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Book Review

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witnesses that are not disclosed to the applicant. Some members believe that new legislation should cover this point, while other members believe that the unsuccessful applicant should have the right to rebuttal or else the evidence should not be considered. This section on confrontation and cross-examination are some of the most important in the report.

Perhaps the most publicized question and the greatest area of public interest arises from the requirement that each applicant for a passport must sign an oath of allegiance. It was indeed gratifying to note that the Committee made short work of any objection to this requirement. In their own words: "This is unobjectionable because of its close relation to citizenship, an essential for every passport applicant. A citizen should never object to his government's calling upon him to reaffirm his loyalty in general terms which indicate his willingness to support the Constitution."

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*Reviewed by William Samore**

LIVING THE LAW, by Frank E. Cooper. Published by The Bobbs-Merrill Company, Inc., Indianapolis, Indiana; 184 pp.; 1958.

Frank E. Cooper, Professor of Law at Michigan Law School, has written his latest book especially for the entering law student. But graduates should not make the mistake of setting the book aside unopened.

Professor Cooper uses a wide brush to paint his law canvas. Although of necessity not a treatise on each of many topics covered, still there is sufficient depth. Some of the matters discussed no law student is formally taught. A sampling of the topics covered: questions of fact, the rule of law, legislation, administrative law, the practitioner's skills (investigation, negotiation, advocacy), and drafting.

One point mentioned by the author should have been expanded. The point, evident to professors, but not to students: law school study and undergraduate study simply are not the same. Too many students expect merely a continuation. Many who cannot adjust become an attrition statistic.

Professor Cooper grandly predicts for the successful law stu-

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dent the day when the “kaleidoscopic maze . . . will suddenly assume a geometric progression of form” (p. 1). Yet he spends much of the book’s balance convincing the student that the only certain thing about the law is its uncertainty.

In his chapter on statutory interpretation, the author lists discovering legislators’ “intent” as a technique of interpretation. Correctly, this is not a separate technique. All the other techniques mentioned—canons, legislative history, the plain meaning rule, and purpose—are techniques allegedly to discover the “intent.”

Admitting that his illustrations are based on actual cases, the author still repeatedly states that no resemblance to actual persons is intended. It would be interesting, at least for the student, if the author had explained why he takes this seemingly paradoxical precaution.

To illustrate the difficulty of determining the issue in an appellate case, Professor Cooper quotes (pp. 40-41) from an actual case. Nothing, however, is said about the procedural steps which brought the case to the appellate level. Can anyone even begin to determine the issue without this information?

The main criticism, if valid, lies elsewhere. The author’s purpose is to assist the student to bridge the gap between law school and practice. Certainly an admirable, although difficult, goal. His primary method is to show the student that there are, in the decision of controversies, other factors besides rules of law. It is true that the author gives proper credit to the major influence of legal principles in judicial decisions. But this seems to be a token gesture. It is obvious that to him other factors are more important. There is a de-emphasis of the importance of rules of law, not only in law practice, but even in law school. The reader is confronted by what might be aptly termed scare headlines: **YOU ARE NOT IN LAW SCHOOL TO LEARN RULES OF LAW** (p. 56); **RULES OF LAW DON’T DECIDE CASES** (p. 59).

According to the author, the fundamental purpose of law study is to discover what factors persuade courts to decide one way or another. More important than learning rules of law is the ability to predict, on the basis of past decisions, how a judge will decide present and future controversies. But are not rules of law based on past decisions? Anyway, if rules of law are only one of the guides, others are *stare decisis*, logic, and

ultima thule.¹ One may very well get the impression that a lawyer's task resembles an experienced gambler hoping his number turns up after the die is cast.

"Rules of law don't decide cases" is, according to the author, just a sober recognition that in many cases, rules of law do not present a clear guide; they are equivocal and changeable. Of course they are. But why overly emphasize the pathological in a discipline where the normal case is already pathological? The vast majority of cases are decided without overruling prior decisions. Revisions of casebooks and treatises are mainly reorganizations and substitutions of newer and better cases, not wholesale discarding of rules of law.

No one doubts that a practitioner cannot ignore other factors. Most entering law students mistakenly believe that the law is certain, immutable, and easily determined. Presumably, the practicing attorney knows better. Professor Cooper's book has the merit of dispelling, without ceremony, that student belief. In this way, he does help to bridge the gap between school and practice. This accomplishment alone makes *Living the Law* "must" reading for the student.

¹ It is interesting that of the many books written on the methods of *ultima thule*, the author cites only Cardozo, Frank, and Llewellyn (p. 68, n. 27). Here would have been an opportunity to devote a couple of chapters to the problems of jurisprudence, presenting other views besides legal realism.

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*Reviewed by Anthony R. Fiorette**

DOUGLAS OF THE SUPREME COURT, A SELECTION OF HIS OPINIONS, by Vern Countryman. Published by Doubleday & Company, Inc., Garden City, N. Y.; 401 pp.; 1959.

The author presents a brief and interesting biographical sketch of Justice Douglas. Then follows a selection of sixty-nine opinions from nearly six hundred written by the Justice in the twenty years he has been a member of the Court.

The author organizes the selected opinions into four categories: (1) Powers of Government; (2) The Economy; (3) Fair Governmental Procedures; and (4) Liberty. This arrangement clearly portrays the Justice's philosophy and thinking on the highly controversial questions confronting our generation. The

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