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BOOK REVIEWS

VOICES IN COURT, by William H. Davenport, Macmillan Co., 1958, 588 pages. Price: \$6.95.

Most lawyers look back to law school with mixed memories, and probably foremost among them is the amount of grim reading required. On the other hand most teachers are convinced that one of the worst failings of law students is the lack of reading skill combined with the lack of wide-ranging experience with the printed word. Facts being what they are, the lawyer is stuck with his memory and the teacher with his thoughts. As a teacher I like to think I might someday be able to encourage a nonreader to become a reader and generally to stimulate efforts toward the breadth that results from an extensive acquaintance with good reading.

This book grew out of a similar feeling. A generation ago Dean Wigmore said that varied and widespread reading would "make a better lawyer of the man and a better man of the lawyer." Professor Davenport set out to demonstrate the utility of this observation by offering a course in the law school at the University of Southern California based on literature about the law. As a result of that experience this anthology was assembled. So we have the situation where a professor of English presents a good collection of "law stuff" to the profession.

His course was aimed at students, but his book is directed to a broader audience, which accounts for elements in its makeup which will be touched upon later. Certainly it is not meant solely for the lawyers in our midst, but this reviewer has no doubt that there is enough good, well-pointed "stuff" to make it worth the lawyer's spare time (*sed quaere?*) and a few dollars. In his foreword the editor says he made his collection for "lawyers, judges, men of law in any capacity, and laymen interested in the law." He has hit every one of those targets, so one has to resist the temptation to criticize him for not including every favorite piece or for including some not very interesting things. An editor who wants to hit several targets at once had better use scattershot—but judiciously.

It is a bit unfair to throw the jacket blurb at an editor, but this one suggests that VOICES IN COURT "bears the authentic stamp of the enthusiast, the critic, the scholar and the discoverer." (Subsumed under those labels I would

expect to find "teacher", too.) No quarrel could be made with the first three tags, but I can't see much of the discoverer in these pages. Almost every selection has a vague (sometimes very vague) familiarity, with less than the hoped for number of shiny new things. Perhaps other readers will react differently. In any event there is little in VOICES which cannot be profitably re-read, even if one has read it before.

The volume has four sections, and each has enough crammed into it to provide highs and lows for every reader. In the first, "The Lawyer", Davenport leads off with just about the best piece of all: *The Advocate*, by the Boston lawyer Charles P. Curtis, who is himself co-editor (with Ferris Greenslet) of a magnificent anthology of thought, THE PRACTICAL COGITATOR. An excerpt from IT'S YOUR LAW, this selection is an unbeatable exposition of the function of the lawyer and, although it is directed mainly at laymen, the finest effort I know. No lawyer (or layman) can read it without great profit. The low point in this part is Alexander Woollcott's old *New Yorker* profile of Lloyd Paul Stryker, which is neither particularly good Woollcott nor a very good picture of a great lawyer. *The Jim Wheat Murder Case* by Clinton Giddings Brown is a touching and funny story, and one of the few "discoveries" in the book.

In "The Judge" there are fourteen items, including ones by Macaulay, John Marshall, Beveridge, Swisher, A. T. Mason, Frankfurter, Learned Hand, Cardozo and James Gould Cozzens. This constitutes a rather heavy dosage of excellence. Macaulay's portrait in heavy colors of *Jeffreys, The Hanging Judge* is one to shake your head over, while Frankfurter's *Chief Justices I Have Known* is a series of nice pastiches with a few interesting insights. Cardozo's familiar *Law and Literature* has the expected qualities, but most lawyers would find the greatest enjoyment trying to fit particular judges to the types he distinguishes. An excerpt from Cozzens' *The Just and the Unjust*, which to my mind is not a particularly good novel, looks pretty pale at the bottom of this heap.

Much the same fate is due Benet's old chestnut, *The Devil and Daniel Webster*, here anthologized for the *n*th, and unfortunately, probably not the last time. It is included in the section called "The Courtroom" together with Catherine Drinker Bowen's recreation of Raleigh's trial from her biography of Coke, *The Lion and the Throne*, the wildly amusing breach of promise suit *Bardell v. Pickwick*, and Sir William Holdsworth's analysis of Dickens' picture of Chancery procedure in *Bleak House*. My own favorite in this group would have to be the morbidly fascinating cross-examination of Oscar Wilde by Sir Edward Carson in Wilde's trial on charges of homosexuality. Even in cold

print the gradual destruction of the wit's insecure stature as a human being by the brilliant lawyer is horrifying, even if Virtue does win out.

For reasons impossible to fathom, the final section on "The Law" is the weakest. This reviewer's guess is that Davenport felt a need to supply some thinking material without driving readers away with "jurisprudence", which word unhappily carries toxic connotations for lawyer and layman alike. The result is almost a dull hodgepodge. Montaigne's *On The Law* is nicely skeptical, and Thoreau's *Unjust Laws* is pessimistic and bitter. Two speeches by Holmes are worth reading and contain good things. Still I wonder what he meant in 1886 when he said, "Of course, the law is not the place for the artist or the poet. It is the calling of thinkers." Anyone who wants proof positive that even the great can fall from grace can read Holmes' great fallacy that every contracting party has a *right* to break his contract and pay damages. On the other hand, more lawyers might do well to understand his positions on the importance of morality, history and theory in the law. *The Case of the Speluncean Explorers* by Professor Lon L. Fuller is an important piece of painless jurisprudence based on an appeal from a murder conviction against a group of cave explorers who ate one of their fellows during a long entrapment. The date is 4300 A. D., but one can play the same game here as suggested in reference to Cardozo's piece—even though Fuller warns that the various judges are "as mythical as the facts and precedents with which they deal."

The editor began and ended his collection on very high notes. Paeans have already issued for Curtis' work at the beginning, and time has come to note with appreciation the concluding selection. (Actually the last item is Wigmore's essay on *A List of One Hundred Legal Novels*, dated 1922, which might sadly be subtitled "Five Score Books Lately Unread and Unappreciated".) Lawyers criticize other lawyers and the judges, and judges lawyers. Law teachers criticize everything. And the public criticizes the law and its practitioners—on too little information, we like to think. Much of this critical atmosphere stems from the use and misuse of words. The problem has seldom received the cogent, understanding treatment that critic and author John Mason Brown gives it in *Language, Legal and Literary*. To be sure Brown's 1952 speech to the American Law Institute has so much good sense and serious pleading in it that he has since been recognized by this one effort alone as something of a legal critic. His plea for illumination as a paramount obligation of the legal writer has frequently been cited—but apparently to little avail. No better selection could have ended this volume.

Before my reading of VOICES IN COURT was completed, I loaned it to a non-lawyer friend who has perforce of close association with its practitioners

more than a passing interest in the law. His reaction surprised me, for I had not expected him to find it dull and tasteless. But now I wonder if he wasn't a good one man cross-section of what the lay reader's reaction would be. Perhaps it is impossible with one shot to hit lawyer, judge and layman; maybe this volume is long on "law stuff" and short on drama, which is what most laymen expect from law. This volume isn't dramatic. And it is uneven. Thereby it is a better mirror. No lawyer or judge would find it dull, or even tasteless. Some of us might even learn a thing or two, which is really the best reason to read any book.

GEORGE M. JOSEPH.*

BUSINESS LAW—UNDER THE UNIFORM COMMERCIAL CODE, by Reed T. Phalan. Prentice Hall, Inc., 1959, 164 pages. Price: \$1.25.

This book, one of the most recent texts on the "Code", deals primarily with those sections of the "Code" with which the Business law student is most concerned. The work might be divided into three major sub-divisions, the first dealing with the *Sale of Goods*, the second with *Financing Transactions*, and the third with *Commercial Paper*.

The author, realizing that the changes made by the "Code" are so extensive in some areas that existing business law texts would be of little value, has designed this work to be used as a supplemental text. Not only has Mr. Phalan reduced the often ambiguous language of the "Code" to easily understandable terms, but while discussing the 1957 draft of the "Code" has very appropriately footnoted the work with the original sections of the 1952 draft (enacted into law in Pennsylvania) in cases where the latter has been changed. Further, by liberal use of examples he has developed an interesting as well as informative work.

While not sufficiently annotated to be of any great value to the practicing attorney, the book may be interesting as an introduction to the various changes that have been made in the sales, secured transactions, assignments, and negotiable instruments sections of the "Code."

As we have already noted, the author's purpose was to bring the business law texts up to date. In this reviewer's opinion he has accomplished it in a most desirable fashion.

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