CASES AND MATERIALS ON CORPORATIONS. By Henry W. Ballantine, Norman D. Lattin, and Richard W. Jennings. (2d ed.). Chicago: Callaghan & Company, 1953. Pp. xliv, 1102. $10.00.

THIS book is a thoroughgoing revision of the casebook brought out by the late Professor Ballantine and Professor Lattin in 1939. It includes reports of two hundred or more principal cases, of which more than half were decided after 1939, and approximately one-third since 1945. Its first chapter of 62 pages deals with partnerships and other forms of business associations; teachers can readily omit this to meet their curriculum requirements. The authors have devoted about twenty-five percent of the page space to supplemental materials, such as editorial notes and problems, and matter drawn from text books, law reviews, and statutes. The book is rich in references to specific statutory provisions. The California General Corporation Code is perhaps most favored, for this is an outstanding example of a well thought-out modern corporation statute. I understand Professor Ballantine played an important role in its formulation. However, the laws of Delaware, New York, Illinois, Ohio, and New Jersey receive only slightly less generous citations, while other statutes, including the Model Business Corporation Act, receive occasional mention. The Delaware references are to the 1935 Code, but the editors have added a last-minute appendix which provides a cross reference between the section numbers of the 1935 Code and those of the new 1953 Delaware Code. Mention should also be made of the greater than usual fund of footnote citations and references. The work is a far cry from the old fashioned Langdell type of casebook, and might well serve as a very handy reference book in its field, particularly in view of the clear and comprehensive table of contents and index.

Dean Harno has recently questioned whether or not the inclusion of so much supplemental material in a casebook is a good way to open the windows of the student's mind to the various areas of learning.[1] In this book the authors have competently selected and handled their material, producing a result that not only adds to the coherence and intelligibility of the problems presented, but also, on occasion, raises thought provoking questions which might not otherwise be suggested by the student's experience. It is my own opinion that any possible detriment to the incentive of the exceptional student resulting from the inclusion of such material is more than outweighed by the advantages which this material affords the average overworked law student. Some teachers may dislike to use the supplemental material because they believe it reduces them to the subordinate role of Sir Roger de Coverley's chaplain who, instead of wasting his spirit in laborious compositions of his own, preached sermons which had been "penned by greater masters." Personally I see no reason why the materials in a casebook should necessarily restrict the freedom of the teacher in presenting such additional materials and problems as he sees fit. Moreover, any conflict between his own ideas and

1. HARNO, LEGAL EDUCATION IN THE UNITED STATES 69 (1953).

those of the casebook editors may provide an element of dialectic which is quite appropriate in the classroom. In any event, law teaching has the serious objective of giving the best possible education to future lawyers, judges, and administrators. It is not a sporting avocation designed to show off the individual teacher's versatility and skill, and therefore does not preclude the use of any or all helpful aids which can be devised by casebook editors.

The editors have updated the problems and trends presented as well as the cases reported. This is in line with their stated purpose of devoting less space in the second edition to topics which are now comparatively obsolete in practice, and of omitting other topics which they consider relatively unimportant. Discussion of criminal and tort liability is entirely omitted. The authors have compressed the chapter on the ultra vires doctrine to six pages of cases—four principal cases, three of which are British—and some seventeen pages of editorial notes and statutory extracts. The old case of *Salomon v. A. Salomon & Co.*[2] has been relegated to a mere footnote citation, and the editors have used *Arnold v. Phillips*[3] as a much more comprehensive illustration of the distinction in a person's status as creditor and stockholder, respectively, of a closed, insolvent corporation. The editors relegate the *Old Dominion Copper Company* cases[4] to a brief footnote plus the very pertinent critique of them contained in *Jeffs v. Utah Power & Light Company*.[5] And the editors do not even mention the old bonus stock rule of *Handley v. Stutz*,[6] apparently a victim of *Erie v. Tompkins*[7] and of modern corporation statutes.

The editors have apparently sought to focus on the practical questions which beset a practitioner today when he is called upon to advise a client in the planning of a corporation or a corporate transaction. These problems range into such fields as taxation, securities regulation, accounting, and even estate planning. The tax materials in the book could scarcely substitute for an adequate tax course. Yet they seem to me to emphasize the sometimes paramount relevance of tax liability to decisions relating to the choice of a form for doing business, or to other problems such as stock dividends, incentive compensation to management, pension plans, stock options, financial structure, dealings in the corporation's own shares, or dissolution procedure. The editors state in their preface that the book is designed to mesh with a separate course in accounting; but they still retain some reference to elementary accounting procedure, at least as it affects capital and surplus, and treasury shares. Also, despite their expressed general policy of leaving the SEC aspects of corporate financing to a specialized course on the subject, they have succeeded in demonstrating the relevance and importance of the federal statutes and regulations since 1933 with respect to the intramural relationships of promoters, directors,

2. (1897) App. Cas. 22.
3. 117 F.2d 497 (5th Cir. 1941), *cert. denied*, 313 U.S. 583 (1941).
4. 210 U.S. 206 (1907); 203 Mass. 159 (1909).
5. 136 Me. 454, 12 A.2d 592 (1940).
6. 139 U.S. 417 (1891).
7. 304 U.S. 64 (1938).

officers, and stockholders. *Park & Tilford, Inc. v. Schulte*,[8] *Speed v. Transamerica Corporation*,[9] and *SEC v. Transamerica Corporation* [10] are among the principal cases reported in this connection. Moreover, the authors present a host of references to the statutes and regulations themselves.

I would particularly commend the 34-page treatment entitled "Shareholders' Agreements: Some Problems of the Incorporated Partnership." There, the editors present and develop problems and questions considered in such old familiars as *Clark v. Dodge* [11] and *Benintendi v. Kenton Hotel*.[12] The chapter on shareholders' individual and derivative suits also struck me as outstanding.

I might disagree with minor details of selection and editing. The editors feature the majority opinion of the Supreme Court in *Anderson v. Abbott* [13] as an example of the use of the corporate form to evade statutory obligations, *viz.*, to evade double liability on national bank stock. True, this decision purports to pierce the corporate veil in order to enforce the alleged statutory policy. However, Congress itself seems to have previously disavowed such a policy by repealing the double liability law, and to have further indicated its disinclination to extend such policy by its refusal to enact any sanctions against bank holding companies. Therefore the action of a bare majority of the Court in this case in reversing the unanimous decisions of the two lower courts has always impressed me as an expression of judicial rather than statutory policy making, and possibly, an abuse of judicial power. The point is controversial, of course, but in any event, I consider the report of this case as inadequate in that it omits the dissenting opinion of Mr. Justice Jackson.

I would also take exception to the utilization of Mr. Justice Brandeis' opinion—dissenting in part—in the case of *Louis K. Ligget Co. v. Lee* [14] for its survey and critique of the evolution of state corporation laws and the process of removal of old restrictions on the status of doing business in corporate form. Brandeis rejects the modern tendency to regard this status as either a right or a privilege inherent in the citizen. He apparently regards it as a privilege to be granted or withheld at the will of the sovereign state, *i.e.*, of the legislature. Brandeis further speculates on the supposed purpose of the Florida legislature in taxing chain stores out of existence. Its purpose may be broader and deeper, he says, than merely to preserve competition. It may be *to preserve equality of opportunity*, and he expresses eloquent approval of this. Though I honor and respect Brandeis, his liberalism sometimes seems to retrogress to eighteenth century mercantilism.[15] The state's power of eco-

8. 160 F.2d 984 (2d Cir. 1947), *cert. denied*, 332 U.S. 761 (1947).
9. 99 F. Supp. 808 (D. Del. 1951).
10. 163 F.2d 511 (3d Cir. 1947), *cert. denied*, 332 U.S. 847 (1948).
11. 269 N.Y. 410, 199 N.E. 641 (1936).
12. 294 N.Y. 112, 60 N.E.2d 829 (1945).
13. 321 U.S. 349 (1944).
14. 288 U.S. 517, 541, 544, 548, 568 (1933).
15. See also Brandeis' dissent in New State Ice Co. v. Liebmann, 285 U.S. 262 (1932). Justice Stone concurred in this dissent.

nomic regulation has been well stated as existing "whenever any combination of circumstances seriously curtails *the regulative force of competition* so that buyers or sellers are placed at such a disadvantage in the bargaining struggle that a legislature might reasonably anticipate serious consequences to the community as a whole."[16] Mercantilism, however, seeks not to preserve the regulative force of competition but to destroy it. This happens when, regardless of the non-existence of either monopoly or unfair trade practices, the state seeks either to reduce the status of doing business from that of a right of free men to that of a privilege to be granted or withheld by the state, or to cripple the strong and efficient for the purpose of protecting the interest of the weak and inefficient in their competition for the public's dollars. Brandeis' views are indeed interesting and challenging, particularly as he spoke in 1933. But I question the desirability of their *ex parte* presentation in this book with no suggestion of the other side of the case.

In conclusion, I may state what must be the obvious inference to be drawn from the foregoing remarks: I would give this book a high rating for excellence. As further evidence of my appraisal, I may mention that in the course of reviewing this book, I reached the decision to adopt it for my own class next year.

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EFFECTIVE LEGAL WRITING. By Frank E. Cooper. Indianapolis: The Bobbs-Merrill Company, 1953. Pp. x, 313. $5.00.

SURPRISINGLY little has been written in the way of direct advice to lawyers and law students to help them improve their legal writing.[1] Here is a new book that provides excellent material for at least one kind of legal writing course—one that calls for the composition of legal opinions, pleadings, briefs, contracts, wills and statutes. It will necessarily be of less value for a course that consists wholly or largely of writing projects involving original legal research, but even for such a course it is probably the most useful book that can be put into the hands of students to give them advice on "how to write."

The book itself contains most of the helpful hints and advice that can be given. It emphasizes the different objectives in different kinds of legal writing, and the uses of words and techniques for achieving these objectives. In the chapter on drafting contracts, for example, the student is told at the out-

16. Dissenting opinion of Justice Stone in Ribnik v. McBride, 277 U.S. 350, 360 (1928) (emphasis added). Justice Brandeis concurred in this dissent.

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1. Professor Cooper's book contains a bibliography of books and articles on this subject, but it fails to include one of the best: Nicholls, *Of Writing by Lawyers*, 27 CAN. B. REV. 1209 (1949). Probably this was excluded, because it appeared in the *Canadian Bar Review*, and Cooper's bibliography is limited to American works.