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Cooper: *Living the Law*

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RECENT BOOKS

LIVING THE LAW. By *Frank E. Cooper.* Indianapolis: The Bobbs-Merrill Co. 1958. Pp. xv, 171. $7.50.

There is now a considerable literature written with the object of giving background and some sense of direction to law students. Most of it is addressed to students in school, especially to the first-year beginners, the most frustrated and forlorn of all. There have been some books written for the post-graduate learner, who in his start in law practice needs guidance of a different kind. The chief novelty in Professor Cooper's handbook is that it is addressed to both audiences and makes the drama into a continuous performance. In his own words, he aims "to explain how the lawyer uses his law school training in his professional work; and—this is the important part—how you can get the most out of your law school work to prepare yourself for your career at the bar." (Preface, p. vii)

There are few persons as well equipped as the author to undertake such a task. In twenty-five years of successful law practice he has established a high reputation for professional competence. He has also given much time and thought to problems of legal education. He has not only taught for years courses in administrative law and joined with Dean E. Blythe Stason in preparing a casebook in this subject *[The Law of Administrative Tribunals* (1957)], but he has also given instruction in Legal Writing—a subject that in most law schools is still highly experimental—and has written a book on this subject too *[Effective Legal Writing* (1953)]. Among law school teachers he is best known for his book, *Administrative Agencies and the Courts,* published as part of the series of Michigan Legal Studies in 1951. He has thus proved his versatility as scholar, teacher, and successful practitioner. The present handbook reveals that he has also given much time, in reading and thought, to the interrelations of all three kinds of experience acquired in an exceptionally varied and active life.

Two qualities of the author that appear most notably are enthusiasm and humor. It is plain to any reader, on every page, that the author has found his life in the law to be exciting, interesting, full of novelty and surprises—exacting too but worth all the effort that first-class performance demands. It is worth the effort because lawyers can contribute in so many ways, through so many different skills that reinforce each other, and because the contributions are crucial in a society whose main reliance is on private initiative. But in making all this abundantly clear, the author resists the temptation that some have felt to make lawyers into moral giants. Lawyers are endowed, like others, with consciences. They are trusted by others more than most men are. But they can nevertheless do silly things. The lawyers and judges who appear in these pages are human beings who are subject to the usual human impulses and who often find themselves much embarrassed by the usual human oversights. There are many drily humorous comments like the one that appears (p.158) after suggesting that in the trial of cases Chautauqua styles of oratory are now outdated: "The

judges seek to set a tone of quiet efficiency, assuming that lawyers, like boats, toot loudest when in fog." The pervasive humor of the book and the homeliness of some of the illustrations help to make it most readable.

The style of writing is likewise simple, direct, and unpretentious. In his courses and in his book on legal writing the author has tried for years to publish the message that this is the way lawyers should write—simply, directly and without pretension. He has learned his own lessons well. Many of the ideas dealt with are complex and basic. The author, if he wished, could no doubt be as abstruse as others have been in discussing them. But he lays great stress on economy—economy not only in the volume of words employed but in the demands made on the reader. As numerous quotations and references show, the apparent simplicity is somewhat deceptive. A hasty reader will not discover how much thought and reading are here condensed. It is a considerable achievement to maintain, in matters of real complexity, an almost conversational style.

Among all the interwoven themes there is one that recurs so often as to become a thesis—the importance to lawyers of the *facts*. The need to discover all relevant facts, the immense difficulties that the search encounters, the skill required in organizing and presenting them—on these topics the author is eloquent, insistent, and emphatic. He presents this thesis at an early stage (chapters III and IV) in discussing the canned and bottled version of the facts that law students encounter through their concentration on appellate court opinions. His discussion here is first directed to the importance and difficulty of the distinction between law and fact—an issue to which the attention of first-year students is presumably directed at an early stage. But he quickly moves on to describe the elaborate process of sifting and elimination while a litigated case progresses to its assumed destination, decision by an appellate court. This court will state the facts that *it* considers established, marshalled in such a way as to make the court's conclusion seem just if not inescapable. The author rightly emphasizes the usefulness of dissenting opinions in revealing that the statement of facts in appellate opinions is not only the product of a special art but another form of advocacy.

To illustrate the process of sifting and elimination the author sets out at length an imaginary case, prepared to imitate an actual case. The pleadings, the testimony of the parties, the trial court's opinion and the ultimate decision by the appellate court show the range of choice that is open to each of these participants and the crucial effects of selection and emphasis, among facts that are not seriously disputed. In the following chapter (V) a similar technique is used in discussing the related problem of determining the issues presented for decision—in the author's words, "the lens through which the case is examined." The lens moves around over the landscape of facts, the angles of refraction shift, and the focus changes, with startling effects on the outcome. The author's thesis as presented in these sample cases is certainly not exaggerated and the cases

are skillfully prepared. Any student reading them over with care, several times, is not likely to forget their message.

As to the remedy for the condition described—the great stress in law schools on appellate court opinions—Mr. Cooper does not propose any radical reforms. On the whole I have the impression that he accepts the methods and materials of modern law school instruction as the best that are presently available. His book is written with the object of showing that skill in the analysis of appellate court opinions is only one of the skills needed by the practicing lawyer. Unlike some recent, hostile critics he does not urge any great extension of "how to do it" instruction in law schools. Indeed, in later sections of the book he makes it clear that the ability to predict the outcome of litigated cases is an essential part of any lawyer's equipment, that enlarging and refining it will be a main objective in his "continuing education," (p. 70) and that in this process he will be repeating and building on his law school experience. As to the remedy of the student while still confined to the law school, Mr. Cooper suggests in effect that the remedy lies chiefly with each student himself, by reminding himself always of the selection process that has preceded in appellate cases, by considering the factors that could have influenced the choices that had already been made, and by conscious attention at all times to the effects of shifting the focus of attention among the potentially relevant facts.

Some of this process of analysis is of course a standard feature of the work in any well-run law school. But Mr. Cooper's argument serves as a reminder that questions debated by law school teachers for at least thirty years are not much nearer ideal solutions than they were when the debates began. Can more be done to bring home day by day the depth and complexity of the processes by which litigation extracts the decisive elements from the raw material of human disputes? Is it possible to disclose the many factors, often unacknowledged, that have influenced choice or that should, if they have not? Would law schools do a better job if they did not have readily at hand, in the law reports, such an abundant intellectual food supply already processed, packaged and wrapped? All these familiar questions are raised again, insistently, by the argument here presented. An important purpose of the book is to provide some needed corrective, as indeed it will to those who read it attentively. The question remains whether more is not needed in the day-to-day work of the law schools.

Most law teachers nowadays would concede that the traditional emphasis on opinions of appellate courts has also meant neglect of other rule makers, such as legislatures and administrative agencies. To provide a corrective in these respects the author includes chapters on the interpretation of statutes and on administrative adjudication. Both chapters are brief. Neither could take the place, and neither is intended to take the place, of intensive study of these two subjects. Of the two chapters the one on administrative adjudication seems to me the more useful and satisfactory. Here the author speaks from his own extensive experience in practice, teaching and writing.

Even from the brief treatment here provided, an uninstructed reader should be able to extract the peculiar features of administrative decision-making and the needs and the institutional arrangements that have made them peculiar. Still more he should understand their effects on the role and the working methods of lawyers. But in the chapter on statutes (chapter VII), I doubt the utility of reviewing the "canons" of statutory construction, even when this is done with the commendable skepticism that the author shows. The illustrative problem with which the chapter on statutes concludes has a freakish element that makes it not very suitable. Altogether, as to statutes, the remedy surely is for the law schools themselves to take on the job of training students in using them and giving them an emphasis that their importance deserves. For students who have had some close work with statutes, chapter VII will then be a handy check list.

The last third of the book is mainly concerned with the skills that "the law schools do not teach." Here the author, consistently with his main thesis, lays greatest stress on the skills required in dealing with facts—both "ascertaining" and "presenting" them. The emphasis is on trial work, the preparation for and conduct of trials. The incidents described are interesting and sometimes dramatic. As he says, not every lawyer, no matter how well trained in other respects, achieves the highest proficiency in this respect and the most successful, like great painters, cannot transmit to others the qualities that make them more than copyists. But the author gives the ground rules and the minimum requirements. This portion seems to me especially good.

There follow brief chapters on legal planning, negotiation, advocacy, and drafting of legal documents. The last chapter, on drafting, is admirably concise. It makes all the essential points in eight and one-half pages. It can be brief, because the conclusions here advanced are implicit and indeed exemplified on every page of the book.

From what has been said it should be clear that this book differs greatly from other handbooks for learners. It does not provide historical background. It does not describe our court system and the interrelations of its various parts, though some of this appears incidentally. It is not a book on jurisprudence, though the author has read and used numerous books on jurisprudence. It is not a book on office management for the young author entering practice. It is essentially a book on the complex process of learning to be a good lawyer. The learning process is conceived as continuous, from the first day in law school and lasting till the end of professional life. It is a student handbook plus a good deal more that is omitted from other student handbooks. Students who left school many years ago can read it with pleasure and interest. In a style that is exceptionally clear, with sense, restraint and modesty, the author brings together the essentials learned from his own many-sided experience.

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