BOOK REVIEWS

FRAUD UNDER FEDERAL TAX LAW. By HARRY GRAHAM BALTER. Commerce Clearing House, Inc., Copyright 1953. Pp. 495. $6.00.

To say that this book is valuable reading for the taxpayer, tax collector, lawyer and accountant alike, would sound like sales talk. But that is what it is — a valuable reading. This is especially so in view of the growing tax consciousness in our country as a result of the earnest campaign of the Bureau of Internal Revenue.

For some readers, the author explains, it is feared, too much will be discussed, while for others too much will be left unsaid. For a tax jurisprudence such as ours which has barely started to grow, this apology is of no moment.

Although some features of the federal system are not applicable in our jurisdiction, so much is adopted by our country, our tax system being a child of American parentage. This volume is an attempt to correlate and synthesize a mass of materials which "while in no way esoteric or even unavailable, has not up to this point been hammered into a working tool for the legal and accounting professions." This books gives the *whys* and *wherefores* of tax fraud cases where local materials prove barren. And where our existing procedural rules appear wanting, the federal statutes on tax fraud become a consummation devoutly to be wished.

It has been said that every tax law contains the seeds of its own evasion. Perhaps Justice Holmes was a lonely voice when he said to an assistant: "I like to pay taxes. With them I buy civilization." Everybody else, it seems, would prefer to look at taxes as an imposition. And legion are those who would cheat and bully their way to escape tax liability.

Fraud under Federal Tax Law is a careful and systematic study from the birth to the successful prosecution or defense of a tax fraud. Starting with the detailed differentiation between "avoidance," "evasion," minimization," "reduction," and "alleviation," it winds up with the civil and criminal aspects of a fraud case, the knotty problems that beset both parties in a trial, the penalties imposed or avoided. It is shown here that a tax fraud case may cut across the whole fabric of the tax structure, and its pre-litigation and litigation phases may encompass the entire frontier of civil and criminal law, as well as remedial law. In a brief outline the tax fraud problem is attacked according to the following outline:

1. Basic concepts; tax evasion versus tax avoidance.
2. Administrative processing of a tax fraud case; voluntary disclosure policy; compromise procedure.
3. Problems incident to the fraud investigation; examination of books and records; taxpayer cooperation in the course of the investigation.
4. Problems incident to the handling of a civil fraud case; civil penalties for fraud, failure to file, and negligence; handling a civil fraud case in the tax fraud.
5. Problems incident to the handling of a criminal evasion case; criminal penalties; procedure prior to trial; the trial; proof of wilfulness; methods used to prove tax deficiency.

Heavily documented with leading cases in every point raised in his discussion the range of which is exhaustive and straight-forward as well, Mr. Balter writes in a language not so technical as to be understood only by those tutored in the lingo of those who are in the craft. This revised edition is endorsed with significant, new comments on the processing of a fraud case and the problem of taxpayer cooperation during a fraud investigation, a procedural aspect which has been well developed only recently. Among those discussed are the still

controversial net worth increase method or the inventory method which of late has stirred many a taxpayer's nest, the bank deposit method which Congress until now frowns upon.

Mr. Balter does not meet unsettled points of the law like an opinionated authority. He prefers to bow to the majority ruling without suppressing what to him would have been the "ought" of the law. He would rather quote the narrow implications of a case rather than venture to formulate a rule from its holding; he would rather cite the two conflicting opinions than proceed to draw his own distinctions.

*Francisco Tantuico, Jr.**

THE ART OF ADVOCACY. By LLOYD PAUL STRYKER.
Simon and Schuster, New York 1954. Copyright 1954. Pp. 306. Introduction by Harold R. Medina—Publisher's Note about the Author. "Knight with a Rueful Countenance — A Profile of Lloyd Paul Stryker" by Alexander Woolcott. Index. P10.00.

"Good Advocacy—a Crying Need." This is the title of a chapter of *The Art of Advocacy*. It is also its message, for this book is an impassioned plea for the renaissance of what in America today is a vanishing tribe: the trial lawyers. It is an attempt to show that the trial lawyers, the advocates of the Bar, are the real bulwark of law and of the Bill of Rights. It is an assertion that only a trained and fearless advocate can assure a defendant of his day in court.

The author opens with an interesting account of how a trial lawyer conducts his case: the interview with the client, the seemingly endless questioning to establish what the facts are, the search for applicable legal principles, and the trial itself. Explaining why a lawyer should take pains to be completely familiar with the facts of the case, even if he had to bore the client by asking him to repeat what he had previously related, the author writes: "The really difficult problem in the preparation of a case is to learn what the facts are and no matter how long or conscientiously you work, you will never know them all. The law seldom decides the issue, the facts do; and as contrasted with the ascertainment of facts, the law is easy to discover." But, the author hastens to add: "You must acquire a feeling for law as much as for the facts. It must become a part of you and you must translate it into common parlance for instantaneous and ready use."

Mr. Stryker dwells at length on the fascinating art of cross-examination which he considers with Prof. Wigmore as "beyond doubt, the greatest legal engine ever invented for the discovery of truth." To him "it is a sword for cutting and destroying perjury. It is a bulwark of liberty." It is something which cannot be learned by rote, for each cross-examination differs from all others "because the facts are different, the witnesses are different, the jury is different, the judge is different, everything is different. Each cross-examination is a new adventure, a forage on an uncharted sea."

What makes this book pleasurable reading not only to lawyers and students of law but also to laymen is the fact that it is profused with interesting anecdotes of famous trial lawyers. Mr. Stryker takes his readers to the front seats of courtrooms where appear Martin W. Littleton, Daniel Webster, Rufus Choate, Robert Jackson, John W. Davis and other legal luminaries.

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* LL.B. (U.P.) 1955.

Somewhere in the middle of the book, the author decries the present state of the art of advocacy. "It is indeed an art which in these latter days, has fallen into neglect, judging by the lack of enthusiasm evinced for it in many of the law schools as well as in the forum where both its theory and its practice are of such vital moment to those who would essay it as well as to those for whom it is essayed." Somewhat wistfully, the author recalls the days of Pericles, of Cicero, of Hamilton, of Webster, and of Lincoln. With this condition of the art, the author also observes the decline of the county seat lawyer and the small town advocate.

Touching on the propriety of a lawyer taking the defense of indicted persons specially those against whom public opinion is aroused, the author observes: "Many persons so despise the crime that they no longer can distinguish between it and the question of whether the indicted man is in fact guilty. To hate crimes is just and laudable; but to condemn in advance of trial a man who as yet is only accused is to adopt the philosophy of a lynching party. To condemn and pillory and execrate the lawyer who stands forth to defend a man still presumed to be innocent, is not less than an attempt to destroy the sacred rights embodied in the constitution and specifically guaranteed by our Bill of Rights." He further notes: "Justice is a flame that often flickers in the headwinds of an aroused public sentiment; but it is a fire that must be kept alight if we are to escape such trials as are daily witnessed in the Kremlin and if we are to avoid the lawless sway of a Gestapo. If lawyers do not do their parts to keep the fire of justice lighted, who will lead our people back to the civilized conception that every man, no matter how we hate the crime of which he stands accused, has nonetheless, a right to be defended, to the end that all that can rightfully be said for him is well said? If there should come a time when there are none left to cry out when the Bertram Campbells[1] are made to suffer tortures, the America that we know would then follow the republic[2] of the past down the long road to oblivion."

The bood also describes in detail the English system of legal profession — its division into barristers[3] and solicitors.[4] This system inspired the author's proposal to create and recognize in America the different roles of barristers and solicitors and to divide the one from the other to the end that those fitted for either branch of the profession be definitely placed there. This is Mr. Stryker's reaction to the growing scorn of the legal profession to trial lawyers.

Replete as it is with sound advice from a person who knows what he is talking about,[5] on the proper treatment of clients, on eliciting facts from them, on conducting cross-examinations, on the right way of speaking in courtrooms, on appealing cases and bringing them into successful termination, and of accounts of how some giants of the legal profession tackled some trial problems common to practitioners, the book is invaluable not only to law students but also to those

[1] The center of a celebrated criminal case in New York. Bertram Campbell was convicted of forgery, a crime which he did not commit, a fact proved by the confession of the real felon. The confession, unfortunately, was made after Campbell had served his term at the Sing Sing Penitentiary. This case and other cases recounted in the book, was attributed by the author to lack of competent and fearless advocates.

[2] Reference is made to the ancient Roman Republic.

[3] Persons authorized to argue a case before a court.

[4] Those who prepare the case, interview the clients, etc. but cannot come to court with it.

[5] The Publisher of the book of the author: "He is the victor in ninety seven per cent of the several hundred cases he tried when he was general counsel for the New York Medical Society, a man whose clients have included judges, district attorneys, political leaders, prominent figures in the world of government, business, and society, a man who has represented people in all walks of life and whose career has attracted nation-wide and even international attention, and one of New Yorks and the nation's top-flight trial lawyers." Among the books written by him are: ANDREW JOHNSON, A STUDY IN COURAGE, COURTS AND DOCTORS, and FOR THE DEFENCE, THOMAS ERSKINE.

who wish to improve their practice. Its inspired dissertation on the rights of lawyers to defend any accused person is a soothing balm to those who in answering the call of duty have to bear the stigma of public contempt.

Augusto S. San Pedro

ACADEMIC FREEDOM: AN ESSAY IN DEFINITION. By RUSSEL KIRK.

Henry Regnery Company, Chicago, 1955. Pp. 191. Notes. Bibliogrophy. Index. ₱7.50.

So much has been said and written about academic freedom that these discussions have confused rather than clarified the significance of this liberty of the teacher and the scholar. This almost hysterical literary outburst by educators, politicians and the press in defense of academic freedom is the direct result of loyalty-oaths, legislative investigations and arrogant dismissals of university professors during the past few years. Out of this literary babel has come this timely book by Professor Russel Kirk—certainly an exception to the confusion. Professor Kirk wrote this book, an essay in definition, because "academic freedom is gravely threatened in our time." Ironically enough, those who should be deeply interested in this freedom imperfectly apprehend the causes of this threat to academic freedom.

The author approaches the herculean task of defining academic freedom from the view point of the "conservative mind" that has faith in a "higher law" and "the laws of nature and nature's God." The historical method is used not only because academic freedom is "an historical reality" but also because it is necessary that we know just what the phrase meant to past generations and how it has developed so that we may employ the phrase sensibly.

In a lucid style, Mr. Kirk discusses the historical significance of academic freedom and why such liberty should be given to the scholar. Starting his summary inquiry into the past with Plato's Academy, then through the medieval institutions to our present universities, Mr. Kirk concludes that the great schools of antiquity were founded not by the community but by private persons for their "private, professional delight." In time, especially during the Middle Ages, the community came to regard such men as consecrated to the service of Truth. Because it could not bestow wisdom upon the truth seekers, the community simply recognized their right in the search for wisdom. It is not, therefore, necessary that academic freedom be expressly guaranteed by the constitution or any statute because its positive existence is based upon prescription and tradition. Perhaps there are persons who might disagree with this theory with valid reasons but that is beside the point. "The principal support to academic freedom, in the classical world, the medieval world, and the American educational tradition, has been the conviction, among scholars and teachers, that they are Bearers of the Word, — dedicated men, whose first obligation is to Truth, a Truth derived from an apprehension of an order more than natural or material."

With these premises, the author defines academic freedom as "a group of immunities and privileges intended to protect the teacher and the scholar from the consequences which often attend marked freedom of thought and expression in the rough world outside the Academy. The teacher and the scholar have laid claim to these immunities and privileges, and the public has allowed the validity of their claim, because here and there, in the hurly-burly of this world

of woe, we need to have sanctuaries in which contemplation and speculation may find security; for without such sanctuaries, the life of mind and spirit would flicker out, and the civil social order would slip back toward the primitive night."

Professor Kirk is no anarchist either. He recognizes also that academic freedom has its own limits. In order to find a "principle of order" as a limit to academic freedom, Professor Kirk ventures into the "tangled thickets of loyalty-oaths, legislative investigations, non-juring professors, and all that labyrinth of suspicions and recriminations which have plagued our colleges these several years."

Academic freedom, he says, should not be confused with the "human rights" or with "consttiutional guaranties." Academic freedom is more than these rights. It is a special freedom for a select body of men. This is because scholars and teachers are men with whom we can reason. They should be free in the search for wisdom "so long as professors do not take violence for the means to reform society, so long as they admit the possibility of rational discussion, so long as they do not deliberately indoctrinate their students with their own prejudices, so long as they do not engage in a conspiracy against the civil social order — and so long, of course, as they are competent scholars."

Professor Kirk takes issue with those who seek to change the purpose of the Academy as a place reserved only for men dedicated to the service of Truth and as a place of "disciplining the higher faculty of imagination" with what they call "education for democracy." He call these persons "educational levellers" or the apostles of John Dewey who would suit the purposes and ends of the university to the whim and wishes of the majority. This group of educators, speaking through William F. Buckley, Jr., had advanced a new definition of academic freedom which when pursued to its logical consequences would convert the phrase into "a hoax to deceive the proprietors of universities and colleges."

The author visited several universities and colleges and had interviews with their respective presidents and professors. As a result, he came across several cases of arrogant disregard of academic freedom by university administrators. He specially discusses two of the most shameful incidents in the American struggle for academic freedom. One is the case of Dr. Frank Richardson of the University of Nevada. He was dismissed from the university for having vigorously opposed the lowering of the academic standards of the university by admitting more students. The other case was the arrogant dismissal of W. T. Couch as director of the University of Chicago Press for having published a book entitled *Americans Betrayed* by Morton Grodzin in violation of an order of the university president. The book was already approved for publication but another university did not like the subject matter of the book. But Mr. Couch could not disregard "decent standards in scholarly publishing" just because the publication of the book would disturb "inter-university comity."

Simply worded, and direct to the point, the book is recommended for university administrators, professors and students, especially in the University of the Philippines, the only institution to which academic freedom is guaranteed by the Constitution. With this scholarly work the author gives us a more comprehensive and deeper insight into the intrinsic worth of academic freedom, in the unending search for Truth.

Jose C. Concepcion

THE COMMUNIST THEORY OF LAW. By HANS KELSEN.

Frederick A. Praeger, Inc., New York, 1955. Pp. viii, 203. Preface. Index. ₱10.00.

In this book, Prof. Kelsen gives a comprehensive analysis of the Communist doctrine that law is an ideological superstructure, that the economic production and the social relationships constituted by it determine the coming into existence and disappearance of state and law, and that law is intended merely to be a weapon in the struggle of socialism against capitalism. He considers Marx' interpretation of society as a confusion of science and politics, and says:

> "Social science is for Marx in the first place a critique of the ideological consciousness of bourgeois society, that is of the religion and social theory of the bourgeoisie; and its purpose is to unveil the contradiction between this consciousness and the social reality distortedly reflected by it. But, since a social reality produces an ideology, a perverted consciousness only because it is itself perverted, and that means contradictory in itself, the critique of social ideology turns into a critique of social reality. And the critique of social reality aims at a total change of this reality, at social revolution. Thus, the science is from the very beginning mixed with politics."

Political dependency, the author says, demoralizes the science of jurisprudence.

The book also presents the legal theories of the following famous writers: V. I. Lenin, P. L. Stuchka, M. A. Reisner, E. B. Pashukanis, A. Y. Vyshinsky, S. .A Golunskii and M. S. Strogovich. The theories of these writers are evaluated in the light of the legal theory of Marx and Engel. Of Lenin's theory, Kelsen says that "it is hardly more than casual remarks interspersed in his theory of state; and nothing else but an interpretation of the words of his masters (Marx and Engels)." With regard to Pashukani's theory that only private law is law in the true sense of the term, Kelsen explains that the conflict of interests is the *raison d'etre* of the law; that conflicts take place not only between individual interests but also between collective interests and individual interests. Those who refuse to consider public law as true law assume that the state by its very nature is beyond and above the law because of the concept of state sovereignty.

The author manifests a keen and analytical mind when he presents the definition of "law" by Vishinsky. He says, for example, "that judged from a purely logical point of view, this definition makes a rather dilettantic impression. 'Law is the aggregate of the rules...established in legal order' is a tautology, since an aggregate of rules is an order, and legal order is only another term for law."

A noted international law jurist,[1] Prof. Kelsen did not fail to include in this book his study of the Soviet theory of international law. A monist also, the author vigorously criticizes the Soviet legal theory that national law has primacy over international law and that the validity of the norms of international law is based on their recognition by the state. Kelsen discusses the international legal theories of Pashukanis, Korovin and Krylov.

Professor Kelsen has always been philosophical in his approach to his subject matter. Typical of his many books, *The Communist Theory of Law* is very thought-provoking, and is recommended to law students. To those who are not familiar with Kelsen style, however, this book may prove to be quite abstruse.

Pilipina A. Arenas

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[1] Among his books are: PRINCIPLES OF INTERNATIONAL LAW, THE LAW OF THE UNITED NATIONS, LEGAL TECHNIQUES IN INTERNATIONAL LAW, PURE THEORY OF LAW, and LAW AND PEACE IN INTERNATIONAL RELATIONS.

THE HOLMES READER. By JULIUS J. MARKE.

Oceana Publications, N.Y., Copyright, 1955, Pp. v. 282. Appendix. ₱9.40.

Justice Oliver Wendell Holmes has been variously called one of the greatest American jurists since Chief Justice John Marshall, the champion of Anglo-American liberty through the law, one of the best legal minds that the world has produced, one of the five outstanding exponents of American democracy, "the summit of hundred of years of civilization, the inspiration of ages yet to come," and of course, to most law students, the great dissenter, whose dissents have been vindicated by time. What could be the reason for the plaudit and praise?

This little volume, a collection of the writings of Justice Holmes and of articles written about him, explains the high esteem in which the bench and the bar hold Justice Holmes. It contains the biography of Justice Holmes by Justice Benjamin Cardozo, Sir Frederick Pollack, and Arthur Dehon Hill, his speeches and writings, his letters, his famous decisions, and an evaluation of his contribution to the science of law.

Justice Felix Frankfurter's essay entitled, "Mr. Justice Holmes and the Constitution: A review of his Liberty — five years on the Supreme Court," is specially interesting and enlightening. It contains important excerpts from his majority and minority opinions and a critical evaluation of his contribution as a jurist.

These different articles also give the background of his famous decisions and opinions. They explain the growth and development of his "clear and present danger doctrine." His famous dissent in the *Dred Scott* case is also critically discussed. And it is not surprising to come across his famous quotation in *Abrahms v. United States*[1] ("When men have realized that time has upset many fighting faiths...") four or five times. Surely it is fast becoming one of his judicial imprints.

Many will be pleased to observe that this modest volume has not confined itself to admiration and praise-singing. Mr. Marke was kind enough to include in it a work by one of the bitter critics of Justice Holmes, who brands the late Justice as "totalitarian, sceptical, and unconcerned with the influence of morality in law." I must say however, that Harold R. McKinnon's attempt to dent the Holmes myth is interesting but futile. The Holmes legend lives.

Mario R. Alcantara

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[1] 250 U.S. 616 (1919).