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LIONS UNDER THE THRONE, by Charles P. Curtis, Jr. Boston: Houghton, Mifflin Co., 1947. **THE NINE YOUNG MEN**, by Wesley McCune. New York: Harper & Bros., 1947.

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fundamental notions 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

by any layman. In the case of Mr. McCune's book, they are probably right. But the little knowledge which would be imparted to the average reader by *The Nine Young Men* is of a particularly dangerous variety. It would merely strengthen his impression from the newspaper headlines that the work of the court consists of skirmishes and flank attacks conducted by shifting alliances among a group of men who can never seem to agree on anything. Mr. Curtis's *Lions Under the Throne*, despite a deceptive air of simplicity, is clearly of even less value for the average reader; it would merely confuse him all the further. A satisfactory "Law for the Layman" has still to be written. Both of these books, however, should be of great interest and value to the practicing lawyer.

Attorneys study the decisions of the Supreme Court in two ways. Many problems of federal law require a thorough, patient search for any pronouncement or dicta from the Court, for even a straw-in-the-wind or hint as a basis for an informed hunch as to which way the court will go in the future. Over and above this, however, a lawyer dealing with Federal law tries to keep up with the general trends in the court's thinking and the changes in its method of approach to the problems before it. On many federal questions, a knowledge of the court's general attitude is of far greater value than a study of its past decisions in similar cases. Both of these books are very helpful in a lawyer's efforts to piece together these general trends and attitudes.

Both Mr. Curtis and Mr. McCune rehearse the fight between the Old Court and the New Deal, the tactical success of the Court, and the strategic victory of the New Deal. This is all cut-and-dried by now. The story has been told and retold until there is nothing new left to say. The historians have fitted it into the general picture of American history in the thirties and by and large do a better job on it than the lawyers. It is to be hoped that any future books on the Supreme Court today will not try us with another recital of the same facts. The remainder of Mr. Curtis's book deals with the present-day court's views on federal-state issues and civil liberties, and with the wise discretion which the court should use in the exercise of its powers. Mr. McCune, after a much briefer discussion of the court fight, devotes the remainder of his book to descriptions of the individual judges, their beliefs and prejudices, interspersed with chapters on the urgent legal issues of the day.

In style and manner, the two books differ widely. Mr. Curtis, a distinguished Boston lawyer, is polished and urbane; Mr. McCune's book frequently reads like *Time* magazine for which he is a Washington correspondent. Mr. Curtis writes with high seriousness, while Mr. McCune is sometimes slap-stick. There is in *Lions Under the Throne* that air of deference and respect which lawyers seem to feel obligated to assume when they write of the Supreme Court. Despite the fact that he studied law before turning to journalism, no such obligation seems to rest on Mr. McCune, who writes about the nine men on the Supreme Court in about the same spirit as he might write about the capabilities and personalities of the eleven men of his choice for an All-American football team. Furthermore, Mr. McCune's scholarship fails him from time to time and he misses the real point in some of the cases he dis-

cusses. With the odds thus seemingly against him, however, Mr. McCune has produced the more valuable book for the lawyer or the law-student.

The personalities, mental habits, and prejudices of the Justices do as a matter of fact exercise today a profound influence on the way in which the court resolves the issues brought before it. With the passing of the old court, passed also a well-developed system of judicial attitudes and doctrines which, whatever their other virtues or faults, had become relatively stable. The Justices may have all been wrong, but at least they all thought pretty much alike. They continued to hold to these doctrines long after the rest of the country had passed them by, and when they were finally dislodged from the court, the new Justices and attorneys alike faced a landscape singularly barren of judicial guide-posts. The old court had refused for so long to move the guide-posts gradually, that the new court had no alternative but to tear most of them down and start afresh. The members of the court are still arguing violently amongst themselves as to where the new posts are to be placed. In the development and elaboration of these arguments, the characters of the individual Justices are of the greatest importance. Thus, Mr. McCune's book with all its faults contains important information for the lawyer. The portraits of the Justices are shrewd and candid, and the trends of their thinking well described. Litigants and their attorneys may well regret that our federal law is in a state of flux and transition, but that is the fact of the matter and they would be well advised to learn everything possible about the men whose individual ideas are today so important in the decision of their cases.

Mr. Curtis has attempted something quite different in *Lions Under the Throne*. He has tried to ferret out the basic philosophy of the court in several important fields and to state that philosophy in clear, precise terms. The effort is an important one, since the only way to find out whether the decisions of a court can be organized into a clear, well-articulated system, is to take the decisions and try it. It is very much like sticking one's finger into a pudding to find out whether or not it has yet jelled. Mr. Curtis is the latest person to stick his finger in, and the answer is that it has not yet jelled. This is not to minimize his effort. To test this particular pudding takes great skill and patience and Mr. Curtis has done his job well. It is no discredit to him that the test was negative.

Mr. Curtis is a sensitive and clear-headed legal writer. It is to be hoped that in the future he will continue his efforts to order the decisions of the Supreme Court into a consistent basic philosophy. In the meantime, however, lawyers can be better served by Mr. McCune's description of the individuals who are today writing those decisions.

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