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Christopher A. Anzalone, *The Encyclopedia of Supreme Court Quotations*. Armonk, N.Y.: M.E. Sharpe, 2000. Pp. xiv, 395. $83.95.

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Full Disclosure: I edited *The Oxford Dictionary of American Legal Quotations*.[1] The book being reviewed, *Encyclopedia of Supreme Court Quotations* by Christopher A. Anzalone,[2] might be considered a work competing with my own volume, so readers should take what I have to say with a grain of salt.

"Legal quotation" is a somewhat oxymoronic concept when applied to case law. Judicial discourse is long-winded, and the need for precision or pseudo-precision is usually valued far more highly than literary qualities are by judicial writers. Looking at American sources, most quotable authors on law-related subjects have not been judges but rather academics (Karl Llewellyn, Fred Rodell, Alexander Bickel, John Chipman Gray), statesmen (Thomas Jefferson, Abraham Lincoln, Benjamin Franklin, Alexander Hamilton, James Madison, Daniel Webster), literary figures (H.L. Mencken, Ralph Waldo Emerson, Henry David Thoreau, James Fenimore Cooper, Herman Melville), or satirists (Mark Twain, Ambrose Bierce, Will Rogers, Finley Peter Dunne). Among judges, four individuals (Oliver Wendell Holmes, Jr., Robert Jackson, Learned Hand, and Benjamin Cardozo) account for a very high percentage of all quotable passages in opinions, and if these four were excluded, the landscape would be an extremely barren one.

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1. Fred R. Shapiro, *The Oxford Dictionary of American Legal Quotations* (New York: Oxford University Press, 1993).

2. Christopher A. Anzalone, *Encyclopedia of Supreme Court Quotations* (Armonk, N.Y.: M. E. Sharpe, 2000).

The paucity of good judicial quotes has become more pronounced in recent decades. Some of the explanation lies in the fact that the last of the "Big Four" died in 1961. Some lies in the tendency of recent opinions to be ghost-written by clerks who are unlikely to insert bold or humorous pronouncements in their boss's decisions. Some may lie in a general decline of modern art and thought. Conservative court-watchers champion Antonin Scalia as a titan of eloquence on the contemporary United States Supreme Court, but I believe that they are influenced by partisanship and today's greatly lowered standards. Consider this quip, widely considered to be one of Scalia's best: "Frequently an issue of this sort will come before the Court clad, so to speak, in sheep's clothing. . . . But this wolf comes as a wolf."[3] Not exactly one for the ages, in my view.

I was pleased to learn of the publication of *Encyclopedia of Supreme Court Quotations*. Researchers and students of the Supreme Court need all the help they can get in identifying the noteworthy sound-bites from that Court's jurisprudence. I started to get nervous, however, when I read Anzalone's Preface, where I came across the following passage:

> Each year the Court decides hundreds of legal controversies. The Court has been in existence for over two hundred years. Decisions generate an opinion of the Court (majority opinion); depending upon agreement of the nine members of the Court, an outcome may also generate a flurry of concurring opinions and dissents—all of which constitute the universe of potential excerpts. The calculus is staggering; we could have easily selected a hundred thousand quotes. Is it not an inspiring notion that the total universe of excerpts is so overwhelming that great efforts were made to pare the number down to a manageable 900? This question itself should fill the reader and citizen with pride in the Court's place in American history.[4]

In reality, there are probably not a hundred thousand truly good quotes in all of recorded world culture, much less in the eloquence-challenged pages of the *United States Reports*. The difficulty is to find 900 examples of "inherent beauty, literary quality, profound philosophy" (Anzalone's professed criteria)[5] in those reports, not to winnow an embarrassment of riches.

3. Morrison v. Olson, 487 U.S. 654, 699 (1988) (Scalia, J., dissenting).
4. Anzalone, xi-xii.
5. Anzalone, xii.

I was now very curious as to what Anzalone's notion of a good quotation was, and also as to the quality of his research. Did he do a thorough job of finding the truly outstanding Supreme Court passages? In order to test this, I made a list, based on my own extensive study of legal quotations, of the preeminent sayings from the opinions of Justice Robert H. Jackson. The following is the test list:

> [1] The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections. *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 638 (1943).
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> [2] Those who begin coercive elimination of dissent soon find themselves exterminating dissenters. Compulsory unification of opinion achieves only the unanimity of the graveyard. *Barnette*, 319 U.S. at 641 (1943).
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> [3] The case is made difficult, not because the principles of its decision are obscure, but because the flag involved is our own. . . . To believe that patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous instead of a compulsory routine is to make an unflattering estimate of the appeal of our institutions to free minds. *Barnette*, 319 U.S. at 641 (1943).
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> [4] But freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order. *Barnette*, 319 U.S. at 642 (1943).
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> [5] If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. *Barnette*, 319 U.S. at 642 (1943).
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> [6] The choice is not between order and liberty. It is between liberty with order and anarchy without either. There is danger that, if the Court does not temper its doctrinaire logic with a little practical wisdom, it will convert the constitutional Bill of

Rights into a suicide pact. *Terminiello v. Chicago*, 337 U.S. 1, 37 (1949) (dissenting).

[7] Thought control is a copyright of totalitarianism, and we have no claim to it. It is not the function of our Government to keep the citizen from falling into error; it is the function of the citizen to keep the Government from falling into error. *American Communications Ass'n v. Douds*, 339 U.S. 382, 442-43 (1950).

[8] The day that this country ceases to be free for irreligion it will cease to be free for religion—except for the sect that can win political power. *Zorach v. Clauson*, 343 U.S. 306, 325 (1952) (dissenting).

[9] There is no doubt that if there were a super-Supreme Court, a substantial proportion of our reversals of state courts would also be reversed. We are not final because we are infallible, but we are infallible only because we are final. *Brown v. Allen*, 344 U.S. 433, 540 (1953) (concurring).

[10] Procedural fairness and regularity are of the indispensable essence of liberty. Severe substantive laws can be endured if they are fairly and impartially applied. Indeed, if put to the choice, one might well prefer to live under Soviet substantive law applied in good faith by our common-law procedures than under our substantive law enforced by Soviet procedural practices. *Shaughnessy v. United States*, 345 U.S. 206, 224 (1953) (dissenting).

The results of comparing the above list with Anzalone's work are dismaying. Quotation [5] above appears in *Encyclopedia of Supreme Court Quotations*, but the other nine do not. The omissions include [6], which has become part of the basic vocabulary of American politics, and [9], one of the most quoted and justly admired *bons mots* in American law, but all of them are striking by their absence. Leaving out even one of them would have suggested lack of comprehensiveness or quirky standards of inclusion; leaving out two would have clinched the case.

I also looked at an additional seventeen Jackson quotations, not quite as famous as the first group of ten, but still quite renowned, and covering a broader range of topics than the first group. Here Anzalone does slightly better, including four of them and missing thirteen.

Checking against the possibility that there was an isolated glitch with Jackson, I looked up Holmes in the index by justices. There are twenty-nine quotes from "The Great Dissenter," fewer than the far less quotable Warren Burger, for example. "Three generations of imbeciles are enough"[6] is not here, perhaps because it is now considered a morally offensive line.

Such an explanation is less available for the absence of "Every idea is an incitement"[7] and "For my part I think it a less evil that some criminals should escape than that the government should play an ignoble part."[8]

Finally, I looked to see whether the *Miranda* warnings[9] are included (no) and whether John Marshall's landmark "We must never forget, that it is *a constitution* we are expounding"[10] is included (no). At that point, I felt my investigations were completed. I recommend this book to those who need a supplement to the standard legal quotation dictionaries, particularly for quotations too recent to be in other works. The *Encyclopedia of Supreme Court Quotations* should not be anyone's primary source for Supreme Court quotations.

For the convenience of readers, I list below the leading other legal quotation sources:

Fred R. Shapiro, *Oxford Dictionary of American Legal Quotations* (New York: Oxford University Press, 1993);

M. Frances McNamara, *2,000 Famous Legal Quotations* (Rochester, N.Y.: Aqueduct Books, 1967);

Eugene C. Gerhart, *Quote It Completely!: World Reference Guide to More Than 5,500 Memorable Quotations from Law and Literature* (Buffalo, N.Y.: W. S. Hein, 1998);

Percival E. Jackson, *The Wisdom of the Supreme Court* (Norman, Okla.: University of Oklahoma Press, 1962);

Elizabeth Frost-Knappman & David S. Shrager, *The Quotable Lawyer* (New York: Facts on File, 1998);

Simon James & Chantal Stebbings, *A Dictionary of Legal Quotations* (New York: Macmillan, 1987).

The *Lawyer's Reference Shelf*[11] allows one to search the *Oxford Dictionary of American Legal Quotations* (as well as Bryan Garner's

6. Buck v. Bell, 274 U.S. 200, 207 (1927).
7. Gitlow v. New York, 268 U.S. 652, 673 (1925) (Holmes, J., dissenting).
8. Olmstead v. United States, 277 U.S. 438, 470 (1928) (Holmes, J., dissenting).
9. Miranda v. Arizona, 384 U.S. 436, 444, 479 (1966).
10. McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 407 (1819).
11. (New York: Oxford University Press, 1999).

A Dictionary of Modern Legal Usage, 2d ed.[12]) on a CD-ROM. There is also a CD-ROM version of *Quote It Completely!*[13] In addition, the online databases *Lexis* and *Westlaw* are both extremely powerful tools for quotation research. By going into the combined law review or case law databases of either of these systems, and searching for distinctive key words from the desired quotation, the researcher can often find the accurate text of the quotation and a precise source reference.

12. (New York: Oxford University Press, 1995).
13. (Buffalo, N.Y.: W. S. Hein, 1998).