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Book Reviews

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BOOK REVIEWS

THE OPPENHEIMER CASE: THE TRIAL OF A SECURITY SYSTEM. By Charles P. Curtis. New York: Simon and Schuster, 1955. Pp. xi, 281. $4.00.

This book contains a detailed discussion of the proceedings in 1953-54 whereby the Atomic Energy Commission decided to revoke the security clearance of its distinguished consultant Dr. J. Robert Oppenheimer. Dr. Oppenheimer has played an extremely important role in the atomic energy program since its start, and the Oppenheimer case has had correspondingly much attention in the press. Such attention is appropriate, for aside from questions of justice in this case and aside from the prominence of the individual involved, the faults and virtues of our security system are so enormously important to the nation that they deserve frequent and searching examination. Mr. Curtis would seem well qualified to make such an examination, for he is a lawyer, experienced in writing, thoughtful and cultured, and clearly much interested in the case.

The proceedings against Oppenheimer began in July, 1953, with Lewis Strauss' accession to the Chairmanship of the AEC, at which time the AEC "initiated steps to organize the removal of classified documents" from Oppenheimer's custody. The "steps" were slow until November, when William L. Borden, former secretary of the Joint Committee of Congress on Atomic Energy, wrote to J. Edgar Hoover that "more probably than not J. Robert Oppenheimer is an agent of the Soviet Union," and presented a list of his reasons for thinking so. Soon thereafter, Oppenheimer having declined an offered chance to resign without an investigation, his clearance was suspended, he was ordered to relinquish the classified documents in his custody, and he was formally charged with various improper actions and attitudes in a letter to him from General Nichols, the General Manager of the AEC. Oppenheimer answered the charges in a long autobiographical letter dated March 4, 1954. By the following month a personnel security board had been formed to investigate the case and had begun preliminary meetings that were soon followed by the hearing itself. In describing the Board, Curtis speaks very highly of its three members: Gordon Gray, President of the University of North Carolina, former attorney, legislator, publisher, Army Officer, and Secretary of the Army; Thomas A. Morgan, director of several corporations and retired President of the Sperry Corporation; Ward V. Evans, Professor of Chemistry at Loyola University in Chicago, and retired Head of the Chemistry Department at Northwestern.

The charges investigated by the Gray Board were of six main types:

(1) that Oppenheimer had, since before the war, associated with many Communists and fellow-travelers and had hired several of them while he was Director of the Los Alamos laboratory; (2) that he had belonged to, or financially supported various Communist-front organizations and the Communist Party itself; (3) that he had lied to security officers during the war about a Communist attempt to obtain secret information through his friend Haakon Chevalier; (4) that he had been unduly susceptible to the influence of the well-known physicist E. U. Condon, particularly in being persuaded in 1949 to retract publicly some adverse testimony about one Bernard Peters that he had recently given before the House Committee on Un-American Activities; (5) that he had generally been uncooperative with respect to security; (6) that he had excessively and improperly used his great influence in opposing post-war work on the hydrogen bomb, having in particular concealed an opinion in favor of developing the bomb expressed by G. T. Seaborg, a member of an advisory committee of which Oppenheimer was Chairman.

In reply to these charges, Dr. Oppenheimer stated that he had never belonged to the Communist Party, though he admitted having been a fellow-traveler between 1936 and 1941 or 1942 and having made rather large financial contributions during this period to Communist-supported causes. He claimed that his naive sympathy for Communism was completely gone by the end of 1942, a claim supported by the fact that in 1943 he was unwilling to have Communists at Los Alamos, and by the fact that in 1946 he refused to be associated with the Independent Citizens' Committee of the Arts, Sciences, and Professions. On the other hand, he never seemed to mind having at Los Alamos presumed former Communists (Bohm, Hawkins, Lomanitz, Weinberg, et al.) whom he thought to have mended their ways; there was also evidence that in 1946 he attended a meeting at which Communists were present and helped the Communist Paul Pinsky analyze some material to be taken up with the California Legislative Convention. His association with some former Communists or fellow-travelers continued into 1954.

The third matter, the so-called Chevalier affair, is considered by Curtis to have been the most derogatory of all the facts cited against Oppenheimer. There was little disagreement about what had happened. Early in 1943, one George Charles Eltenton asked Oppenheimer's friend Haakon Chevalier to seek from Oppenheimer certain secret information about the work at the Berkeley Radiation Laboratory. Chevalier reported the request to Oppenheimer, who in strong language refused to collaborate. Chevalier expressed agreement with him, and later relayed the refusal to Eltenton. Some months later Oppenheimer, feeling that Eltenton was dangerous, told security officers that Eltenton had sought information from several of the

Berkeley scientists, all of whom had refused. He repeatedly declined to name any of the men involved except Eltenton. It was not until December, 1943, that Oppenheimer, under heavy pressure, revealed Chevalier's name and admitted that he knew of only the one illicit request for information. Before the Gray Board, Oppenheimer admitted that he had lied in 1943, saying that it had been very wrong to do so, that he had been "an idiot," that he had not realized how such false information would impede the security officers, that he had wished only to protect his friend Chevalier.

Oppenheimer denied ever having been unduly influenced by Condon. Such influence was alleged in connection with Oppenheimer's requests in 1943 for draft deferment for Lomanitz and his testimony as to Condon's loyalty in 1953, as well as his partial retraction in 1949 of his earlier testimony about Peters. It seems that in an Executive Session of the Un-American Activities Committee, Oppenheimer, believing his testimony to be confidential, stated that Peters had denounced the U.S. Communist Party as a "do-nothing" party and that it was "well known" that Peters had formerly belonged to the German Communist Party. After publication of this testimony, he stated in a letter to a Rochester newspaper that Peters was ethical, honorable, and presumably loyal, and that he believed Peters' claim of never having belonged to the German Communist Party; he expressed the hope that his testimony had not damaged Peters' "distinguished future career as a scientist." In the hearing, he attributed his having written this letter to the fact that Bethe and Weisskopf had urged him to right the wrong his testimony had done. He said that Condon's remarks on the subject had only made him angry.

Oppenheimer was said to be uncooperative in security matters because of the Chevalier incident, because he requested the deferment of Lomanitz whom the security men thought disloyal and wished to have drafted, because in two rather minor matters he refused to answer questions put to him by the FBI, and because he continued to associate with Bohm, Lomanitz and Chevalier.

With respect to the H-bomb, Oppenheimer testified that in October, 1949, he had opposed a "crash program" to develop it, partly on moral grounds, partly because he was not reasonably sure it would work, and partly because he felt that conventional fission bombs were as powerful as it was practical for bombs to be and would better repay the expenditure of effort. After President Truman had decided to develop the bomb, Oppenheimer said he had ceased his opposition to it. As for Seaborg's suppressed opinion, Oppenheimer had received this in a letter from Sweden and had, he said, filed the letter and forgotten it.

Numerous distinguished men, among them Bush, Conant, Groves, Kennan, Von Neumann, Lilienthal, Dean, Pike, McCloy, Rabi, and

Karl Compton, testified unequivocally to Oppenheimer's loyalty, ability, discretion and character. Curtis quotes only two character witnesses whose testimony cast doubt on Oppenheimer's qualifications (though he hints that there were others): David Griggs, who was unsure of Oppenheimer's loyalty, and Edward Teller, who "assumed" that he was loyal, but suggested that he was confused.

The Board voted two to one to deny security clearance to Dr. Oppenheimer. All three members agreed that he was loyal, and remarkably discreet in handling classified information. Gray and Morgan, in voting not to clear him, gave four reasons: (1) that his "continuing conduct and associations" had "reflected a serious disregard for the requirements of the security system"; (2) that he was too susceptible to influence; (3) that his attitudes during the H-bomb controversy would, if continued, not be "clearly consistent with the best interests of security"; (4) that he had been "less than candid in several instances" during the inquiry.

In dissenting from the Board's recommendation, Evans indicated that he agreed with the majority report with respect to most of the facts, but remarked that these same facts had been available when Oppenheimer had been cleared in 1947 and that if Oppenheimer had changed at all he was more mature and trustworthy in 1954 than he had been seven years earlier. He felt that failure to clear Oppenheimer would be "a black mark on the escutcheon of our country," and expressed concern over the adverse effect of such a decision on the future development of nuclear physics in the United States.

After receiving the Board's recommendations along with those of General Nichols, the Atomic Energy Commission acted promptly, as Oppenheimer wished it to, so that its decision might be rendered before the expiration of Oppenheimer's contract. The decision was negative, by a vote of four to one. The majority, Commissioners Strauss, Campbell, Murray, and Zuckert, in their joint opinion, complained of "fundamental defects in his character," as revealed in six incidents: (1) the Chevalier incident—some doubt is expressed as to which is the true version; (2) the request for Lomanitz' deferment at a time when Oppenheimer allegedly knew that Lomanitz was a Communist who had revealed secret information; (3) Oppenheimer's having, as they said, made conflicting statements about whether he knew a certain Communist, Rudy Lambert; (4) the Peters letter; (5) the Seaborg letter; (6) alleged conflicting statements about the Communist Party membership of Joseph Weinberg. Of these six charges, those relating to Lomanitz, Lambert, and Weinberg had never previously been made known to Oppenheimer. The four Commissioners also indicated that there had been other damning incidents that they chose not to mention. Campbell, Murray and Zuckert also appended the separate statements

justifying their decision. The most interesting of these is Murray's, for he terms Oppenheimer "disloyal," even though probably not pro-Communist nor guilty of revealing secrets. He does so because he defines "loyalty" to mean obedience to law under a lawful government, a matter in which he sets extremely high standards for a man in an important and sensitive position like Oppenheimer's.

Commissioner Smyth dissented from the opinions of the other four, pointing out that according to the AEC's own criteria "the decision as to security clearance is an overall, common-sense judgment, made after consideration of all the relevant information as to whether or not there is risk that the granting of security clearance would endanger the common defense or security." He maintained that the decision must depend on a balancing of the individual's probable future contributions to the nation if he is cleared against the risk to the nation likely to result from his clearance; he asserted that the only important risk to consider is that arising from revelation of classified information, to which danger all the various security criteria concerning associations, etc., are ultimately addressed. He concluded from these arguments that Oppenheimer was eminently fit to be cleared, never having improperly revealed classified information, nor even having violated subsidiary rules except perhaps in the six instances (he claimed there were no others) cited by the majority, and having rendered distinguished service to the nation.

Mr. Curtis makes many convincing arguments against the beliefs, attitudes, and procedures of the Gray Board and of the Atomic Energy Commission. He criticizes the procedure followed by the Board as being an illegitimate mixture of the two legitimate methods of *trial* and *inquiry,* a mixture which usually impedes justice; in particular, he objects to the role of prosecuting attorney played by Robb, the counsel for Board, whereby the inquiry was given the aspect of a trial without the procedural safeguards of a trial. He objects also to the Commission's having based its decision partly on three charges which Oppenheimer's counsel Garrison was never allowed to argue. Even more strongly, he decries the criteria employed by the Board and perhaps also by the Commission in making the decision not to clear Oppenheimer; he maintains that the applicable criteria were those specifically laid down for such boards by an earlier Commission and never rescinded, that the judgment should have been "an overall, common-sense judgment," that a determination should have been reached "which balances the cost to the program of not having [Oppenheimer's] services against any possible risks involved." Curtis thinks it obvious that Robb and Gray were not being guided by such criteria and suggests that they were influenced by Executive Order 10450, according to which a man's clearance should depend on whether such action is "clearly consistent with the interests of the national

security." He says that their adverse decision was based on a mere doubt rather than an "overall common-sense judgment."

He objects to the criticism of Oppenheimer implicit in the opinions of Gray and Morgan and of some of the Commissioners, that he had not been enthusiastic enough in supporting either the security system or the H-bomb program. Apparently, these men felt that Oppenheimer quite properly gave the best advice he could in 1949—although they disapproved of the admixture of moral and political with technical arguments in his opinions—but they thought that after the President's decision in 1950 to make the bomb Oppenheimer's continued lack of enthusiasm had improperly hindered the project. Curtis argues that it is inconsistent to censure Oppenheimer both for expressing too much moral "emotion" with respect to the H-bomb in 1949 and for showing too little of the emotion of enthusiasm in 1950. He maintains that just as Oppenheimer's stated technical opinions were supposed to be his own, so should his expressed feelings have been his own, neither suppressed nor distorted into orthodoxy; he denies the Government's right to command the enthusiasm of its servants. He suggests also that the Gray Board was inconsistent in deeming Oppenheimer too influential in the H-bomb controversy and yet too susceptible to influence in the matters of Lomanitz' deferment, the letter about Peters, and Condon's clearance.

Curtis remarks that even if proven such failings as these do not make a man a security risk, pointing out that the AEC could have simply dispensed with Oppenheimer's services without attaching a derogatory label to him; he rejects Commissioner Zuckert's argument that the security issue had to be settled so governmental agencies other than the AEC would be prevented from consulting Oppenheimer on secret matters. He decries such harsh treatment of one who seems to deserve it so little.

As for those allegations that Curtis seems to think relevant to security, he marshals many arguments to the effect that they are either unproven or unimportant: Oppenheimer's continuing friendship with Chevalier was innocent because the latter had quit fellow-traveling, and his post-war association with Bohm and Lomanitz was too slight and casual to merit censure; the investigation did not establish that Oppenheimer had made conflicting statements about Weinberg and Lambert during the war; Oppenheimer had not been "less than candid" during the inquiry but perhaps even too candid; he had really forgotten the Seaborg letter and had written the Peters letter because he was too honest to do otherwise; he had long since lost his sympathy for Communism.

In short, as the title of the book suggests, Mr. Curtis feels that the Oppenheimer case casts more doubt on the security system itself than

on Oppenheimer's trustworthiness. The book is indeed a trial of a security system, or rather it is a mixture of an inquiry with one side of a trial, in which the system is defendant (without counsel) and Mr. Curtis is prosecuting attorney. The facts of the case seem to be presented fully and accurately, mainly in long quotations from documents and from the transcript of the proceedings, but the arguments are so one-sided and so laden with innuendo that it is very difficult for the reader to make a balanced appraisal. The author's confession of prejudice made early in the book does not entirely excuse such a pervasive bias, which gives to a very complex problem a deceptive appearance of simplicity. It is unfortunate that the book so discredits itself, for it does contain an admirable compilation of facts and many compelling arguments. Indeed, the faults of the secruity system do seem to be very grievous, and it does seem clear that the AEC was both unwise and unfair in its treatment of Oppenheimer. These problems are of such crucial import to the nation that we would have deserved to have them treated in a book less homogeneously colored.

INGRAM BLOCH*

TRIAL TACTICS AND METHODS. By Robert E. Keeton. New York: Prentice Hall, Inc., 1954. Pp. xxiv, 438. $6.65.

Until recently, law teachers and lawyers alike often looked upon the successful trial lawyer as a rare genius who acquired his qualities by heavenly endowment, as it is supposed do such great artists as Beethoven or Rembrandt. It was thought that good trial lawyers came on earth already inspired, with the combined talents of William Jennings Bryan and Edwin Booth. Every community has one or more well-recognized, well-advertised, well-equipped and successful trial lawyers.

Because of this general feeling, lawyers and teachers until recently have disregarded the study of the art of trial technique. It had been thought that no study of the subject would tend to improve without the presence of this divine spark. Recently a number of studies on the subject have been made, and several text-books and general treatises have been written. The authors of these works have not assumed that they will make a scintillating personality of a dullard, but they do assume that the average well-trained lawyer may improve his courtroom technique.

Law schools have become aware of this vacuum in their course of training. The better schools are now offering, usually on an elective basis, a course on trial technique. I have examined several of the works of recent date on the subject, and here at Vanderbilt I have

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taught the book which is the subject of this review. Mr. Keeton has stripped this subject of some of its mystery. All of us who have practiced law for more than a quarter of a century have admired those who have seemed, by second nature, to be able to unfold to a court and jury the contention of their clients, in an orderly and sometimes dramatic manner. Such a lawyer seems to recognize what he should *know;* what he should *do;* and *how* he should do it.

Lawyers have been inclined to feel, as the public does, when they see "Mr. District Attorney" and read of Earl Rogers, the great California "mouthpiece," that these courtroom giants, and even the local giants they see in the courtroom, are leaping from one inspiration to another. Actually every successful trial lawyer came endowed with some unique qualifications, but many so endowed have failed to accomplish success in courtrooms; for these successful trial lawyers have worked out a plan in their own mind, which they have gradually adopted over a period of years, without ever formulating these principles. Each of them follows nearly the same course.

Mr. Keeton in his book, in a very orderly fashion, deals with this subject, as the successful trial lawyers have done without recognizing that they are following certain general rules. Each may have a different manner. One successful trial lawyer may use a "bludgeon" and another a "rapier," and each be equally successful, but they all follow certain general accepted principles. Mr. Keeton points out that they learn to limit cross-examination to the subject matter; they learn that calling cumulative witnesses is a dangerous practice; they learn the best order of witnesses; they learn not to ask too many questions; they have learned how to prepare a case and how to put their own witnesses at ease in the strange atmosphere of a courtroom. They have even sent young women home to change from slacks to dresses before taking the witness stand. It is assumed that they already know the rules of evidence and the law of their case.

I do not know that these books would be of much help to a great trial lawyer, but I do know that they would confirm the many strategies that the good trial lawyer has long adopted but never catalogued. The young and inexperienced lawyer may not know that you should cross-examine your own client in the privacy of your own office before you turn him over to your adversary. Many of these things may seem simple to an experienced trial lawyer, but I have found in teaching this course that that which we think is simple is new and novel to the law student.

Mr. Keeton disregards the dramatic stories that we all know, and treats subjects which a trial lawyer is confronted with daily, by employing short cases in synopsis form and then discussing the subject. For instance, he poses the question "Should you purposefully offer

evidence of doubtful admissibility," and then illustrates the problem and discusses it. He relates how you can emphasize important parts of lengthy documents; how you should introduce secondary evidence. He deals with the subject of how you should react to adverse testimony. We have seen lawyers who usually disdainfully smirk at every adverse piece of evidence. He deals at some length as to the best method of portraying evidence, by diagrams, drawings, computations and photographs.

Obviously such a treatise is interwoven with the subject of evidence and pleading. Mr. Keeton well guides the inexperienced and uninitiated through this maze, which to them would appear to be a difficult journey, when in fact to the experienced it may be a simple, straight road. I recommend Mr. Keeton, not only to the law student, but to the practicing attorney alike.

J. RAYMOND DENNEY*

MILITARY LAW UNDER THE UNIFORM CODE OF MILITARY JUSTICE. By William B. Aycock and Seymour W. Wurfel. Chapel Hill: University of North Carolina Press, 1955. Pp. xviii, 430.

The recent spate of courts-martial in public entertainment media may well draw the attention of many to the means of punishing the occasional wayward son in the service. But publicity, per se, does not insure enlightenment. Just as the popular motion picture *Trial* does not purport to reflect the day-to-day business of most lawyers or judges, *The Caine Mutiny Court-Martial* does not give a true picture of the frequently prosaic though none-the-less important business of the military lawyer. Military law is a subject on which enlightenment is needed in many quarters and Aycock and Wurfel's book, unlike several on the subject which have appeared recently, is thorough and authoritative. They have mustered to their service a balanced breadth of experience, study and understanding. It is unfortunate that the book will perforce have only a limited audience.

General Caffey, Judge Advocate General of the Army, in his introductory note to the book, draws an analogy between the Uniform Code of Military Justice, which became effective in May, 1951, and a child "who, during its earlier life, is frequently the cause of so much worry, care, and annoyance that its parents sometimes wonder whether it is an asset or a liability." The authors have directed their main effort to reporting the work of the Court of Military Appeals in interpreting and applying the Code during this early experience. For that purpose the coverage necessarily is limited to areas thus far considered by the Court, but possible problem areas in fields not yet so considered are

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also delineated. In the past the main standby of the military lawyer seeking a standard text on military justice and law has been Colonel Winthrop's *Military Law and Precedents*, which has been unrevised for over sixty years. Aycock and Wurfel's book should fill a long-felt need. The possible objection that the period covered is relatively brief is completely outweighed by the timeliness of appearance.

Much of the material has appeared previously in law reviews. This has been added to and spliced into a well-rounded work. In addition to the coverage of the work of the Court of Military Appeals, and a detailed annotation of the Uniform Code itself, there is an excellent brief history of military law and a comprehensive chapter on habeas corpus as applied particularly to military prisoners. The materials, particularly the extensive citations, were designed for use by the military lawyer or the civilian lawyer with a military justice case. Although a lawyer who has not had contact with the services may find some terminology of citations in parts of the book to be unfamiliar, the text itself is thoroughly readable. Particularly well written is the chapter entitled "Prejudicial Error vs. 'Military Due Process,'" in which the authors gently chide the Court of Military Appeals for having leaped to glue a label, "military due process," on "the process of finding and declaring reversible error" and then finding itself stuck with it like a feather on molasses.

It is to be hoped that this book will set a trend for more scholarly writing in this field.

JAMES B. EARLE*

WHY JOHNNY CAN'T READ. By Rudolf Flesch. New York: Harper & Brothers, 1955. Pp. ix, 222.

PLAIN WORDS: THEIR ABC. By Sir Ernest Gowers. New York: Alfred A. Knopf, 1955. Pp. viii, 298.

EFFECTIVE LEGAL WRITING. By Frank E. Cooper. Indianapolis, The Bobbs-Merrill Company, Inc., 1953. Pp. x, 313.

Why Johnny Can't Read evokes almost as much debate as the Cold War! The book calls to mind the trend in education that began some decades ago by tossing out Latin as of slight value to anyone except pharmacists and clerics, and that then proceeded to do away with several English verbal skills, including spelling and grammar as, presumably, effete for young people preparing to enter a know-how society. Meanwhile the public became restless. Perhaps even yet educators are not convinced with Henry Adams, who warned us in the nineteenth century, that the basis of study ought to be mathematics

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and languages; but at least they are questioning the dogma of some teacher-training centers and a few business administration schools that pupils must be required at any cost to adjust to the group, handicapped by an inability to communicate with one another except by a shoeshine and a smile.

Lawyers, realizing that their only tools are words, have long sought to require of candidates for the Bar a facility in reading and writing, including a competence in drafting documents, making speeches, and doing legal research. *The American Bar Association Journal* recently published an article by Professor Harold Q. Pickering entitled "On Learning to Write."[1] And Dr. George John Miller gave a vivid address on legal style at the 1955 meeting of the American Bar Association.[2] One might disagree with Pickering's adulation of Gibbon's prose, or with Miller's penchant for English rather than American authorities; but these contributions support the definition of the law as a learned profession and focus attention on a continuing need.

In fact, articles and speeches may be more significant than the books that occasionally appear. Few people care to read several hundred pages on style at a sitting, and a reference work sharpens rather than creates taste and skill. Yet, Sir Ernest Gowers' book is an aid. He attacks government agencies: not their policies, but their phraseology. He accords legal writing more credit than it perhaps deserves, surely less than Cardozo gave it;[3] and he offers helpful essays on punctuation, word usage, and choice of words in a manner that is never condescending to adult readers.

Representative law schools along with the lawyers now agree that a student must project learning, not merely absorb it. To most responsible teachers, the mission of a law school is to train people to think and to express their thoughts in words. Indeed, the point is an old one. The famous lawyers of the past, if we are to judge by eulogies and obituary notices, were nurtured on Shakespeare and the Bible, and one wonders if Blackstone did not set the pace because of his eighteenth-century prose rather than the profundity of his thought. The difference today is that the law schools are re-emphasizing the verbal skills through what are hoped to be better devices based on a traditional liberal arts background.

Most schools, for example, are now concerned with giving all students the benefits long reserved for the few selected for the law reviews and moot courts. Some law schools offer the type of course presented by Professor Cooper in his textbook. Its purpose is "to develop skill in the rhetorical techniques of effective presentation."

1. 41 A.B.A.J. 1121 (1955).

2. The address was based on his article, *On Legal Style*, 43 KY. L.J. 235 (1955).

3. CARDOZO, LAW AND LITERATURE (1931).

(p. iii). He encourages separate classes in legal draftsmanship to buttress the regular subjects. His book, based on his course at Michigan, takes up the writing of opinions, letters, pleadings, briefs, contracts, bills, and statutes, and involves the solution of problems through the help of examples. As valuable as his work may be, the fact remains that few wills are exactly alike; and certainly no practitioner wishes to copy one contract from another. A clear legal document is built up from facts, not deduced from a model.

Perhaps even better than a separate course in writing is the requirement by some teachers that students draft documents to match the theory of a particular course. This technique also permits the instructor to teach grammar and rhetoric without causing the students to feel that they are taking remedial work. Oddly enough, teachers most interested in the theoretical component of the law are among the leaders insisting that the students express their knowledge not only by the usual examination but by papers and exercises that take them to the library, the court house, the lawyer's office, and the teeming world.[4]

Several schools offer pioneer work in the nature of semantics. One such course requires the student to translate a legal opinion into layman's language.[5] This can be a hard chore in technical subjects such as future interests, bills and notes, and taxation; but it rewards the student who realizes that he will soon have to explain law to clients. Such work also helps a student discover for himself that language has often mastered him, and that he really has said nothing by such words as contingent, vesting, delivery, and consideration. Fundamental with all the writers and innovators is the point that legal writing tends to be heavy. They prefer the Anglo-Saxon word to the Latin. They dislike the passive voice. They demand the thrust, not the parry. A tendency to make learning an exercise in pedantics has doubtless caused the Bar to miss fully achieving its public relations mission.

Of course, some difficulties remain. A number of students enter

4. For example, a property course in the Vanderbilt Law School called for some unsigned letters from students on the subject of supplementary assignments that included the preparation of a contract, an abstract of title, an opinion letter, a deed, a bill of sale, and a mortgage. Despite the usual complaint that these papers require much time, the students in part said they "liked the work"; that it is "practical"; that it "builds self-confidence"; that it gives them "a review of property courses"; that they get "to see the law as well as learn legal history." Professor Trautman, who teaches the course, adds that he considers his assignment in title search, for example, as necessary for the student to understand the policies of the recording acts and the consequent alternatives for reform; that he really teaches more rather than less theory.

5. This course offered by Professor Fred Rodell in the Yale Law School is entitled *Law and Public Opinion.* Bulletin of Yale University Law School for the academic year 1955-1956. (1955). It is described in part as, "A workshop to try to train a few lawyers to write (and speak) about law in language that a non-lawyer can understand . . ."

law schools with academic majors in marketing and, say, minors in archery and marriage-and-the-family. They achieved the distinction of graduating by fair performance on true-false tests and by a sort of hearty physical agility and friendliness that characterized them as leaders. These students, parenthetically, do not always show up too well in the legal courses in domestic relations or in a study of the commercial codes, albeit their skill in understanding the mores of society. Fortunately enough, patient teaching in a language-oriented law school brings out the latent verbal abilities of these students, and permits them to add a brain to their splendid physical assets. Once under way, all law students welcome as a change to the bulk of case and hornbook law a variety of creative exercises that permit them to imitate members of the bar.

Unfortunately, some of the leading practitioners who think back on earlier curricula that offered intellectual content devoid of social reality, do not fully realize the present shift in emphasis. These lawyers still enjoy the old quip, "They don't teach in the law schools what you need in the practice." Their complaint, of course, has not been unavailing. Leaving aside the question whether any school can do more than ready a student for the firing line, and admitting that these new courses cannot as yet suggest more than tentative solutions, no disinterested observer can deny that law students today are busy doing rather than memorizing. In fact, Deweyism with its emphasis on function and adaptation may win its greatest victory through the conservative forces that continue to insist on reading, writing, and arithmetic.

Finally, any single article, book, or course on writing may impress harried citizens as merely a pleasant frill. As a minimum, though, these writers and teachers all urge that pomposity and artificiality must go; that sincerity of thought and clarity of expression may cause many problems to fade away; and they tell us all this with a faith in the goals man seeks, and with a respect for wit that identifies them and compliments their readers as civilized human beings.

J. ALLEN SMITH*

THE MORAL DECISION: RIGHT AND WRONG IN THE LIGHT OF AMERICAN LAW. By Edmond Cahn. Bloomington, Ind.: Indiana University Press. Pp. ix, 315. $5.00.

Although it is fashionable in many quarters, particularly among the pure scientists of the legal phenomenon, to say that law and morals are two fundamentally different ways of controlling human behaviour,

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no reader of this book will any longer accept that distinction without affirming at the same time that the realms of law and morals overlap at important points. Indeed, the author of this book assumes that the connection between law and morals is so obvious that he feels no need to prove it. His chief concern is centered on a far more vexing problem, namely: granted that American courts of law must be guided by moral insights in the solution of cases which involve all the ramifications of man's life, whose moral insights should prevail? Hence, this book is not solely a study of the moral content of the decisions of American courts, but, taking these moral expressions of the judges as a starting point it is a fascinating essay in moral philosophy. And the importance of the book derives not from the author's giving us a "system" of ethics or even at all points an acceptable moral insight, but rather from his clear perception that the enterprise of law is deeply implicated in the moral capacity of human beings and is animated by the articulated, as well as mystically brooding, moral impulses of man.

I.

The courts are asked to decide momentous questions at each critical stage of a human being's life and at each of these stages grave moral questions arise. From the beginning, there is the question concerning the ground of a person's right to life. Any one who pushes the argument even one step behind the phrase "human dignity" is aware that the basis of human value is not self-evident to all nor is it easy to prove, especially from empirical evidence. Equally debatable are the rules governing the various aspects of man's conduct and relations. The courts must wrestle with the complications of sexual relationships and the ground rules for marriage and the family, trying to steer a clear course upon a sea that shifts disconcertingly and moves from depths not readily discernible. When a man moves beyond the family into the arena of business, even there the claims of morality reach out to him and become insinuated into the law whereby the law looks at his honesty and his intentions as well as the quality of his loyalty to his associates. The realm of property is not exempt from this scrutiny, for some of the fiercest debates in our time have raged over the morality of the institution of private property, a debate that is clearly reflected in the decisions of the courts and in the struggle to shift to government those tasks which another generation fought to keep in the hands of individuals. Nor has the law closed its eyes to behaviour which is best described as that of the "good Samaritan," even though in an earlier era of stricter legalism Ames could argue that the law does not require active benevolence between man and man. At the end, there are disability and death, around which there cluster a variety of moral questions, including such items as mercy killing

of the hopelessly incurable and the curious tendency of the dying man to invent ways of asserting his reluctance to satisfy the tax collector, or by expressing a final resentment at one who stood near to him in life, all this in an instrument whose morality and legality are simultaneously probed. This is the wide variety of human involvement with things and persons which creates cases in the courts and which compel the courts to absorb and employ moral insight. It is around this spectrum of cases that the major part of the book is organized.

II.

Behind the writing of this book is the author's concern over the breakdown of morality in modern civilization. Men no longer see a clear standard for the moral life and hence their sense of right and wrong has become dangerously weakened. For the lawyer and the courts this situation poses a difficult problem because the courts are forced to construe and apply moral standards to concrete cases. But the vital nerve of a living morality has been deadened in our day by the twin forces of (a) skepticism, which looks at morals as being at best simply local community mores and (b) contumely with which any system of ethics is regarded which claims to find its authority in nature and ultimate truth. Against these, the author replies, on the whole satisfactorily, arguing that even the most authoritarian morality has in time revealed its relative nature when faced with the contingencies of history; and as for morality as mere mores, the sense of right within man's conscience testifies to the inconclusiveness of mores in defining the moral obligation of man. The author would look for a solution of man's moral quest not in community mores nor in authoritative religions but rather in man's "moral constitution," which is more than just his faculty of reason for it includes "the emotions, the glands, the viscera to join the faculty of reason in the experiences of a moral evaluation." (p. 19).

III.

Since it is not the author's intention to outline a system of ethics for the lawyers' use, the reader will not find in this book any complete treatment of right and wrong. He will instead be stimulated to think for himself about the vexing moral questions which the above mentioned aspects of life thrust up to the law. Whenever the author does express his own philosophy, it usually conforms to the articulated insights of jurists with whom he shares a deep measure of affinity. In an otherwise brilliantly reasoned book the loosest logic and most imprecise argument are found in the author's treatment of the family and sex, for here he wrestles with the multiple factors of actual ex-

perience, Freudian analysis and the "moral constitution" of man, factors which seem too bewilderingly disruptive to stay within the boundaries of any clear notion of right. For example, he argues that "if we are to be guided by what I have called the 'morals of the last days', the family has no strong claim to survive." (p. 78). Then he incorrectly supports this view by reminding us that Jesus "repudiated his family." What Jesus did is what any good parent would encourage, namely, to be true to one's highest insights. But this does not call for the "repudiation" of the *institution* of the family. That the family arrangement does at times exhibit "strangeness and even absurdity" is not sufficient ground for dissolving it: strangeness and absurdity are not, as the author holds, "inherent" in the family and can be corrected. And his eloquent description of the family as a "unique emotional matrix" leads him to consider it the most suitable context for the child, for "where could there be a more favorable background for sympathetic instruction and effortless learning than a really harmonious family home"? (p. 85). Yet anyone who has dealt with the problem of achieving a really harmonious home would not advocate that "an enlightened moral classification—the kind we are seeking here—will not run along the traditional boundary line fixed by legal marriage, separating the permissible intercourse within the borders of wedlock from all outside, presumedly vile types of sexual connection." (p. 93). Undoubtedly, the author rightly focuses attention upon many abuses which a strict enforcement of authoritarian sex and family ethics can produce, but this hardly justifies a wholesale sardonic appraisal of marriage which one is more accustomed to find in Jonathan Swift.

Nevertheless, this is a literary achievement of the highest merit. It is written with the rarest kind of concreteness in a field where authors usually wallow in the wastelands of meaningless abstractions. At times the book is almost poetic in quality yet it never loses the sense of vividness and immediate relevance. This should guarantee a wide reading of this exciting book, and it would deserve such a reception for it has addressed itself in an uncommonly stimulating way to the common problems of every man and the law.

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