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Henry Cecil, Brief to Counsel

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BOOK REVIEW

BRIEF TO COUNSEL. By Henry Cecil. London: Michael Joseph Ltd. 1972. Pp. 204. \$6.00.

Many American law students have been attending summer courses set up in England by American law schools to the delight of the American law professors who go there to teach American law to American law students. Also, many members of the American Bar are still basking in Anglophilic nostalgia following their tax-deductible vacation trips to London to attend the 1971 annual meeting of the American Bar Association. All this interest in legal England makes it appropriate to have a look at the English legal profession. Many of the readers of this Review have recently enjoyed one excellent look at a look at that profession (at least at part of it) in Messrs. Thomas' and Mungham's study¹ of the Ormrod Report.² *Brief to Counsel* is another, rather different, look.

Brief to Counsel, originally published in 1958, is now in a "New Edition," which we can take to mean a second edition. It is a very strange second edition because the author spends a lot of time for no apparent good reason (other than justifying his failure to rewrite more of it) referring to the first edition. The work seems hurriedly done and suffers for it.³ But now to the substance of the book.

The English legal profession has what is called a divided bar, composed of barristers and solicitors. A barrister's principal activity is to argue cases, and generally he can act only on the "instructions" of a solicitor who, with some exceptions, does not appear in court as an advocate. The solicitor is generally considered as the barrister's client; he pursues an office practice and prepares cases for trial

1. Thomas & Mungham, *English Legal Education: A Commentary on the Ormrod Report*, 7 VAL. U.L. REV. 87 (1972).

2. REPORT OF THE COMMITTEE ON LEGAL EDUCATION, CMND. NO. 4595 (1971). This report is popularly referred to as "The Ormrod Report" because the committee was under the chairmanship of Sir Roger Ormrod.

3. For example, on page 133 a sentence reads: "One of the most important part of your duties as a junior will be to advise as to the evidence to be called in a case." What seems to be poor grammar is accounted for by the fact that the word "part" was added to the sentence which, but for that change, was identical in the first edition on page 124; the author forgot to make the other necessary changes.

by the barrister and presents him with a "brief" of the case when he retains him. Thus their functions and hence their training differ considerably.

This book was written for the advice and edification of young men⁴ who may wish to become barristers. The author is a barrister, and we have it on no lesser authority than the Right Hon. Lord Devlin, formerly one of Her Majesty's Lords of Appeal in Ordinary, who wrote the forewords to both editions, that he is a wise and experienced one. We also have it by obvious implication from the author himself that he is a "top class advocate." It is impossible to resist the temptation to borrow from Finley Peter Dunne's review of Teddy Roosevelt's *Rough Riders*, where Dunne's literary alter ego, Mr. Dooley, says to his foil,

"'Tis 'Th' Biography iv a Hero be Wan who Knows.' 'Tis 'Th' Darin' Exploits iv a Brave Man be an Actual Eye Witness.' 'Tis 'Th' Account iv th' Destruction iv Spanish Power in th' Ant Hills,' as it fell fr'm th' lips iv Tiddy Rosenfelt an' was took down be his own hands.⁵

Mr. Cecil is also an experienced author, having written twenty-nine other books mostly anecdotal and mostly about the law. (He reminds the reader of *Brief to Counsel* several times that one of those books was made into a film.) Normally the reader comes away from a book with an articulated or unarticulated desire to know more about the author—perhaps to meet him. Not so here. If Mr. Cecil's personality is at all revealed in the book, he must be a crashing bore. He tries to be funny at times. *Sober as a Judge*⁶ is one sad example. In *Brief to Counsel* he frequently indulges in that which a few Englishmen mistake for humor and which many Americans mistake for English humor. Queen Victoria was probably funnier.

But what is the book *about*? He begins by discussing education for the Bar. In effect he tells the would-be barrister not to bother studying in school but to study very hard once in the practice to make up for it.⁷ This may be good advice, for English legal educa-

4. He does devote an afterthought, two-page, discouraging Chapter 23 to women.

5. F. DUNNE, MR. DOOLEY ON IVRYTHING AND IVRYBODY 104 (Dover, ed. 1963).

6. H. CECIL, *SOBER AS A JUDGE* (1958).

7. The second edition, a bit better than the first in this respect, at least tells the student (at page 36), "[I]t would be worth your while to work hard at the new practical and final examinations." It is difficult to determine whether this is a warning that the examinations

tion, especially in the Inns of Court where future barristers are trained, is renowned outside Britain as the worst in the world. Erwin H. Griswold, then Dean of the Harvard Law School, said of it:

Some day I hope to understand English legal education. I have worked hard at that for a long time, but so far it has often seemed to me to be rather inadequate in plan and execution, and to produce generally very excellent results.⁸

Two of the most useful parts of the book to one unfamiliar with the English legal system are chapters 4, "A Chapter of Explanations," and 5, "Which Branch?" Here are presented explanations of the court system and its various branches, the difference between a barrister and a solicitor and the structure of the Inns of Court. He also tells what a "brief," a "dock brief," a "proof," a "lay client," a "devil" and many other legal and semi-legal terms mean. These chapters alone justify reading the book merely for the insights or understanding which they give. Later on in Chapter 21 he describes the differences between a "junior" and a "Q.C." All barristers are juniors unless they have "taken silk," which is a status-elevation ceremony entitling them to be known as "Queen's Counsel" and to wear a silk gown (the junior's is made of "stuff"). "Taking silk" has its assets as well as its liabilities and American readers, especially lawyers, will find this discussion most interesting. We have a slightly similar, though less ceremonious, parallel in our legal profession—the senior partner.

Much of the book is devoted to telling the student-neophyte how to chart his course in and out of court, from the Inns of Court to the achievement of the status of a "top class advocate." No doubt the author's advice is "top class," though it is unnecessarily dull except for some intriguing passages such as these at page 99:

See that you never tell the judge what you really think—except out of Court, if you know him well enough to do so.

Remember that you have a duty to the Court as well as to your client. Apart from your duty never to mislead a judge, it may be your duty to disclose to a judge matters which are

are now more difficult or sage advice by one who should know that a thorough knowledge of legal theory is of little use at the Bar.

8. Griswold, *Graduate Study in Law*, 2 J. LEGAL ED. 272, 276 (1950).

against your client's interest.

By now this reviewer's reader may share his opinion that such a book seems calculated to discourage all but the most perversely determined young man or woman from aspiring to membership in the English Bar. Maybe this is just as well, for many have chosen to study for the profession but few are "called to the Bar." Nonetheless the book is recommended for the American reader, especially the lawyer, because the book, though often dull, is not heavy. It is a light and informative inside view of a fascinating profession from the student's bench to the judge's bench.

One final note on aesthetics. The insight that this book gives one into the English legal profession is enhanced greatly by many sensitive and delightful drawings by Mr. Edward Ardizzone, who captures the spirit of the profession even better than does Mr. Cecil.

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