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Book Reviews

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The Successful Practice of Law. By John Evarts Tracy. New York: Prentice-Hall, Inc. 1947. Pp. vii, 466. $5.75.

The first wave of our post-war law school graduates has already embarked on its "invasion" of the legal profession. How these men and those who will follow can successfully establish their "beachheads" in this very competitive profession is told by John Evarts Tracy in his recent book "The Successful Practice of Law." The author who is both an able practitioner and teacher of law is exceedingly well qualified for the task he has undertaken. He entered the legal profession in Wisconsin in 1904 where he practised till 1907. The next ten years found him practising in the state of Michigan. From 1920 to 1925 he practised in New York and from 1925 to 1930 in Illinois, in all a total of twenty-six years. In 1930 he exchanged his life of a busy practitioner for that of a Professor of Law at the University of Michigan, a position which he currently enjoys.

Upon entering the teaching profession, Mr. Tracy gave a series of optional lectures to senior law students which consisted of hints for the embryo lawyer on the practice of law. These lectures were later mimeographed and subsequently published in a small volume entitled "Hints on Entering the Practice of Law." That book is now out of print and the book which is the subject of this review is a rewrite of nearly all the old materials with appropriate enlargements of certain subjects and the introduction of others not covered in Mr. Tracy's original lectures.

The student is first informed on the very practical question of "How to Obtain Clients." Some very excellent and frank advice is given in the ten pages devoted to that subject. If the young lawyer would succeed in getting clients he must be socially active. He is told that ". . . it will not hurt you to join one or more lodges," to affiliate with a political party, to make luncheon speeches for the Rotary and Kiwanis type of clubs. While the author disclaims any intention of putting the church on a too material basis he suggests that much good will be obtained from church-going. Having succeeded in his effort to "catch the hare" the young lawyer is then advised on what he should do in order to hold clients. Aside from doing the work well, Mr. Tracy gives that much needed and most valuable bit of advice—namely—to keep one's client informed of the progress being made. Every practitioner knows that one of the surest ways to obtain satisfied clients is to keep them posted on the status of their cases, yet it is in that very particular that many attorneys fail, little realizing that while they as counsel know everything

is shipshape, or perhaps that nothing more need be done for several months, the client is apt to interpret silence on the part of his attorney as a sign of neglect.

The mechanics of handling a conference with a client are covered in detail. The injunction to "do it now" in regard to client's work is wisely modified when the author discusses divorce cases. In such instances the reader is told that he should "allow the matter to simmer" and that, if he does so, a reconciliation may make the divorce action unnecessary, whereas, had the divorce suit been promptly started a reconciliation might become impossible. Excellent yardsticks are given in the chapter on "The Fixing of Fees," a problem which in practice is often as difficult of solution as a legal question. The practice of some attorneys who occasionally allow a client to fix his own fee is frowned upon and an excellent illustration of the undesirable results of this policy is given.

Chapter 6 is devoted to the drafting of instruments and the use of check lists in closing titles. Some very practical hints on office management are given in Chapter 7. On page 140 the author gives a sample bill in a litigated case. It has the distinct advantage of being neither too general nor too specific. The drafting of bills is in itself an art and the sooner the young lawyer acquires it the better will both he and his clients be satisfied.

The preparation of a case for trial, both from the standpoint of fact and law is made the subject of Chapter 9. The young lawyer is admonished to visit the scene of the accident, to study the mechanics of a machine involved, to personally go out and interview witnesses, to get signed statements not only of the witness who admits knowledge but also of the witness who denies any knowledge. Every trial attorney knows that a signed statement from a hostile witness to the effect that "I did not see the accident," or "I don't know anything about it," is of infinite value on cross-examination of that witness who on the stand testifies glibly to having knowledge of the occurrence in question. Yet, it is a fact that many a young attorney, on finding that a prospective witness states he knows nothing of the accident or other occurrence in question, drops the matter there and does not get a negative statement in writing.

Mr. Tracy emphasizes the necessity of counsel cautioning his client not to be lured into confusion by giving a negative answer to that pet question of cross-examiners, "Have you ever talked with anyone about this case?" He then warns his reader against being lured into the signing of stipulations by more experienced counsel lest he find he has stipulated his client's case away. He cautions against the favorite trick of the adversary who subpoenas witnesses that the attorney had himself

expected to use thus causing the inexperienced attorney to withhold his subpoena only to find at the trial that the witness has failed to appear having been excused by his adversary. While these and many other "tricks of the trade" are common knowledge to the well seasoned trial attorney they are matters which the young attorney does well to learn before trial rather than by bitter experience. He may do so by reading Mr. Tracy's book.

"How to Try a Jury Case" is the subject of Chapter 10 which consists of 136 pages and consumes one third of the book. It is easily the most entertaining as well as the most instructive portion. The author takes us through the trial from the drawing of the jury to the reception of the verdict. Interspersed in this chapter are quotations from well known lawyers as Francis L. Wellman, George Battle, Asher L. Cornelius and others. After a reading of Chapter 10 no young lawyer will be in a position to say that he had not been warned on improper trial techniques for although the full art of trial work cannot be covered in any book of this size there is mighty little of importance which Mr. Tracy has not touched upon. Chapter 10 alone is easily worth the price of the entire book.

The author closes what he has chosen to call Part 1 of this book with a Chapter on "Problems of Professional Ethics." Then follow two chapters designated Part 2. The first of these is entitled "Choice of Location" and the second "The Opening of an Office." The titles adequately indicate the substance of these chapters which should prove most helpful to the young attorney who is uncertain where to locate and has no knowledge of the mechanical operation of a law office. From the editorial point of view it appears to the reviewer that the last two chapters should in fact be the first two chapters of the book.

At the request of his publishers, Mr. Tracy has, by way of an appendix, included a transcript of testimony from an actual case. As he goes through the testimony he indicates the points of strength and weakness in counsel's examination of witnesses, the propriety of the trial court's rulings and the probable basis in fact and in law for the reversal handed down by the appellate court.

This book, which is appropriately indexed, will prove of inestimable value to the young man who, having completed his law school course, finds himself at last ready to start on the actual practice of law. I heartily recommend it to every senior law student.

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A Declaration of Legal Faith. By Wiley Rutledge. Lawrence, Kansas: University of Kansas Press. 1947. Pp. 82. $2.00.

In December, 1946, Justice Wiley Rutledge of the United States Supreme Court inaugurated the Stephens Lectureship at the University of Kansas. The lectureship was established to honor the memory of Judge Nelson Timothy Stephens, founder of the School of Law of the University of Kansas. The donor, his daughter, expressed the hope that the lectures would make clear the great truth that civilized "life arose as the result of law." The title of the book containing these lectures derives from the title of the first lecture.

"A Declaration of Legal Faith" by a member of the United States Supreme Court is significant. Few judges or lawyers are willing or able to express simply their faith in law, in liberty, in justice, in human society. Justice Rutledge stands in the succession of men like John Milton, John Locke and Thomas Jefferson, who conceived of life and liberty as inseparables and who proclaimed the truth that liberty and law are not antagonistic but complementary and that liberty in human society is liberty under law. Justice Rutledge states his personal faith in this truth and in justice as the ultimate purpose and end of law. Thus, he looks at law only as the means to an end and at justice and individual human freedom as the aims and ends worth striving for. To Justice Rutledge, the differences between warring nations are ideological; they are differences in notions of justice and individual freedom and not differences in law. Law may be the means of securing either a maximum or a minimum of freedom and justice. It becomes the instrumentality of dictator and democrat alike. The real problem among nations, as among individuals, is the reconciliation of ideas of justice and freedom. Since it is under law that men are able to live together in society, there must be law and legal order if our present civilization, with its ideals of liberty and justice, is to survive and to go forward.

Justice Rutledge further declares his faith in the principle of federal union. The greater part of these lectures is devoted to a discussion of the Commerce Clause of the Constitution as the device by which diverse communities were welded into a great nation and, similarly, diverse nations may become a world community. He entitles this discussion "The Commerce Clause: A Chapter in Democratic Living." The Commerce Clause, as the chief tool in the development of a strong nation under our federal system, thus becomes the hero of the story, ably assisted by the great judges who have used it to adjust clashes between national and state interests and to create a nation.

This story of national growth under the Commerce Clause is told with a broad sweep and yet includes clear-cut analysis of the difficulties

which had to be surmounted and the various paths followed by the United States Supreme Court since the days of *Gibbons v. Ogden*.[1] One part of this development, the expansion of federal power through Congressional action, is told quickly and effectively. According to Justice Rutledge, the federal pendulum finally came to rest with the decisions upholding the National Labor Relations Act[2] and the Fair Labor Standards Act.[3] In his opinion, later cases are but filling in and accommodation to the mandates of these great decisions. Apparently, this would include such a case as *Wickard v. Filburn*,[4] in which the court upheld the AAA wheat acreage allotment program as applied to a farmer who grew grain for his own use.

The other part of the development, and the more complex, concerns the limitations on state legislation derived from the Commerce Clause. This is told at greater length, with considerable use of historical background to explain the trends in judicial decision in this area of conflict between state and national power. The "exclusive power" theory of the Commerce Clause, set out explicitly by Justice Johnson in his concurring opinion in *Gibbons v. Ogden*[5] and by implication in the famous opinion by Chief Justice Marshall in that case, is presented as an attempt to build up national power and as yielding inevitably to the "concurrent power" theory when the lines of conflict were more clearly drawn. Justice Rutledge might effectively have emphasized as the high point of this development the opinion by Chief Justice Stone in *Southern Pacific v. Arizona*,[6] in which a rationale for reconciling competing state and national interests was so ably presented.

There is a moral to the story. What was achieved under the Commerce Clause of the federal constitution for a loose confederation of sovereign states might be accomplished under some sort of international commerce clause for the world today. Whatever lessons may be learned by a study of our national development under the Commerce Clause, it is history that calls for frequent retelling. Mr. Justice Rutledge has done this in words that may be understood by the layman and which also picture adequately the great difficulties involved. Because relatively few had the privilege of hearing these lectures, their publication is

[1] Gibbons v. Ogden, 9 Wheat. 1 (1824).
[2] National Labor Relations Board v. Jones and Laughlin Steel Corp., 301 U. S. 1 (1937); Associated Press v. National Labor Relations Board, 301 U. S. 103 (1937).
[3] U. S. v. Darby Lumber Co., 312 U. S. 100 (1941).
[4] Wickard v. Filburn, 317 U. S. 111 (1942).
[5] Gibbons v. Ogden, 9 Wheat. 1, 222 (1824).
[6] Southern Pacific Co. v. Arizona, 325 U. S. 761 (1945).

opportune for all of us who are interested in the growth of the United States under the Constitution and who are concerned with the lessons which our experience may have for the world we live in.

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