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Book Reviews

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BOOK REVIEWS

AMERICA'S ADVOCATE: ROBERT H. JACKSON. By Eugene C. Gerhart.[1] Indianapolis-New York: The Bobbs-Merrill Company, Inc., 1958. Pp. xiii, 545. $7.50. This is an unusual biography in that most of the materials for it had been compiled and most of the work in preparation for its writing had been done in the lifetime of the subject, and with his approval of, and active assistance in, the project. Mr. Gerhart had been compiling materials for a life of Mr. Justice Robert H. Jackson since early 1947. In October of that year he approached the Justice about writing his life. The Justice was doubtful of the usefulness of a published life of a man still living and continued to entertain that doubt, but he nevertheless helped Mr. Gerhart, furnishing him important documents, memoranda and letters, and giving him numerous interviews which were recorded stenographically, until the Justice, in March, 1954, just before his first heart attack, told the author that he had exhausted the sources. Justice Jackson's untimely death on October 9 of that year removed the problem of the propriety of publishing his biography during his lifetime.[2]

Under these circumstances, while the author is careful to say that this "is not an 'authorized biography' in the sense that it was written at the behest either of the subject, his family or his literary executors,"[3] still he had the inestimable advantage of his subject's active help during the last seven years of the latter's life and also the help of his family and secretary thereafter until the book was published in 1958. This gives an element of authenticity to this work that few biographies have.

But Mr. Gerhart has by no means made a book of materials and views furnished by Justice Jackson, his family and associates. He made a prodigious and independent research of his own, as is abundantly attested by his encyclopedic notes, vastly interesting in themselves, by his use in his text of every available source entirely outside any influence of the family and associates, and by his comprehensive bibliography. The first and most important thing to say about this book is that it is entirely free from anything that is blindly partisan, and even more free from anything that is deliberately partisan, or partisan with open eyes. The author gives both sides of every controversial phase of the life of a man whose strong character and dynamic personality made him sometimes the storm-center of controversy. He gives equal hearing to friends and to critics. It is believed that that judicial restraint and balance in presentation would have pleased his subject. Robert H. Jackson never flinched from or dodged criticism. He would meet it head-on and contest it if he thought it unmerited. But he would be the first to admit its merit if he saw merit in it, and he would see it if it were there. He had a rare faculty of self-criticism. In one of his well-known court opinions he most amusingly pleaded guilty to error in a previous opinion he had rendered as Attorney General and refused to be bound by it.[4]

But another and fundamental problem of balance in presentation is unavoidably posed by this book. It was undoubtedly the most difficult problem Mr. Gerhart had to solve. That is, whether this biographer, in dealing with the many-faceted life of his subject, did or did not overplay that phase of his life concerned with his leadership in the preparation and presentation of the case of the United States at Nuremberg.[5]

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1 Lawyer, writer and editor of Binghamton, New York.

2 Text, Preface, ix.

3 *Ibid.*

4 Text at 301-02. See McGrath v. Kristensen, 340 U.S. 162, 177-78 (1950).

5 This name is Nurnberg in German but Nuremberg in both French and English. Mr. Gerhart adopts the course of spelling it in the German form in his text but of reproducing it as Nuremberg in his quotations, where so spelled. A sense of confusion results. The British, French and Americans

To write a life of Robert H. Jackson is one thing, one aim; to write a book on the Nuremberg Trial is another. The two aims are essentially incompatible. To try to accomplish both within the scope of one marketable volume drove the author to the most difficult of compromises, and a biographer's task, in any event, is full enough of necessities for compromise. This was to be the first biography of Mr. Justice Jackson, hence to write it was an outstanding challenge for pre-eminence in its own field. Its author could hardly hope to compete in this special field with books covering only the Nuremberg Trial, such as Jackson's own,[6] Peter Calvocoressi's,[7] Whitney R. Harris's,[8] or Sheldon Glueck's.[9]

The first impression from reading this book is that is overplays Mr. Justice Jackson's Nuremberg advocacy as prosecuting attorney at the expense of his judicial career on the Supreme Court. This impression is not altogether dispelled on the most careful restudy and weighing of the book. Of its 468 pages of text, 165 pages are concerned with Nuremberg and 303 with all the rest of his life. The book starts and ends with Nuremberg. The first chapter and the last seven chapters are all on that subject. The international criminal trial even creeps up into and colors the title of the biography, *America's Advocate*: *Robert H. Jackson.* After all, that is a strange title for the biography of a distinguished Associate Justice of the Supreme Court of the United States. It smacks of newspaper headline writing and he who runs and reads would hardly expect that headline to be followed by the life of a very eminent member of our highest Court.

After all, Mr. Justice Jackson lived more than sixty-two busy, hard-working, eventful, successful and distinguished years. He was a lawyer in local, private practice for over twenty-one years, a government lawyer for over seven years, a Supreme Court Justice for over thirteen years, and "America's Advocate" at Nuremberg for only sixteen months. In temporal terms, Nuremberg was only a very brief "amazing interlude."

In a sense, of course, the seven years of his service as a government lawyer at Washington might, with some exaggeration, be referred to as the service of "America's Advocate." But he was only one of many such even in that period. And it is wholly clear that the title of the book refers only to his Nuremberg service. That is the sense in which his British, French and Russian associates at London and Nuremberg thought of him as "America's Advocate," and in which all of Europe so considered him. It is the sense intended by Mr. Gerhart in the title of his book.

The other side of the balance is that Nuremberg was an unprecedented, extraordinary, and truly amazing interlude in the life of a lawyer and Supreme Court Justice. The trial itself was without precedent. It was a matter of worldwide significance and importance. It brought to America's leading advocate at that trial worldwide fame. It had to be treated importantly in his biography. Looking back on it shortly before his death, Justice Jackson himself characterized it as the most important work of his life. It is difficult to criticize his biographer for giving it the prominence customarily given to the most important work of a man's life.

This was Mr. Gerhart's basic problem for compromise. Perhaps it was a problem incapable of any wholly satisfactory solution. The attempt at its solution can hardly be fairly weighed in merely temporal terms of the life or in merely spatial terms in the book. The question of comparative emphasis strikes this reviewer as more one of arrangement and organization than of time or space measurement. It does seem a mistake to have placed chapter 17, "Mr. Justice Jackson: an Appraisal," ahead of the final

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at the trial with practical uniformity spelled it Nuremberg. Shortly after the American staff reached that almost destroyed medieval gem of a city, a United States Army information bulletin asserted that the only correct spelling was Nurnberg. Without the *Umlaut*, of course, that was about the only way to spell it entirely incorrectly. Mr. Gerhart's publishers, on the paper jacket, spell the name according to the Army dictum.

6 JACKSON, THE CASE AGAINST THE NAZI WAR CRIMINALS (1946).

7 CALVOCORESSI, NUREMBERG AND THE CONSEQUENCIES (1947).

8 HARRIS, TYRANNY ON TRIAL (1954).

9 GLUECK, THE NUREMBERG TRIALS AND AGGRESSIVE WAR (1946).

seven chapters devoted to Nuremberg. Justice Jackson's career by no means ended when the Nuremberg Trial ended. He thereafter had eight more years of service on the Supreme Court, as compared with five before Nuremberg. Those eight years were by far the most interesting of the thirteen years of his judicial experience. There were two ways to deal with this problem. One would have been to appraise his first five years of judicial work before Nuremberg, then to cover Nuremberg, and to end with an appraisal of his last eight judicial years. This is the chronological order that his life suggested.. There is always much logic in a chronological presentation. But that would have split the appraisal of his judicial career in two. Perhaps the preferable order would have been to have finished the Nuremberg story and its appraisal and then to have ended the book with a less generalized and more detailed appraisal of his entire thirteen years of judicial work.

That Mr. Gerhart could have written such a final chapter, and could have written it well, is clearly indicated by his article of May, 1953, in New York University Law Review, entitled "A Decade of Mr. Justice Jackson."[10] That article obviously was prepared and written more than a year before Mr. Justice Jackson's death and five years before this book appeared, and it did not cover the last three years of his judicial career. Without knowing that this review was to be written, Mr. Gerhart has told this reviewer that he had originally included in this biography a revised, up-to-date edition of this article but that his publisher forced him to omit it because of limitations of space. Publishers also have their problems of compromise, however uncompromising they may seem in their decisions. But it seems to this reviewer unfortunate that this revised material was not included and made the end of this biography. That would have restored balance and would have made it a better book.

Rarely has a biographer had a more nearly impossible task than to try to condense, summarize and evaluate the Nuremberg Trial in seven chapters at the end of an extensive biography. Mr. Gerhart has nearly accomplished the impossible. He has written one of the best overall short summaries of that trial that has yet been published. The reader's judgment as to whether that phase of Mr. Justice Jackson's career is overstressed at the expense of his judicial career will, in last analysis, depend chiefly upon the particular reader's personal attitude toward his judicial career and toward the Nuremberg Trial and his participation in it. His judicial career presents certain controversial features and Nuremberg always has been controversial. Mr. Gerhart faithfully presents both sides of all the controversies.

He makes a sympathetic and skillful coverage of Mr. Justice Jackson's heritage and background; of his grammar and high school training (he never attended college); of his non-academic education in the law, for he studied for several years as a clerk in a law office and had only one year at Albany Law School; of his family life; of his more than twenty-one years as an upstate New York "country lawyer" in a very varied and general practice; and as that rare specimen, a Democrat in a heavily Republican community and section. Then Jackson is followed to Washington as General Counsel of the Bureau of Internal Revenue, Assistant Attorney General in charge of antitrust matters, Solicitor General — his favorite job — and then Attorney General and confidential advisor to President Roosevelt. We are given the inside story of much of New Deal politics, the background of the Court controversy and a very complete coverage of President Roosevelt's Court-packing plan and of the fight over it and its defeat in the Senate, in all of which Jackson was one of the President's ablest lieutenants and advocates. He did not personally believe in the wisdom of that plan, though he did agree with its announced objectives, but he was there giving his best efforts on behalf of his chief, to whom he was completely loyal.[11]

We are taken through the poignant story of the inflating and sudden bursting of the Roosevelt-inspired Jackson "New York Governorship Bubble." We have an inside

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10 28 N.Y.U.L. Rev. 927 (1953).
11 Text at 108, 121.

view of Jackson's important work as advisor to the President on foreign policy matters, as America approached involvement in World War II. And then we see him seated as Associate Justice on the Supreme Court after much public speculation that he might succeed Chief Justice Hughes as our highest judicial officer. That appointment went, instead, to Associate Justice Harlan Fiske Stone.

Here the biographer ran into another serious problem, whether the Black-Jackson controversy should be dealt with. Some of the facts in that controversy were already public when Jackson's famous cables from Nuremberg to the judiciary committees of Congress, after the death of Chief Justice Stone and after President Truman had appointed Fred M. Vinson in his place, making the controversy dramatically public. Mr. Gerhart felt that he was bound to deal with this whole matter, and Mr. Justice Jackson agreed with him and furnished him full information and invaluable documentary materials. Mr. Gerhart has made full use of these materials and equally full use of all published materials presenting the controversy from Black's viewpoint. The result is the most complete treatment of this unfortunate controversy that has yet appeared, and the reader is left the ultimate judge as to its merits.

There is an excellent chapter on Justice Jackson's merited disappointment as to the chief justiceship, after the death of President Roosevelt, who had promised him that position, and we have already commented on the chapter appraising his work on the Supreme Court.

Then, rather suddenly, the whole tone and character of the book changes and makes the unavoidable shift to the Nuremberg story. This makes an unfortunate break in the smooth organization of the book, but it by no means causes any flagging of the reader's interest. On the contrary, the amazing interlude in the life of a country lawyer, government lawyer, and Supreme Court justice makes the biography end in the bright light of international publicity and world-wide renown.

Mr. Gerhart deserves high credit for the scholarly care with which he has treated his most extensive source materials. As Sir Norman Birkett says in his charming Foreword, "The book is extremely well documented, and the notes are sometimes most fascinating additions to the text, and should not be overlooked."[12] The author is meticulous and generous in giving credit to the authors of all materials of which he has made use.

In conclusion, this reviewer is content to join heartily in the expression of the last sentence of his good friend Sir Norman Birkett in his Foreword: "To those of us who were privileged to know Bob Jackson he will remain in memory a very well-loved figure, but it is to be hoped that this book will preserve his memory for those who never knew him in life, but who will be inspired by his great example."[13]

*Sidney S. Alderman**

LOYALTY AND SECURITY: EMPLOYMENT TESTS IN THE UNITED STATES. By Ralph S. Brown.[1] New Haven: Yale University Press, 1958. Pp. xvii, 524. $6.00. Professor Brown's book is the third major study in the loyalty-security area to appear within the past two years. Readers who have not yet come upon the reports of the New York City

12 Text, Foreword, at v.

13 *Id.*, at viii.

* Member of the District of Columbia and North Carolina Bars. Associate Trial Counsel at the Nuremberg Trial.

1 Professor of Law, Yale Law School.

Bar[2] and the Commission on Government Security[3] would do well to attend to Brown's book first. The earlier reports are given over to studies of the machinery of the formal programs of the federal government. Brown's book presents a panoramic view of the scope and impact not only of official programs, federal and state, but of a variety of quasi-official and private programs, the latter ranging from screening tests employed by state bar associations to the blacklist compiled by a grocer in Syracuse.

The large view of the loyalty-security problem is indispensable to meaningful appraisal of the official programs. It is easy to damn out of hand the cumbersome, dilatory and often outrageously unfair machinery which the Government has used since 1947 for ferreting out untrustworthy personnel. Easy too is the assumption that the programs grow out of the indifference of administrators to the problem of reconciling the demands of security with the equally valid demands of individual freedom. But, as Brown's study of the private, informal programs indicates, drastic modification or even abolition of formal programs would furnish no real solution to the twin evils of the loyalty-security era — ostracism of the non-conformist and intimidation of all who harbor ideas not shared by the general citizenry. The formal programs correctly mirror popular fear and anger, and if they fail to allay fear and to satisfy the sense of outrage, private groups will be more than adequate to the task of making life miserable for the unorthodox.

I confess that I have often thought that it would be best to abolish the entire formal loyalty-security machinery. Simply remove all sensitive positions from the protection of civil service procedures and empower agency heads to remove employees without cause under the rubric of "the best interests of the agency." Wherever possible those removed would be transferred to non-sensitive positions; otherwise they would be dismissed without indication of reasons. There would be no talk of security risks, no opportunity for playing partisan numbers games — simply removal when in the judgment of responsible superiors removal seemed warranted. I discount the notion that such a solution would reduce civil service to shambles. The tenure system is by now such an accepted fact of government service that it would probably continue on of its own momentum. Certainly neither political party could afford to risk the re-introduction of the spoils system. Some abuses there might be, but I was persuaded that they would be preferable to the impossible business of forcing agencies to sit in judgment on the loyalty of employees where often the only materials for decision are the protestations of the employee, his past associations, and the opinion of his neighbors and associates.

My bias against *any* formal security program survived readings of both the *Bar* and *Commission*[4] reports. But Brown's book persuades me that it would be unwise to scrap the formal programs altogether. However lamentable their excesses, the programs provide a measure of insulation for those covered by them. Without them, the whole of the government service would lie exposed to the wildest speculations of partisan demagogues, partisan and merely patriotic. Worse still, private pressure groups would rapidly move into the void seemingly created by the abolition of the programs, and personnel caught up in the toils of a latter day *Red Channels* might well look longingly back on the good old days of the Loyalty Review Boards. Mildred Bailey received considerably less than the process which is due an employee dismissed by her Government as disloyal. She it was of whom Judge Edgerton wrote: "Without trial by jury, without evidence, and without even being allowed to confront her accusers or to know their identity, a citizen of the United States has been found disloyal to the Government of the United States."[5] But as a government employee under the original loyalty program, she did receive several hearings, and she was ultimately able to carry her protests to the Supreme Court. Jean Muir and Philip Loeb, whose difficulties are chronicled in Brown's pages,

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2 *The Federal Loyalty Security Program*, REPORT OF THE SPECIAL COMMITTEE OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK. New York: Dodd, Mead & Co. (1956).

3 REPORT OF THE COMMISSION ON GOVERNMENT SECURITY. Washington: (G.P.O. 1957).

4 See notes 2 and 3, *supra*.

5 Bailey v. Richardson, 182 F.2d 46, 66 (D.C. Cir. 1950) (dissenting opinion), *aff'd by an equally divided Court*, 341 U.S. 918 (1951).

might well have envied Miss Bailey her opportunities. As public entertainers they were subject to no formal loyalty program. Their loyalty to the United States was determined in the pages of *Red Channels,* and their dismissals were summary.

Professor Brown's central recommendation for reform of federal programs is that the scope of the programs be sharply restricted to positions which are truly sensitive. What *is* a sensitive position? This is the abiding question in the loyalty-security area. Even those who see no objection to the subjection of millions of citizens to loyalty tests must concede the necessity of answering it. It is plain nonsense to suppose that the seven to eight million positions now covered by the federal programs can be effectively screened. If national security is the primary concern of these programs, the immediate need is to reduce the number of persons covered to something resembling manageable size.

Brown devotes a chapter to formulating a workable definition of the sensitive job. He posits a general theory of sensitivity which is as sound as it is simple:

> (1) A reasonable classification system adequately designates the areas of employment where there are espionage hazards. (2) In guarding against the other hazards of a cold war, employment tests should be concentrated on positions where one employee, or a few employees, can do great harm. (3) In this country at this time it is unnecessary and impractical to screen masses of people against the remote risk of mass breakdowns.[6]

Elaborating on the first proposition, Brown notes that if the general public has access to a critical area, there is no point in screening employees merely because of their own access to it. Acceptance of just such a simple truth could contribute materially to reduction of the reach of security programs. What is the wisdom, for example, of the blanket designation of the New York City Transit Authority as a "security agency" under the New York Security Risk Law,[7] with the result that all of its employees are caught up in the security net? Max Lerner was a New York subway conductor. Because he refused to tell the New York Civil Service Commission, in a proceeding brought under the provisions of the act, whether he was a communist, he was dismissed.[8] The Commission thus made it certain that if Mr. Lerner wants to plant a bomb in the New York subway system he must do so on his own time and perhaps even pay a fare for the opportunity. The *Lerner* case goes far to illustrate Brown's basic thesis with regard to the security-sabotage problem: "Against the infinite theoretical possibilities of sabotage, the best remedy is a little stoicism."[9]

Brown concludes that if the seven to eight million positions now covered by federal security programs were to be realistically classified, some two million would merit the designation "sensitive." For these two million, he proposes a security screening program which does not appear to differ markedly, in theory at least, from those now generally employed. He states the case for what he terms "the judicial ideal"—a uniform standard, formal charges, an unbiased trier of facts, and full confrontation of witnesses, but he ultimately rejects it for "the administrative ideal," a less formal proceeding under standards tailored to the specific position and without the procedural safeguards of a judicial trial — most notably, without the right of confrontation. I find his acceptance of "deficient confrontation," even, presumably, in the case of casual informers, the most disquieting part of his book. But his later eloquent appraisal of the necessity of confrontation in loyalty (as distinguished from security) cases, demonstrates that he is not in need of a lecture on the basic postulates of our legal system.

At the very end of his treatment of security screening, Professor Brown is content merely to pose a problem which surpasses in importance many which receive detailed treatment in his pages. I refer to the protection to be afforded applicants for sensitive

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6 Text, at 248.

7 N.Y. Laws 1951, c. 233, as amended, N.Y. Laws 1954, c. 105. N.Y. UNCONSOL. LAWS § 1101.

8 Lerner's unsuccessful journey through the courts can be followed in Lerner v. Casey, 138 N.Y.S.2d 777 (Sup. Ct. 1955); 2 App. Div. 2d 1, 154 N.Y.S.2d 461 (1956); 2 N.Y.2d 355, 141 N.E.2d 533 (1957); 357 U.S. 468 (1958).

9 Text, at 249.

positions. At present, only on-the-job employees are entitled to the limited safeguards which exist. Applicants against whom derogatory information is unearthed in the course of a general check of the various lists and dossiers available to the security officers can be turned away without even a statement of reasons, much less a hearing on the charges uncovered. Their plight is effectively described in the pages of the New York City Bar Report:

> In consequence, such applicants may be continually denied positions, perhaps throughout their lives, because of adverse security information contained in their personnel files about which they know nothing and to which they could give a completely satisfactory answer if opportunity were afforded.[10]

Brown feels that denial of a hearing to applicants is both harsh and shortsighted. He seems to favor giving the applicant an opportunity to see any dossier containing derogatory information, yet he stops short of any positive recommendation. I find his diffidence on this score as puzzling as the recommendation of the *Bar Report*, which would allow the applicant no more than a statement of the derogatory information unearthed and an opportunity to comment on it. As early as 1955 security screening had been completed for all employees then in federal service. Reform of existing procedures does not affect present employees except in the relatively rare case where derogatory information is uncovered subsequent to initial clearance. So that the true beneficiaries of whatever reforms are now proposed are the new employees, *i.e.*, the applicants. To exclude them from the reach of the proposed reforms is to prepare an elaborate bath for an infant who isn't to be allowed near the water. I see no insurmountable difficulty in the way of allowing applicants access to their dossiers. Granted that there is no central file of dossiers and that derogatory information may come from many listings and sources, the security officer involved knows which he used, and he can and should be required to identify them. The argument that the communists would use the right of access to root at large through government files seems a makeweight. The record of the true communist or his dupe would doubtless be such as to enable the security officer considerable latitude in assigning reasons for denial of clearance. He could indicate the least confidential of his sources and with perfect propriety require the applicant to explain the information contained therein as a condition to gaining access to the others.

Once the sensitive positions in the federal service and areas related to national security have been marked off, Brown would restrict the whole loyalty-security apparatus to those positions. He draws a distinction, not hitherto observed in the operations of the programs, between security tests and loyalty tests. Any test of orthodoxy directed at an employee not occupying a sensitive position is by his definition a loyalty rather than a security test, regardless of the stated justification for the test. His prescription for loyalty tests as thus defined is short and pointed: Abolish them. He neither accepts nor rejects the proposition that the "disloyal" ought not to be paid out of public funds simply because they *are* disloyal. His conclusion is based upon the difficulties, and consequently the possible injustices, inherent in making the loyalty judgment. In his view only the national security justifies the Government's sitting in judgment on the loyalty of its citizens. Since national security is not an issue where the position is a non-sensitive one, the sole justification falls.

But after forcefully making this point, Brown concludes that the chances of actually eliminating the loyalty factor are remote, and he goes on to prescribe standards and procedures for a pure loyalty program. These differ markedly from those prescribed for the security program. A uniform standard is proposed as the test of loyalty: The inquiry is to be restricted to the question of whether the person under investigation presently entertains a preference for communism; it is not to be extended to other homegrown varieties of subversion. The proceeding is to be surrounded by full procedural due process, including a specific listing of charges and complete confrontation, even of witnesses which the Government alleges to be non-expendable. Decisions are to be

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10 *The Federal Loyalty Security Program*, REPORT OF THE SPECIAL COMMITTEE OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, *supra* note 2 at 186.

supported by findings of fact and a statement of reasons for the final determination, and are to be made a matter of public record. The fairness of the hearing is to be subject to review by a higher authority. The protections thus afforded would be extended to probationary employees and to applicants.

The proposals go considerably beyond the recommendations of the *Bar Report* and of the Commission on Government Security. If they appear extreme, I invite the reader to follow Brown's argument and refute it if he can. The proposals offer small comfort to the communist or the fellow traveler. They do offer a goodly measure of protection to the ultra-liberals, the philosophical socialists, the home-grown radicals, the one-worlders, the pacifists, and the simple cranks. Can it plausibly be argued that by depriving them of a dignified livelihood in non-sensitive positions we thereby render them less a risk to our national security? All we know of human nature points clearly to the other way. And if the loyalty programs cannot be justified in terms of national security, what remains in the way of justification? "Fear and anger," concludes Professor Brown. Fear of those who cannot hurt us is irrational; all that remains is anger. We can fairly claim that it is righteous anger; the difficulty is that we can seldom know whether we are fairly venting it. Who is the disloyal American? Professor Brown's modest proposal is that we put a bit of care into some form of reasonable definition and take conventional precautions to find out whether those we suspect fit our definition.

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BOOK NOTES

THE ANATOMY OF A CONSTITUTIONAL LAW CASE. By Alan F. Westin.[1] New York: The Macmillan Company, 1958. Pp. vii, 183. $1.60. This short work is a well done compilation of materials and background on the presidential seizure of the steel industry in 1952, the resolution of the problems this raised by the United States Supreme Court in *Youngstown Sheet & Tube Co. v. Sawyer*,[2] and subsequent events. Professor Westin lays the story before the reader through a deft use of biographical material, newspaper clippings, and excerpts from briefs and arguments before the courts, augmented by clear and informative explanatory notes. As in any work composed of abridgements, the reader is at the mercy of the compiler in discerning the real meaning of what is presented. However, in his editorial work the author has managed to retain both readability and plausibility throughout the book.

A review of this work might easily contain a comment on the appropriateness of the title. While the title is indeed apt, it does not go far enough, for there is certainly more of reality in this work than the cold analysis of anatomy. It is more like drama, and in the tale that it tells it might have more truly been entitled the "Tragedy of a Constitutional Law Case." Although the author has no express thesis, one of tragic nature seems to develop in his selection and use of materials. The United States was confronted by a problem with which none of the traditional organs of government could cope, for reasons which had nothing to do with the problem itself.

Sufficient space is lacking here to recount all the problems that beset the administration in 1952, as the author has done most succinctly. It is enough to recall the President's position as the leader in a not-overly popular war, meeting the protracted and multi-sided labor dispute in the steel industry and armed by Congress only with tools such as those provided by the Taft-Hartley Act,[3] which he had disclaimed in being re-elected. The logistical and diplomatic significance of steel supply magnified the gravity of any interruption in production far beyond its normal importance. Presidential action was necessary, but partisan political realities prevented the President from using the Taft-Hartley Act and prevented a Republican Congress from providing any alternative. Forced to act on his own, Mr. Truman ordered the seizure of the steel industry.[4]

The problem in this form was then handed to the courts for solution, partly from tradition and partly because there was no where else for the aggrieved to go. There was no inherent guaranty that the courts would be able to settle the dispute or even that they were the proper agency for handling such a problem. Indeed, there existed the traditional refusal of the courts to handle political questions, an indication that the courts themselves did not consider their processes adequate to meet such a situation.[5] But the burden of the whole problem was shifted to the judiciary, and the question was posed: in resolving the controversy, could the courts consider all relevant elements regardless of their political cast?

As the case advances through the judicial system, Professor Westin spells out the attempt to translate the problem into concepts with which the law is accustomed to work. According to what is presented in this book, the effort was not a complete success.

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1 Assistant Professor of Government, Cornell University; Member of the District of Columbia Bar.

2 343 U.S. 579 (1952).

3 29 U.S.C. 176-82 (1953).

4 For Mr. Truman's comments on the situation see 2 TRUMAN, MEMOIRS 465-71 (1956).

5 Colegrove v. Green, 328 U.S. 549 (1946). See also the dissent of Justice Brandeis in International News Service v. Associated Press, 248 U.S. 215, 248 (1918).

From the opinion of Judge Pine in the district court[6] to that of Justice Clark,[7] it is apparent that at least one problem, the political reasons for the President's refusal to use the procedures of the Taft-Hartley Act, cannot be so translated. Moreover, when the imminent dangers facing the country are juxtaposed with the opinions of the majority, as they are in this book, something seems to be woefully lacking in the law. Arguments based on theories of the separation of powers, or the inherently legislative nature of the action taken, seem to apply standards drawn from a frame of reference far removed from the actualities of the situation. An approach more akin to that of the minority (and Justice Frankfurter) which would pay close attention to, and carefully analyze, the facts is more satisfactory, regardless of results. This is the tragedy. With the executive and the legislature paralyzed by partisan politics, the judiciary spoke only in terms of eighteenth-century political theory. The country deserved something better from all three.

William D. Bailey, Jr.

6 Youngstown Sheet & Tube Co. v. Sawyer, 103 F. Supp. 569 (D.D.C. 1952).
7 Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 660 (1952).

THE MICHIGAN ONE-MAN GRAND JURY. By Robert G. Scigliano. East Lansing: Government Research Bureau, Michigan State University, 1957. Pp. 100. This book offers a practical political analysis of the controversial one-man grand jury system in Michigan. Preferring to present a distinctively political approach to the problem, the author has devoted little space and attention to the fundamental constitutional questions latent in the one-man system. Instead, he has proceeded upon the assumption that not only is the one-man grand jury constitutional, but that it is also one of the most efficient methods developed for combating crime. He feels that the system is particularly appropriate where the criminal element has entrenched itself in government and thereby gained immunization from ordinary processes.

The first one-man grand jury act was passed in Michigan in 1917.[1] Intended as a replacement for the traditional twenty-three-man grand jury that had already passed into disuse, the measure was supported by the legal profession. Although the act empowered any justice of the peace, police judge or judge of a court of record to function in much the same way as grand juries had in the past, it was not the subject of any controversy and provoked little discussion at the time of its passage.

The author demonstrates the effectiveness of the act by tracing in detail certain "big investigations" where the one-man grand jury proved effective. One of these, which began in 1939 as an investigation of an apparently insignificant suicide, coupled with another, which began in 1943 as an investigation into corruption and bribery in the Michigan Legislature, resulted in a large number of convictions of corrupt public officials. It is interesting to note that many judges who served as one-man grand juries later were elevated to much higher public offices such as governor, United States Senator, and Michigan Supreme Court Justice.

The last part of the book is devoted to a study of the attempt to abolish or modify the 1917 act which resulted in 1949 in a switch to grand juries composed of three judges of courts of record. However, in 1951 the legislature passed a new act[2] re-establishing the one-man grand juries. Although the legislative history and the reaction of the press to this temporarily successful attempt to abolish one-man grand juries are carefully analyzed by the author, there appears little analysis of the basic legal questions

1 Mich. Acts 1917, No. 196.
2 Mich. Acts 1951, No. 276.

involved. Michigan's one-man grand juries have been involved in two cases decided by the United States Supreme Court,[3] as well as numerous cases before the Michigan Supreme Court. These cases are, however, quickly dismissed by the author.

Mr. Scigliano is not a lawyer, and the design of the book is admittedly political. However, if the purpose of the author was to consider the judicial process in the main stream of political relationships, it is difficult to justify his cursory treatment of the limiting factor of judicial activity in the criminal area — a strict adherence to constitutional mandates. A more-detailed consideration of the constitutional problems involved would have greatly enhanced the value of the book to lawyers and theorists alike, for it would have placed the question of the political function of the court in an area where it is particularly limited by legal procedures, but desireable for effectiveness in combating political crime and corruption.

The 1949 change of the Michigan legislature and subsequent reversal in 1951 indicate that the legislature has, for the time being at least, insured the existence of one-man grand juries in Michigan. Thus, the legal ramifications of this institution are all that remain. Does the Michigan one-man grand jury offer a model to be imitated by other crime-wearied states,[4] or is it a legalized Star Chamber as its critics contend? The question now is not one of policy, but rather, one of legality.

Richard L. Cousineau

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3 *In re* Murchison, 349 U.S. 133 (1955). Text, p. 81; *In re* Oliver, 333 U.S. 257 (1948). Text, p. 82.

4 Text, p. 15.

BOOKS RECEIVED

ADMINISTRATION OF JUSTICE

*THE MICHIGAN ONE-MAN GRAND JURY. By Robert G. Scigiliano.
East Lansing: Michigan State University, 1958 Pp. 100.

ANTI-TRUST LAW

ANTITRUST AND AMERICAN BUSINESS ABROAD. By Kingman Brewster.
New York: Macmillan Co., 1958. Pp. xxiv, 509 $12.00 A study of the legal and foreign policy aspects of the application of antitrust law to our foreign commerce.

A STUDY OF THE ANTITRUST LAWS. By Joseph Burns.
New York: Central Book Co., 1958. Pp. xiv, 574. $12.50. A report to the Senate subcommittee on antitrust and monopoly of export opinion on the present state of the law in this area and suggestions for its improvement.

MARKET POWER. By G. E. and R. D. Hale.
Boston: Little Brown and Company, 1958. Pp. xix, 522. $17.50. A handbook for the general practitioner of practice under Section 2 of the Sherman Act, with a discussion of pertinent economic thought.

UNDERSTANDING THE ANTITRUST LAWS. By Jerrold G. Van Cise.
New York: Practising Law Institute, 1958. Pp. 174. $2.50. One of the Institute's guides for the general practitioner.

BIOGRAPHY

*AMERICA'S ADVOCATE: ROBERT H. JACKSON. By Eugene C. Gerhart.
Indianapolis: Bobbs-Merrill Co., 1958. Pp. xiii, 545. $7.50.

CONSTITUTIONAL LAW

*THE ANATOMY OF A CONSTITUTIONAL LAW CASE. By Alan F. Westin.
New York: Macmillan Co., 1958. Pp. viii, 183. $1.60.

COURTS

THE SUPREME COURT FROM TAFT TO WARREN. By Alpheus T. Mason.
Baton Rouge: Louisiana State University Press, 1958. Pp. xv, 250. $4.95. An examination of the Court's recent history by a lifelong student of its workings

ESTATE PLANNING

LEGAL INSTRUMENTS OF FOUNDATIONS. By F. E. Andrews.
New York: Russell Sage Foundation, 1958. Pp. 318. $4.50. A collection of documents in use in this area today.

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* Reviewed in this issue

LABOR LAW

LABOR. By Neil W. Chamberlain.
New York: McGraw-Hill, 1958. Pp. 625. $7.00. A textbook treatment of fundamental labor economics.

JURISPRUDENCE

CASES AND MATERIALS ON JURISPRUDENCE. By John C. H. Wu.
St. Paul: West Publishing Co., 1958. Pp. xliii, 719. $12.00. A new teaching tool by an important theorist in this field.

LEGAL EDUCATION

THE LAW SCHOOLS OF THE UNITED STATES. By Lowell S. Nicholson.
Baltimore: The Lord Baltimore Press, 1958. Pp. 245. A statistical and qualitative analysis of contemporary legal education; prepared for the Survey of the Legal Profession.

LOYALTY

*LOYALTY AND SECURITY. By Ralph S. Brown.
New Haven: Yale University Press, 1958. Pp. vxii, 524. $6.00.

SOCIOLOGY

THE NEGRO PERSONALITY. By Bertram P. Karon.
New York: Springer Publishing Co., 1958. Pp. vii, 184. $4.50. An attempt to provide needed factual information on the Negro through statistical and psychological analysis.

TAXATION

CAPITAL GAIN V. ORDINARY INCOME. The Indiana State Bar Association.
Indianapolis: Bobbs-Merrill Co., 1958. Pp. xii, 374. $10.00 A series of papers designed to present the subject to the general practitioner.

FEDERAL TAX FRAUD LAW. By Ernest R. Mortenson.
Indianapolis: Bobbs-Merrill Co., 1958. Pp. vii, 312. $12.50. A guide for practice in this area.

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* Reviewed in this issue