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EVIDENCE, COMMON SENSE AND COMMON LAW, by John MacArthuir Maguire. Chicago: The Foundation Press, Inc. 1947.

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REVIEWS

EVIDENCE, COMMON SENSE AND COMMON LAW, by John MacArthur Maguire. Chicago: The Foundation Press, Inc. 1947. Pp. xi, 251. $3.00 (paper bound).

Professor Maguire states, "This book is meant for people who are having trouble, or who expect to have trouble in understanding the application by judges of rules of evidence." He surmises that it will be read by a few intelligent laymen, by some lawyers, but in the main by law students.

Although such an estimate of reader interest may turn out to be correct, this little book compressing the field of evidence into two hundred and thirty-one small size pages deserves a wide reading public among lawyers and teachers, as well as among law students. For in writing a book of this type for law students, the author has not only made a major contribution in the field of legal educational literature, but he has also produced a volume which can be read with delight (and profit) by practitioners and teachers.

This work is a particularly important volume in the field of legal education because it appears to be the first in which a law professor, who is an outstanding authority, has had the courage to aid his students by laying out in published form the structure of his course. In effectively summarizing his class materials by pointing out the basic major problems in the field, explaining and analyzing the fundamental working tool concepts in the field examining the interrelation of the various parts of the field—in his own very readable style—with very few citations—Professor Maguire has produced a new tool in teaching. This is not the usual type of textbook—one which purports to give the student all the answers and rules; it is a book to make the students aware of the fundamental sweep of the law of evidence and primarily to make him understand the basic difficulties. It thus meets the recent insistent demand for such type of book as a basic tool in the teaching of a course.[1]

The author's expectation that the book may be read profitably by intelligent laymen is probably too optimistic, but it is undoubtedly of great value to law students. In fact, it ought to be required reading in every course in evidence in the absence of similar type of material produced by the teacher himself for his own course. At the beginning of the course, the student should read it through carefully. He probably will not understand it all. But if he reads the pertinent parts as he goes through his course and then re-reads it at the end of the course, he should be able to grasp it with solid understanding. Unfortunately, as yet, the book does not appear to be sufficiently widely known among law students the country over.

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1 See Max Rheinstein, "Education for Legal Craftsmanship," 30 Ia. L. Rev. 408 (1945).

In introducing the student to the mysteries of the application of rules of evidence by judges, the author has managed to discuss a large number of intricate problems. Brief mention of some of these puzzles considered will indicate why the book can be read with enjoyment by attorneys, as well as with profit by students.

The treatment of the subject of impeachment of witnesses by self-contradiction and rehabilitation of witnesses so impeached (pp. 54-70) is typical of the interesting quality of the volume in outlining the basic nature of a subject and leading the reader through the maze of knotty problems involved in that subject.

In considering the problem of introducing extra-judicial consistent statements of a witness to rehabilitate the witness after he has been impeached by introduction of an inconsistent statement, the author analyzes the case of Crawford v. Nilon, 289 N.Y. 444, 46 N.E. (2d) 512, 514 (1943) and asks why the consistent statements were rejected in that case. Should a consistent statement be considered hearsay if the witness is present and can be cross examined as to such a statement? Are such statements really excluded on account of technical arguments concerning hearsay? Is not the basic reason the fear that unsavory practices in dealing with witnesses might result? If such statements were admitted would attorneys as a result "hot box" witnesses, like college fraternities dealing with prospective pledges just prior to the pledging date? What effect would admission of such statements have on the efficiency of the court in carrying the trial through on the issues? If attorneys—officers of the court—are of such low order that they must be restrained in dealing with witnesses by the means of excluding consistent statements, will such an exclusionary rule have any real effect in restraining or curbing unsavory practices? These and other questions are raised and concisely dealt with by the author in his typical good humor when dealing with evidence problems.

Following this subject (at pp. 64-69) is undoubtedly one of the best printed concise explanations of the "somewhat obscure" rules governing introduction of independent evidence of inconsistent statements to impeach a witness. In the leading case of Attorney-General v. Hitchcock, 1 Exch. 91, 98 *et seq.* (1847) the Attorney-General charged Hitchcock with having illegally used a cistern for making malt, called one Spooner as a witness, and obtained from Spooner testimony of illegal user. Apparently Spooner was asked, "Have you not said that the officers of the Crown offered you £20 to say the cistern was used?" Answer: "I never did." Thereafter the court excluded an offer to prove that Spooner had said to X that he was offered this bribe. Professor Maguire's concise analysis of this case indicates clearly the problems involved in this situation and the proper answers.

In one form or another the hearsay rule crops up throughout the book. Perhaps one of the main values for the student is the indication of the importance of the hearsay idea in connection with other rules of evidence. The exposition concerning the nature of hearsay and its use as a working tool (pp. 11-23) is particularly helpful and readable. The author also refers more than once to a connection between the

fundamental nations underlying the opinion rule and those underlying the hearsay rule. For anyone confused by the artificial distinctions often applied in connection with the hearsay rule, this volume will be an aid to clarification of the problems involved. Thus, at page 151, it is pointed out that to obtain admission of an extrajudicial statement, attorneys sometimes successfully use a type of argument which would abolish the hearsay rule if carried to a logical conclusion. The courts have often accepted, as circumstantial evidence of the taking of action, proof of expressions of determination or intention by the alleged actors to take such action. As an illustration, the author cites the statement, "I went to the movies last evening." That may well be admissible as evidence of the belief of the declarant at the time of speaking if the belief is pertinent to some issue. But what is to stop this inference process?

In view of the suggested use of the above statement, the author poses the problem of whether the judge could let in the statement on the basis of the following reasoning. "He says he went to the movies; this is some evidence that he believes he went there; the belief, depending upon memory, is in turn some evidence of his having seen, heard, and felt phenomena that convinced him he entered a movie house, sat down and watched a performance; his perception of these phenomena is some evidence of their occurrence and thus of his attendance at a moving picture show." By use of similar, more extended chains of inferences, it might be argued that any extrajudicial statement is admissible. Thus the hearsay rule would cease to exist. Various possible solutions to this problem are discussed.

Even if the problems and subject matter were "old stuff" to the attorney, he would undoubtedly enjoy the book as a new treatment of the subjects considered because of the interesting, clear-cut style—the witty, yet wise and tolerant treatment of the author. The volume is a breath of fresh air in the dark Calcutta-like hole of dry style in law textbook writing.

All in all, the book is something new and different in the educational field—a pioneering book to set a standard for other similar materials which should be produced by other teachers, a textbook for law student's profit, and a book for attorneys to enjoy.

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LIONS UNDER THE THRONE, by Charles P. Curtis, Jr. Boston: Houghton, Mifflin Co., 1947. Pp. 361. $3.50.

THE NINE YOUNG MEN, by Wesley McCune. New York: Harper & Bros., 1947. Pp. 293. $3.50.

Efforts to make the mysteries of the law clear to the man in the street apparently will never cease. The authors of these two books believe—or at least their publishers profess to believe—that these studies of the present-day Supreme Court can be read and understood