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Book Reviews

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BOOK REVIEWS

THE FACES OF JUSTICE: A TRAVELER'S REPORT. By Sybille Bedford. New York: Simon & Schuster, 1961. Pp. 316. $4.50. In this guided tour of English, German, Swiss and French trial courts, with a brief and dreary detour into an Austrian courtroom, Mrs. Bedford has tried, so she writes, to "get hold of a little, make a guess at the whole." Not a masterful job of precise reporting like the author's "Trial of Dr. Adams," the new book is sketchy, episodic and non-definitive but it is beautifully and compassionately written and a joy to read. Her earlier ventures have taught her that "The law, the working of the law, the daily application of the law to people and situations, is an essential element in a country's life" and that the law "shapes, and expresses, a country's mode of thought, its political concepts and realities, its conduct." The author, not a dry or laboring scholar but a perceptive lay observer, has, with reportorial skill, set out in her own way to discover each country's pattern of justice, by sitting as a spectator in a succession of courts and relishing the courtroom dramas. The result is a series of sharply drawn but sympathetic and understanding sketches of individual human beings in contact with the machines of justice.

Understandably (but a bit provincially?) there is more about English courts than about those on the continent, and the latter come out second-best on almost all counts. The author knows a lot about the general course of English criminal trials and obviously admires their tidiness and the expertise of English judges. But some of their special features seem odd to us: the absence of counsel for the accused in minor cases and the resulting inability of the defendants to use the weapon of cross-examination, the custom of releasing the accused on "bail" consisting of his own statement of financial worth, the slow pace of all the proceedings, the remarkable fact that in England no magistrate ever becomes a High Court judge. Add an astonishing statistic: in London the hearing on a traffic violation comes up six months after the event. Felony trials are conducted with a bit of elegance but the magistrates in London as in New York are harried and hurried, some of them bored, all of them overworked and weary. Surprising (to American readers) was the inordinate length (an hour and three quarters) of the justice's summation at the end of an uncomplicated larceny trial.

In Germany and France, of course, our observer encountered quite different methods of determining guilt or innocence. First, endlessly long pre-trial questionings, then the courtroom quizzing of witnesses and defendant by the judges — all this was in sharp contrast to the Anglo-American pure adversary system with the latter's careful (at least on paper) shielding of the suspect from self-incrimination. The real difference in basic method seems to be that in the Anglo systems the proof contra defendant is presented by a lawyer representing the people's justice, then the defendant, through his lawyer, has his turn, then the judge deals with law questions and the jury solves the fact problems. Plainly, Mrs. Bedford thinks the English (and American) way is much the better — but there is merit in the slow-paced, deliberate, non-adversary investigative processes of the continental tribunals. And, perhaps, the French and Germans, seating their jurors with the judges as one composite bench, have found a useful answer to our unanswered question as to whether guilt is better tested by judges or jurors. The French and German courts while retaining what Balzac called the judge's "conscience of his calling" balance judges with jurors in one group, realizing (to quote Balzac again) that "a magistrate relies only on reason and its laws; juries are floated to and fro by the waves of sentiment."

Much the best thing in this book, bringing it close to greatness, is the fifty-page description of the trial in Karlsruhe of Dr. Ulrich Brach for the killing of a man whom, according to the defendant, had molested or annoyed the doctor's daughter. This chapter is packed with the basic stuff of great drama: the worry and tension of the parent, the doubt as to what his real intent was, the agonizingly slow investigative, forensic and deliberative processes of the German courts, the

sympathetically observed and described reactions of the judges and jurors and witnesses and spectators, and the somewhat surprising denouement. Here is a "face of justice" presented by a superb portraitist.

This reviewer, by the way, enjoyed the encomiums on the Swiss courts with their simple, placid procedures carried out by popularly elected judges. It is rare and unfashionable nowadays for any commentator to say a kind word for the elective system of choosing judges, although the system has had its successes in jurisdictions far distant from the Swiss Federation.

In the book is this provocative comment: "Professionals generally seem to feel concern that their guests in court will be bored stiff." In other words, we judges and lawyers are so close to the picture of justice that we do not see the face as a depiction of the living organism behind it, but only the lines and angles and the marks of brushwork, seemingly erratic, mechanical, confusing. It takes a trained and practised critic like Mrs. Bedford to stand back a little and value the face of justice as the live and glowing outward skin of inner truth and order.

*Charles S. Desmond**

CASES AND MATERIALS ON ESTATE PLANNING (2 vols.). By William D. Rollison. Notre Dame, Indiana: University of Notre Dame Press, 1959. Pp. ix, 842. $25.00. The phrase "estate planning" is relatively new in the field of law. It has a certain glamour that has made its use, and perhaps its misuse, popular. Yet it has no precise meaning. For the practicing lawyer it means that he is now able to explain to his client that he is doing more than merely drafting a will or trust instrument. Now he can claim that he is bringing to bear on the client's problem, all of his expertise in the many pertinent areas of the law. Accordingly, he anticipates an increase in his fee.

For the academician "estate planning" means a number of things. In his review[1] of Professor Rollison's new book, Jan Z. Krasnowiecki[2] indicates that, in his opinion, an "estate planning" course in law school should give the student a limited number of "experiences in depth" rather than emphasizing a breath of knowledge in the applicable subjects:

> To prepare a student for estate planning, it is not, this reviewer believes, necessary to give him experience with every aspect of estate planning. But it is essential to give him experience with the full complexity of a number of selected areas. For example, instead of taking up a few cases with a view to giving a general impression of the principles of trust administration, an estate-planning course might take up every significant case dealing with the retention, administration, and sale of a business held in trust. This subject matter furnishes almost inexhaustible opportunities for the development of principles of trust administration and business practice, and for lessons in draftsmanship. Similarly, the settlor-controlled inter vivos trust is an extremely important estate planning device. Every aspect of this device, including conflict of laws problems, should be explored in depth and in one place."[3]

This would appear to be the essence of "estate planning," since the expression itself indicates the necessity of an "experience in depth" in order to formulate a "plan." To this extent, the title to Professor Rollison's new book — *Cases and Materials on Estate Planning* — is, perhaps inaccurate since it does not provide the student with the necessary materials to proceed in this manner.

However, Professor Rollison has accurately described the nature of his work

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1 13 J. LEGAL ED. 279 (1960).
2 Assistant Professor of Law, University of Pennsylvania Law School.
3 13 J. LEGAL ED. 279, 284 (1960).

in a note to his book.[4] He states that it is primarily aimed at an integration of the various materials offered in Wills, Trusts, and Future Interests, in order to eliminate a tremendous amount of overlapping and duplication. Thus, he has attempted to interrelate and bring into perspective what has heretofore been considered in three separate "pigeonholes" of the law, *i.e.*, Wills, Trusts, and Future Interests. In this operation, Professor Rollison has been completely successful and the patient has survived. The perplexing legal problems in these areas are carefully preserved and presented even though a vast amount of duplication is extracted.

Nonetheless, this book does not provide material for consideration by the student of the practical aspects of a particular estate planning problem. Nor is that the author's intention:

> Estate Planning involves knowledge and how to use the knowledge — a knowledge that in a particular case may include many subjects. The primary task of the law student is to obtain this knowledge . . . . It is not felt that a weekly seminar, dealing with a prepared set of facts, is desirable. . . .[5]

Thus, Professor Rollison has taken the traditional approach with respect to the proper method of preparing a student for his future legal responsibilities. In other words, Professor Rollison has taken the horizontal approach by providing the case materials and supplemental footnotes which will give the student a breath of knowledge. This is opposed to the vertical approach which would give the student a limited number of experiences in depth.

Naturally, if it were possible, it would be ideal for the student to obtain both the knowledge of estate planning and the opportunity to use it during his law school education. Indeed, this is true of all law school subjects. However, from the standpoint of the practicing lawyer, from which the reviewers are situated, it would appear that if a choice must be made because of the exigencies imposed by time limitations, it is more important to have the basic knowledge rather than a limited number of experiences in depth. Stated otherwise, it is essential that the student be exposed to as much rudimentary knowledge of the law as time permits. Although the practical application of this knowledge during law school would most certainly be helpful, the student will spend most of his subsequent professional career in this practical application and he will have many opportunities to improve his techniques, but never again will he have the same opportunity to acquire the fundamental knowledge of the law. Furthermore, the practical application of legal knowledge is based largely on common sense, an instinctive ability which is not necessarily capable of being transmitted through the educational processes.

Professor Rollison's selection and abridgment of materials is excellent. In particular, he has made an obvious effort to choose materials of recent vintage wherever possible. This material, if properly digested, should stand the student in good stead in any future responsibilities which he will assume in this area of the law.

*James F. Thornburg**
*Edward J. Gray***

CASES AND MATERIALS ON LABOR RELATIONS LAW. By Russell A. Smith and Leroy S. Merrifield. Indianapolis: Bobbs-Merrill Co., 1960. Pp. xix, 1212. $12.75. LABOR RELATIONS AND THE LAW (1st ed.). By Robert E. Mathews, Editor. Boston: Little, Brown & Co., 1953. Pp. xlviii, 1100; (2d ed.). By Donald H. Wollett and Benjamin Aaron. Boston: Little, Brown & Co., 1960. Pp. xxxii, 955. $12.50. The editors of THE NOTRE DAME LAWYER have asked for a review of these two recent labor law publications. This represents quite an assignment since the books seem designed for rather different purposes. *Cases and Materials on Labor Relations*

4 Rollison, *Legal Education — Estate Planning — an Integration of Wills, Trusts and Future Interests*, 34 NOTRE DAME LAWYER 294 (1959).
5 *Id.* at 294.
* A.B., J.D., member of the Indiana Bar.
** B.S., LL.B., Notre Dame, member of the Indiana Bar.

Law is essentially a student book, intended and devised for use in the classroom; *Labor Relations and the Law* is a compendium or anthology and represents a series of contributions by some thirty-one cooperating editors in the first edition, twenty-six in the second edition.

The book prepared by Professors Smith and Merrifield has been used by this reviewer and found to be an excellent medium for the development of a course on Labor Law. Not only is the case matter fully covered, but the statutes are persented in a supplement which includes the Anti-Injunction Act,[1] the National Labor Relations Act,[2] the Labor Management Relations Act,[3] and finally, the Labor Management Reporting and Disclosure Act of September 14, 1959.[4]

The organization of the material lends itself to teaching. There is a brief historical introduction showing the rise and development of the labor union, the legislative policy with respect thereto, and the right to self-organization which is treated comprehensively with particular emphasis on the employers' obligations with respect to the union. The representation of employees and the appropriate bargaining unit are then discussed with due attention to the conduct of representation elections. Collective action by the unions, specifically strikes and picketing, together with an analysis of lawful and unlawful objectives of such collection action, is the subject of a separate chapter. The intricate and knotty problem of jurisdiction and federal-state relations is considered immediately after an exposition of the obligation to bargain collectively.

The tenth chapter of *Cases and Materials on Labor Relations Law* is entitled "Enforcement of the Collective Agreement." This is of special interest to this reviewer and undoubtedly to the profession at large for the reader is made aware of the legal status of the collective labor agreement in the various jurisdictions. Here the editors discuss custom and usage,[5] "the rule of the industry"[6] and the agency theory,[7] and finally, the third party beneficiary theory.[8] The last represents the great weight of authority,[9] and is discussed separately.[10]

Enforcement of the labor agreement and the examination of grievance procedures and arbitration with special regard to the classic cases of *Association of Westinghouse Salaried Employees v. Westinghouse Electric Corporation*[11] and

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1 47 Stat. 70 (1932) as amended, 29 U.S.C. §§ 101-115 (1958); it is popularly known as the Norris-LaGuardia Act.

2 49 Stat. 449 (1935) as amended, 29 U.S.C. §§ 151-68 (1958); this statute is generally referred to as the Wagner Act.

3 61 Stat. 136 (1947) as amended, 29 U.S.C. §§ 141-87 (1958); this statute is generally referred to as the Taft-Hartley Act.

4 73 Stat. 519 (1959), 29 U.S.C. § 401 (1961); popularly referred to as the Landrum-Griffin Act.

5 5 WILLISTON, CONTRACTS §§ 648-662 (3rd ed. Jaeger 1961).

6 The following cases are pertinent to this particular discussion: Yazoo and Mississippi Valley Ry. v. Webb, 64 F.2d 902 (5th Cir. 1933) where this expression is used; Cross Mountain Coal Co. v. Ault, 157 Tenn. 461, 9 S.W.2d 692 (1928); West v. Baltimore & O.R.R., 103 W. Va. 417, 137 S.E. 654 (1927); Hudson v. Cincinnati, N.O. & T.P.R.R., 152 Ky. 711, 154 S.W. 47 (1913). These cases are also reported or discussed in JAEGER, CASES AND STATUTES ON LABOR LAW (1939) (Supp. 1959), Chapter XI, Collective Labor Agreements.

7 See, *e.g.*, Shelley v. Portland Tug & Barge Co., 158 Ore. 377, 76 P.2d 477 (1938); Shinsky v. O'Neil, 232 Mass. 99, 121 N.E. 790 (1919); Shinsky v. Tracey, 226 Mass. 21, 114 N.E. 957 (1917). These cases will also be found in Jaeger, *op. cit. supra* note 6.

8 Lawrence v. Fox, 20 N.Y. 268 (1859); also in Jaeger, Law of Contracts, p. 338.

9 Marranzano v. Riggs National Bank of Washington, 184 F.2d 349 (D.C. Cir. 1950); Hudak v. Hornell Industries, 304 N.Y. 207, 106 N.E.2d 609 (1952); Yazoo & M.V.R. Co. v. Sideboard, 161 Miss. 4, 133 So. 669 (1931); Blum & Co. v. Landau, 23 Ohio App. 426, 155 N.E. 154 (1926); Gulla v. Barton, 164 App. Div. 293, 149 N.Y. Supp. 952 (1914). See 2 WILLISTON, CONTRACTS § 379A (3d ed. Jaeger 1959); Jaeger, *Collective Labor Agreements and the Third Party Beneficiary*, 1 B.C. IND. & COM. L. REV. 125 (1960).

10 2 WILLISTON, *op. cit. supra* note 9, § 379A; Jaeger, *op. cit. supra* note 9, at 139.

11 Association of Westinghouse Salaried Employees v. Westinghouse Elec. Corp., 348 U.S. 437 (1955).

Textile Works v. Lincoln Mills[12] are given due consideration. Their significance in the labor law field is emphasized and in a supplement, the editors have included the recent trilogy of cases decided by the Supreme Court of the United States following the line of the *Lincoln Mills* case, namely, *United Steel Workers v. American Mfg. Co.*,[13] *United Steel Workers v. Warrior and Gulf Navigation Co.*,[14] and *United Steel Workers v. Enterprise Wheel and Car Corp.*[15] The net effect of these cases is that the labor lawyer in drafting an arbitration agreement must make very certain that he *expressly* "excludes out" any dispute that is not to be submitted to arbitration. For if these decisions are followed to their logical conclusion, it becomes inescapable that anything that is not expressly excluded is by Supreme Court inference impliedly included. This follows logically from the Supreme Court opinion cited below.[16]

However, the Supreme Court is still prepared to admit that the basis of the arbitration, even in collective labor agreements, is the contract and this has been recognized by a number of authorities.[17]

The lower courts had followed previous precedents regarding arbitration agreements considering that a strict interpretation was required since such agreements are in derogation of the common law. The Supreme Court of the United States, however, declared that "the run of arbitration cases [citing as an example *Wilko v. Swan*][18] becomes irrelevant to our problem." The Court went on to say:

> "The collective bargaining agreement states the rights and duties of the parties. It is more than a contract; it is a generalized code to govern a myriad of cases which the draftsmen cannot wholly anticipate. . . . "[19]

This supports the theory which the present reviewer developed in an article entitled "Collective Labor Agreements and the Third Party Beneficiary,"[20] namely, that "a collective labor agreement is a contract affected with the public interest."

The comprehensive treatment of federal and state relations dealing with the enforcement of collective labor agreements includes a discussion of such cases as *McCarroll v. Los Angeles*,[21] *Goldman v. Cohen*,[22] *Schlesinger v. Quinto*,[23] and *International Association of Machinists v. Cutler-Hammer*.[24] The latter case is criticized by the Supreme Court of the United States in *United Steel Workers v. American Mfg. Co.*

In the final chapter, the editors consider the status of unions, particularly in suits by and against these organizations under the common law, the impact thereon of *Coronado Coal Company v. United Mine Workers of America*,[25] and the effect of legislative changes such as section 301 of the Labor Management Relations Act.[26] In the succeeding pages, various state statutes are discussed.[27] Finally, the internal

12 Textile Workers v. Lincoln Mills, 353 U.S. 448 (1957).
13 363 U.S. 564 (1960).
14 363 U.S. 574 (1960).
15 363 U.S. 593 (1960).
16 4 WILLISTON, CONTRACTS (3rd ed. Jaeger). 865-866.
17 United Steelworkers v. Warrior and Gulf Navigation Co. 363 U.S. 574 (1960); 2 WILLISTON *op. cit. supra* note 16 § 626.
18 346 U.S. 427 (1953).
19 United Steelworkers v. Warrior and Gulf Navigation Co. 363 U.S. 574, 578 (1960), where the majority opinion also suggests that the arbitrator is empowered to go beyond the actual contract and look to the "common law of the shop." That this view is not shared by some experienced arbitrators, see Davey, *The Supreme Court and Arbitration: Musings of an Arbitrator*, 36 NOTRE DAME LAWYER 138 (1961) cited in WILLISTON, *op. cit. supra* note 13 § 626.
20 1 B.C. IND. & COM. L. REV. 125 (1960).
21 McCarroll v. Los Angeles County Dist. Council of Carpenters, 49 Cal. 2d 45, 315 P.2d 322 (1957), *cert. denied*, 355 U.S. 932 (1958).
22 222 App. Div. 631, 227 N.Y.Supp. 311 1928).
23 201 App. Div. 487, 194 N.Y.Supp. 401 (1922).
24 271 App. Div. 917, 67 N.Y.S. 2d 317 (1947).
25 268 U.S. 295 (1925).
26 Note 3, *supra*.
27 2 WILLISTON *op. cit. supra* note 9, § 379A.

operations of unions and their various relations such as union to union, union to employer, and unions and the public are exhaustively discussed.

In examining *Labor Relations and the Law,* the reader is immediately made aware of the purposes the editors had before them. These are stated as being four fold:

1. A new approach to the process of compiling a casebook;
2. A major shift in emphasis;
3. An expansion in the use of problems as teaching devices;
4. The introduction of materials from foreign countries as a basis for comparative study.

This rather massive undertaking is divided into five parts;[28] these are: "Organized Labor in a Free Enterprise Society" (I); "Establishment of Collective Bargaining" (II); "Collective Bargaining" (III); "Legal Limitations on Economic Pressure" (IV); and "Unions and Their Members" (V). In the appendix will be found various pertinent statutes including the Sherman Anti-trust Act[29] and the Clayton Act.[30]

In discussing the question of collective bargaining, the topic is introduced by a section headed "What Is This Thing . . .?"[31] Here it is pointed out that the relationships between employers and employees in about 75,000 plants or factories in the United States are controlled, at least in part, by the terms of "collective bargaining contracts." And here the reader is made aware of the approach adopted by the Supreme Court of the United States in *J. I. Case Co. v. NLRB,*[32] where the Court said:

> "The negotiations between union and management result in what often has been called a trade agreement rather than in a contract of employment. Without pushing the analogy too far, the agreement may be likened to the tariffs established by a carrier, to standard provisions prescribed by supervising authorities for insurance policies, or to utility schedules of rates and rules for service, which do not of themselves establish any relationships but which do govern the terms of the shipper or insurer or customer relationship wherever and with whomever it may be established."[33]

Although this represents the early view as to these agreements, in more recent times it has generally been considered that the usual collective labor agreement is indeed a contract and not merely "a rule of the industry." This is strikingly demonstrated by the well-reasoned and lucid opinion in *Springer v. Powder Power Tool Corporation*[34] written by Chief Justice McAllister of the Supreme Court of Oregon, citing and relying on 2 *Williston, Contracts* 985 (3rd ed. Jaeger). In this decision, the distinguished Chief Justice overruled a precedent of long standing, *Shelley v. Portland Tug & Barge Co.,*[35] and held that "the great weight of modern authority adopts the legal theory that the employee is the third-party beneficiary of the labor agreement."[36] The court discusses extensively the effect of the *Lincoln Mills* case

28 In the second edition, there are four parts entitled as follows: Part I "The Individual Employee, The Union, The Employer, and the Government"; Part II "Establishment and Maintenance of Collective Bargaining"; Part III "Negotiating The Collective Bargaining Agreement"; Part IV "Administration of the Collective Agreement."

29 26 Stat. 209, 15 U.S.C. 1 et seq.

30 38 Stat. 731, 15 U.S.C. 17 et seq.

31 MATHEWS, LABOR RELATIONS AND THE LAW 292, (1st ed.).

32 321 U.S. 332 (1944).

33 J. I. Case Co. v. NLRB, 321 U.S. 332, 335 (1944). In the first edition, the quoted excerpt appears on pages 292-293, and in the second edition, at page 8. Although the early cases contain somewhat similar statements, it has long since been established by the great majority of the cases that collective labor agreements are contracts.

34 220 Ore. 102, 348 P.2d 1112 (1960).

35 158 Ore. 377, 76 P.2d 477 (1938).

36 Springer v. Powder Power Tool Co., 220 Ore. 102, 348 P.2d 1112, 1115. The court then cites numerous cases to be found in the footnotes to 2 WILLISTON, *op. cit. supra* note 9, § 399A. In this connection, see also Jaeger, *op. cit. supra* note 9, at 125.

and quotes the opinion of the Supreme Court of the United States with respect to the substantive law to be applied in suits under § 301 of the Labor Management Relations Act.[37] The Court then quotes with approval particular excerpts from *Karcz v. Luther Manufacturing Co.*,[38] a very similar case, and concludes by reversing the lower court and holding that the employees in the instant case were entitled to recover wages under a collective labor *contract* made between the employer and the union. *Springer v. Powder Power Tool Corporation* is worthy of inclusion in any prospective collection of cases which may be published whether for student use or for the benefit of the entire profession.

A distinct innovation in *Labor Relations and the Law* is the introduction of references and discussions of European labor law. Here, the authors point out that a variety of statutes have been enacted to govern the collective labor agreement.[39] Remarkably enough, the German statute has been interpreted as authorizing recovery by an employer third party beneficiary under a collective labor agreement made between the employers' organization and the union. There are also references to French, Swiss and Swedish law dealing with collective bargaining agreements; there is a brief discussion of the Canadian Industrial Relations and Disputes Investigation Act of 1948.

In this same chapter, the editors consider the question of union representation of employees, devoting a comprehensive discussion to the case of *Steele v. Louisville and Nashville R.R.*,[40] *Hughes Tool Co. v. National Labor Relations Board.*[41] and *Moore v. Illinois Central R.R. Co.*[42] In the last of these cases, the Supreme Court of the United States sustained the right of an employee to maintain an action in the courts for wrongful discharge from employment even though he had not first resorted to the administrative remedies available under the provisions of the Railway Labor Act.

There is also a considerable discussion of the union security shop versus the closed shop followed by a comprehensive review of the early common law cases and the subsequent decisions under the statutes. Other aspects of the problem treated herein include the check-off and seniority.

A very intriguing chapter is entitled "Legal Limitations on Economic Pressure." Here the editors deal with the strike, picketing, boycotts and unfair labor practices, analyzing the procedure that is followed in presenting a case before the National Labor Relations Board by means of a carefully prepared chart.[43] The cases that are presented demonstrate the gradual evolution of the strike as a peaceful weapon in labor's contest with management. The author emphasizes the absolute necessity for non-violent picketing which is a concommitant of the strike. The student of Labor Law will quickly recognize these basic precedents such as *Berry v. Donovan*[44] and *Exchange Bakery and Restaurant Inc. v. Rifkin.*[45] Nor are the later cases, such as *Thornhill v. Alabama*[46] or *A.F.L. v. Swing*,[47] slighted.

In conclusion, it would appear that the recent publication by Professors Smith and Merrifield is more useful for teaching purposes than *Labor Relations and the*

37 Note 3, *supra.*
38 338 Mass. 313, 155 N.E.2d 441 (1959).
39 MATHEWS, *op. cit. supra* note 31 420 (1st ed.).
40 323 U.S. 192 (1944).
41 147 F.2d 69 (1945).
42 312 U.S. 630 (1941).
43 MATHEWS, *op. cit. supra,* note 31 570 (1st ed.) entitled "NLRB Complaint Procedure Chart."
44 188 Mass. 353, 74 N.E. 603 (1905).
45 245 N.Y. 260, 157 N.E. 130 (1927).
46 310 U.S. 88 (1940).
47 312 U.S. 321 (1941).

Law. This evaluation is based on a careful comparison of these volumes and experience in the field gained by more than 25 years of teaching labor law.[48]

*Walter H. E. Jaeger**

AMERICA CHALLENGED. By William O. Douglas. New York: Avon Books, 1960. Pp. 63. $0.25. It is somehow instructive that the avocation of Mr. Justice Douglas is climbing mountains. He approaches his judicial task — and his task as a lecturer — with alpenstock and spikes, with energy and by himself, his perspective distant and majestic. It may well be that the nation owes its greatest champion of individual freedom to the Himalayas.

This short book, a paperback edition of the first publication of the Walter E. Edge Lectures at Princeton, is an opinion in dissent from a whole generation, an expression of alarm by a judge who has been untraditionally outspoken on foreign and domestic political problems. The first lecture protests the growth of conformity among individual Americans; the second, which resembles a recent address by the justice on the national television series, "The Nation's Future," deals with the Cold War.

He fears for the loss of dissenters in this decade of affluence; he warns his fellow citizens that their strength is their passion for liberty, a passion ill-served by opulence. "A great many people are brilliant on the outside and want to seem virtuous because they have their own carriage," one of Dostoyevsky's characters said. "All sorts of people keep a carriage. And by what means?"[1] Justice Douglas indicts his contemporaries in ten specifications, each of them forcing conformity and mirroring intellectual laziness: anxiety over communism, the mania for security investigations and loyalty oaths, the decline in rapport with communist nations, mechanization, bureaucracy, materialism, mediocre education, television, the policy-making power of the military and an unsure foreign policy. These, he warns, produce "the self-adjusted automaton who may find a niche in some regimented society but who is never brought to the peaks of idealism and heroism and who never knows the reaches of evil and good or the ingredients of tragedy, sacrifice or fruition."[2]

The geopoliticians Spengler and Mackinder, are invoked, along with examples of Russian zeal and Western apathy, in a warning that democrats in the new nations face grim combat. Characteristically, Justice Douglas fears less for waning American power than for the loss of individual freedom. But none of his antidotes are new — but for his warning to the contrary, one would be tempted to call them a typically liberal list of panaceas (abolition of nuclear weapons, the world rule of law, peaceful co-existence, recognition of the Chinese government, forced domestic growth and government-stimulated industrialization abroad). He is more interesting when he takes issue with recent mistakes — contributions of farm machinery to people who don't know how to use it, jet airplanes to governments whose people are starving — and fascinating when he rattles the sabers of individual personal dignity, come what may.

He concludes that the present crisis is an unprecedented opportunity for Americans among people who seem incapable of understanding that "it is our

48 This reviewer had the privilege and deep satisfaction of presenting the first seminar and the first undergraduate course in Labor Law to be offered in the District of Columbia.

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1 THE IDIOT 143 (Macmillan ed. 1954).

2 Text at 23-24.

passion for freedom, not our automobiles and thick steaks that makes us distinguished among nations."[3] His immediate advice is not unlike Arnold Toynbee's: hope and hang on. Education, for which Justice Douglas' love seems limitless, will develop a renewed pluralism in the Russians. "As those pluralistic tendencies develop, Russia and the West will have more grounds in common than the mere wish for survival."[4]

Although he is hardly open to the charge — as are many of the more vocal liberals — that his ideas have been formed in an ivory tower, Justice Douglas has a unique amount of faith in the average American's ability to forget that his carriage won't make him virtuous, and in the rebellion being fostered in the breasts of the Soviet Union's incipient engineers. But his theory demanding more personal involvement against what Kennan calls "the negative dynamics of the weapons race"[5] is itself worth the hour's time the book will take; it may even win a few converts.

Justice Douglas is at his best when he demands more argument; and, as Norman Cousins recently observed, "Just to be able to identify apprehensions and compare them can be a seedbed of honest hope. The shared thought ignites into action more readily than the secluded thought."[6]

Almost in passing, maybe even without intention, Justice Douglas notes what might be a rallying cry for all of history's judicial individualists. "The right to dissent is the only thing that makes life tolerable for a judge of an appellate court."[7]

*Thomas L. Shaffer**

3 *Id.* at 55.
4 *Id.* at 63.
5 RUSSIA, THE ATOM AND THE WEST, quoted in The Saturday Review of Literature, Sept. 9, 1961, p. 40.
6 *The Most Important Question in the World,* in The Saturday Review of Literature, Sept. 9, 1961, p. 24.
7 Text at 14.
* B.A.; LL.B., Notre Dame; member of the Indiana Bar, associated with Barnes, Hickam, Pantzer & Boyd, Indianapolis; former LAWYER Editor.

BOOKS RECEIVED

CONSTITUTIONAL LAW

FEDERAL CENSORSHIP: OBSCENITY IN THE MAIL. By James C. N. Paul and Murray L. Schwartz.
New York: The Free Press of Glencoe, Inc., 1961. Pp. xv, 368. $7.50.

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* Reviewed in this issue.