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Book Review: Open Court, by F. T. Giles

This collection of the reminiscences of a magistrates' clerk, gathered over a forty year career spent in the Metropolitan Courts of London, tempts one to conclude that the law is not so much an ass as he who administers it. With droll humour, Frances Treseder Giles parades before his readers the magistrates under whom he served, and the exhibition is a tribute to the durability of the English legal system which somehow managed to keep functioning during these gentlemen's tenures of office.

To name of few of them, there was John Gilbert Hay Halkett whose loquacity effectively shielded him from all rational processes, his own as well as others. There was Arthur Gill who trembled with the apprehension of making a wrong decision and thus relied exclusively on his clerk's judgment. Giles points out that Gill was unique among his colleagues as they seldom doubted the perfection of their reasoning. There was "Tommy" Francis whose fame as a cricketer "opened every door to him and when he embraced the Law as his profession nothing stood in his way of becoming a High Court Judge, except a total inability to master and apply even the simplest of legal principles." Luckily, such a deficiency was no bar to his appointment as a Magistrate. There was Sir Chartres Biron, master of the studied gesture and 'bon mot', whose pressing social demands required that he catch up on his sleep during court proceedings. There was the im-

³⁵ P. 315.

³⁶ The author obviously went to great trouble in order to insert an analysis of *R. v. Mann* (December 2, 1964—unreported as yet) which was decided just prior to publication date. This case has since been reversed on appeal.

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peccable Colonel Samuel, "a beautiful little gentleman about two-thirds normal size" whose entrances and exits from the courtroom were performed with all the pomp and circumstance accorded royalty. The Colonel died at sea and was given a watery burial, a fact which caused Giles to comment, "I have often thought since of that elegant little body floating about in the South Atlantic . . . I do hope that when the sharks and barracudas come upon him, they, too, have a respect for the decencies of life and stand to attention on their great thrashing tails as the Colonel floats magisterially by."

Happily for English justice, not all of Giles' superiors were Dickensian characters. Walter Hedly, William Broderick and Theodore Fry are cited as examples of men with great intelligence, patience, fairness and the ability to control their courts. Moreover, the author notes that the calibre of magistrates has been steadily improving and today they are far better informed, more conscientious and more considerate than formerly. The method of appointment to the Bench, although still depending unjustifiably on political patronage, is at least moving away from the basis enunciated by Lord Eldon when he stated: "In selecting my judges, I make sure they are gentlemen. If in addition they know a little law, so much the better."

The author's role as a clerk to these magistrates appears to have been similar to that of one of the saner characters in a P. G. Wodehouse novel. Just as Jeeves, the perfect butler, looked after the witless Bertie Wooster, and frequently saved him from disaster, so Giles, the efficient clerk, with the same discreet competence, shepherded his magistrates carefully by the pitfalls they were so prone to rush into. Such manœuvring required psychology and tact, since a clerk's reputation and job depended largely on maintaining his superiors' confidence and good favour. Giles discovered this fact of life early in his career when he offended the talkative Halkett by forgetting to bow reverently each morning as His Worship entered the Court. The author soon learned not to commit such shocking breaches of protocol, however, and the diplomacy with which he handled his magistrates is amply shown by an incident which occurred during a contested divorce case. Cecil Chapman, who was presiding, dropped off to sleep in the midst of the proceedings. It was not a mere forty winks, Giles recalls, but a sound sleep with head back, mouth wide open and top denture sagging down. Fearing the impropriety of interrupting this judicial reverie, Giles continued to hear the evidence. When His Worship awoke, at the conclusion of the case, he said:

"I suppose this is all right, Giles."

Giles assured him it was.

"What do you think?"

"Oh I think the wife has made out her case."

"How much do you think?"

"A pound a week, Sir."

And so the order went.

This conversation is indicative of the wide responsibilities enjoyed by the English magistrates' clerk, as compared to his counterpart in this country. In England, the clerk's job is basically to advise the magistrate on points of procedure and to take a note of the evidence. In many courts, however, the clerk takes charge of the case if no advocate appears. He puts the charge, explains it, reads out the evidence of the prosecution, assists the unrepresented defendant in any cross-examination and elicits a defence from him. Until recently, it was often the practice of the clerk to huddle with a magistrate and even retire with him to discuss a finding. In *R. v. East Kerrier Ex parte Mundy*¹ Lord Goddard C. J., although unable to name an authority, felt certain there must be one for the proposition that clerks must not retire with justices. Clerks should be consulted, his Lordship continued, only if a justice requires advice on a point of law. Giles criticizes this magnificent example of law in the making by stating that it has tended to muzzle the clerk and cut out a voice of experience that should be utilized in arriving at just decisions. Besides, states Giles with typical candour, in his many years of reading nearly every textbook and case on summary law, he has never encountered his Lordship's mystical authority.

In addition to the author's views on the function of a clerk, there is scattered throughout the book a liberal sprinkling of other practical wisdom distilled from forty years of experience in the courts. Giles considers the present system of judiciary appointments by the Lord Chancellor as "medieval patronage and seventeenth century nepotism." He recommends a standing committee of judges, university dons and members of the public to which barristers could submit applications for elevation to the Bench. Such a committee would have to be entirely free of political control and would be required to make public its reasons for each judicial appointment. The author also emphasizes the ineffectiveness of prison confinement which often deprives a family of a breadwinner at substantial cost to the government. He suggests that probation and fines are more sensible remedies except for crimes involving violence and cruelty. Especially are these remedies appropriate to juvenile offenders whose committal to an institution housing other juvenile delinquents can only serve to widen their criminal horizons.

To dwell at length on the author's serious reflections, however, is to do him an injustice for this book is primarily a comic and sympathetic look at human foibles within a forensic framework. Giles' pageant of players is constantly absorbing and is depicted with a quaintly humorous style which shows the appropriate restraint of a man who has spent so many years in a courtroom. At the same time the author's precise use of language serves to sharpen the comic effects and gives credence to incidents such as that of the magistrate whose inability to do a simple calculation led him to impose the wrong

¹ [1952] 2 All E.R. 144.

fine with the result that the convicted company made a profit of £300 on its crime.

“Open Court” provides a quick and uniformly entertaining jaunt through the life of a man who describes his work as “an amusing job, a congenial occupation, a boon.” The book can be recommended as excellent light reading for lawyer and layman alike. Its panoramic portrayal of ‘beaks’ and sinners is drawn with the kindly insight of a man long grown accustomed to the vagaries of human nature. It may best be summed up in the author’s own words as he looks back over his career:

What a rough crude tapestry these memories make—of tragedy and comedy, of good and evil, of greed, selfishness, perversity, depravity and malevolence; and at the same time, of humor, patience, kindness, fortitude and often love, sometimes a love verging on the divine.

C. C. JOHNSTON.*