gray, Bradley, White and Holmes.

Fuller throughout his life always cultivated those who disagreed with

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† Member of the Chicago Bar.

1. W. KING, MELVILLE WESTON FULLER, CHIEF JUSTICE OF THE UNITED STATES 1888-1910, was originally published in 1950 and reprinted as a volume in Philip B. Kurland's series, THE COURT AND THE CONSTITUTION, in 1967.

2. John Marshall presided as Chief Justice of the Supreme Court for a period of thirty-four years, 1801-1835, while his successor, Roger Taney, presided as Chief Justice for twenty-eight years, 1836-1864.

him. Perhaps, as the author suggests, this was due to the fact that his parents were divorced in 1833, the year he was born. Children of divorced parents usually learn at an early age to be tactful and diplomatic in their dealings with relatives so as not to alienate their necessary affections.

The Chief Justice was born and reared in Augusta, Maine, was graduated from Bowdoin College in 1853, spent one year at Harvard Law School and entered the Maine Bar in 1855. He was an avowed Democrat, being an associate editor of *The Age*, an Augusta newspaper. After a broken engagement in 1856, he moved to Chicago where he married and raised a large family, while practicing law until his appointment as Chief Justice in 1888. He was a delegate to the Democratic National Convention in 1864, 1872, 1876, and 1880.

Twice Fuller held elective office and twice he met with dismal failure. He was a member of the Illinois Constitutional Convention in 1861, which had its proposed constitution rejected by the people at the polls the following year. One of the main reasons for its demise was that the legislative district reapportionment was felt to be unfair. Fuller played a major role in apportioning these districts at the convention.

He was then elected to the lower house of the Illinois State Legislature for the term 1863-1965. President Lincoln issued the Emancipation Proclamation on January 1, 1863. Fuller abhorred slavery, but was adamant in his belief that the people of each state should choose whether or not to permit it. He was no abolitionist. He supported the Civil War to preserve the Union, but he now believed that it was being fought to secure the federal government's abolition of slavery. Fuller was a leader in passing through the legislature a resolution demanding an immediate armistice. The legislature was prorogued by the governor, thus adjourning them from further deliberations. The result shattered the Democratic Party in the mid-West for a generation.

Melville Fuller returned to private law practice and enjoyed a prominent position in the Illinois Bar for his superior presentations, particularly before the Appellate bench. This coupled with a close friendship with President Cleveland accounts for Cleveland's appointment of Fuller, an unknown figure on the national scene and a man with no prior judicial experience, as Chief Justice.

The keys to Fuller's political philosophy prior to his appointment, were sound money, free trade, states rights, no paternalism, govern-

mental economy and the preservation of the civil rights of the individual. These coincided with the views of Grover Cleveland. This philosophy, plus a strict interpretation of the Constitution, served as the cornerstone of the Chief Justice's opinions.

The author detailed Fuller's significant role in some of the important decisions of his time, such as the Insular cases,[3] Fuller's extension of Marshall's "original package" doctrine,[4] his courageous decisions in declaring unconstitutional the income tax law of the Cleveland adminstration,[5] and his membership on the International Arbitration Committee which settled the Venezuelian boundary dispute.

My chief criticism of the book is the author's disappointing failure to discuss one of the most important cases in the history of the Supreme Court, *viz.*, the "separate but equal" doctrine of *Plessy v. Ferguson.*[6] The majority opinion was written by Justice Brown, with a vigorous dissent by Justice Harlan. Justice Brewer did not take part in the decision. Fuller's personal reasons for deciding with the majority are not divulged to us. This volume was originally published in 1950,[7] a period when public attention was beginning to focus on the area of discrimination which culminated in the monumental decision of *Brown v. Board of Education,*[8] overruling *Plessy v. Ferguson.* Perhaps, Fuller did not preserve his notes in this case as he had in so many others and, if that is the case, it is regrettable.

For those whose interest is aroused with the prospect of not only learning the details of a man's life which mold his character and intellect as a member of the Supreme Court, but also the interplay of ideas and emotions of the individual Justices, I heartily recommend this book for their investigation.

*Hon. Richard P. Conaboy**

3. DeLima v. Bidwell, 182 U.S. 1 (1901); Downes v. Bidwell, 182 U.S. 244 (1901); Hawaii v. Mankihi, 190 U.S. 197 (1903); Dorr v. United States, 195 U.S. 138 (1904); Rassmussen v. United States, 197 U.S. 516 (1905). The last in the series of Insular cases, Dowdell v. United States, 221 U.S. 325 (1911), was decided by the Court subsequent to Fuller's death in 1910.

4. Marshall enunciated his "original package" doctrine in Brown v. Maryland, 12 Wheat. 419 (1827).

5. Pollock v. Farmers' Loan and Trust Company, 157 U.S. 429 (1895); Pollock v. Farmers' Loan and Trust Company, 158 U.S. 601 (1895).

6. 163 U.S. 537 (1896).

7. *See* note 1 *supra.*

8. 347 U.S. 483 (1954).

* Judge, 45th Judicial District of Pennsylvania.

ROOSEVELT & FRANKFURTER: THEIR CORRESPONDENCE, 1928-1945. Annotated by *Max Freedman*.† Boston: Atlantic—Little, Brown, 1968. Pp. xiv, 752. $17.50.

As the title suggests, this book collects the correspondence of Franklin Delano Roosevelt, thirty-second President of the United States, and Felix Frankfurter, Supreme Court Associate Justice, patron saint of the Harvard Law School, and intimate Roosevelt friend, confidant and advisor. The correspondence is edited and annotated by Washington Columnist Max Freedman.

The correspondence spans the last two decades of Roosevelt's life, with the first letter one of congratulations by Frankfurter on Roosevelt's nomination as candidate for Governor of New York. It is presented largely chronologically, with an occasional exception, as in the chapter devoted to the Court-packing fight, where a significant volume of correspondence on a subject of importance is treated as a unit. The correspondence is largely, in fact almost exclusively that of Frankfurter to Roosevelt, there being only several score of letters originating with Roosevelt which can be viewed as substantive.

The correspondence is of interest at a number of levels. Most importantly, perhaps, it establishes beyond question the very close relationship between the two principals. It also demonstrates Frankfurter's intimate involvement in many of the programs which lie at the heart of that outpouring of social legislation which has been memorialized as the "New Deal," and Frankfurter's role, spanning many decades, as conduit of personnel to fill the ranks of the Federal Executive. In light of the recent Fortas affair, the correspondence even can be said to be topical in revealing the nature and scope of Frankfurter's contacts with Roosevelt and the Executive after Frankfurter's appointment to the Court. Frankfurter engaged in many of the class of activities which served as the basic ammunition for the assault on Mr. Justice Fortas' relationship to President Johnson; while wearing the judicial robes he rendered advice on tax policy,[1] on the Lend-Lease legislation[2] and on Cabinet appointments,[3] he made recommendations to Roosevelt on his

† Washington Columnist.

1. M. FREEDMAN, ROOSEVELT AND FRANKFURTER: THEIR CORRESPONDENCE, 1928-1945, 500 (1968).
2. *Id.* at 582.
3. *Id.* at 524, 529.
4. *Id.* at 531.

decision to seek a third term,[4] and he volunteered material for a Roosevelt address to Congress.[5] Frankfurter's last published letter includes a recommendation that Dean Acheson be appointed Solicitor General.[6]

Considering the source of the correspondence, however, and its magnitude (the book extends to 752 pages and we are told in the introduction that the omitted correspondence would represent a volume of equal size[7]) the correspondence does not furnish the reader what he would most hope and expect of it—proportionately fresh and illuminating insight into the Roosevelt years. Nor, for the lawyer, is there significant insight into Frankfurter's legal philosophy. This is not to suggest that there is not correspondence of first-rank interest and importance, for there is. The correspondence on the Court-packing fight, for example, includes a letter to Frankfurter in which Roosevelt personally documents the considerations which led to this controversial proposal.[8] There is a fascinating letter written to Frankfurter by Tom Corcoran and Ben Cohen early in the second year of Roosevelt's first term, and shortly before Frankfurter's return from a sabbatical in England, trenchantly revealing the conflict among and aspirations of Roosevelt's closest advisors.[9] Other correspondence, of more interest to the lawyer perhaps than the historian, shows just how close Learned Hand was to appointment to the Court and that it was for reasons of age alone that he was passed over.[10]

But when viewed in relation to the correspondence as a whole, documents of interest and significance are relatively sparse. In contrast, there are literally hundreds of personal, non-substantive letters of salutation, congratulation, invitation and thanks, the sole significance of which being their author and recipient. That the correspondence took such a course is not surprising in spite of the close relationship between the principals, or perhaps because of it. But one wonders on completing the volume whether there is in the correspondence as a whole sufficient substance to justify its publication in a volume devoted exclusively to the Roosevelt-Frankfurter letters.

One also wonders whether Mr. Freedman has done the Justice a service in so publishing the letters. Frankfurter's letters to Roosevelt

5. *Id.* at 573.
6. *Id.* at 742.
7. *Id.* at 27.
8. *Id.* at 381.
9. *Id.* at 223.
10. *Id.* at 671-74.

are riddled with expressions of admiration which almost can be characterized as fawning. Thus a June 20, 1935 letter, selected at random, opens:

> Dear Frank:
>
> These have been exhilarating and awing days for me. Exhilarating—for no one can be in your company without being exhilarated. Awing—for, after all, you are not merely yourself, but the symbol of the majesty of the most powerful nation. And it is indeed awing to have the head of our people so human, so simple, so unspoilably democratic, so gay, so purposeful.[11]

Expressions such as this appear in such abundance that Mr. Freedman feels called upon, on the one occasion in the correspondence where an expression by Frankfurter suggests something less than unqualified approval of Roosevelt, to emphasize it as an example of Frankfurter's independence of character.[12] These expressions of unqualified and undiscriminating approval and flattery are hardly symptomatic of Frankfurter the man, nor, when viewed in full perspective, are they representative of his relationship to Roosevelt. But as presented here, in such profusion and without proper balance, they cannot help but tarnish both the character of their author and the treasured relationship which Freedman has sought to portray.

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11. *Id.* at 281.
12. *Id.* at 49.

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