

ness,<sup>20</sup> smiling at the witness he is about to demolish (two versions),<sup>21</sup> and looking hyperotic after receiving an annihilating answer to the incautious question "Why?"<sup>22</sup>

A table of contents lists the seven chapter titles and most of the subheadings, and in two instances places the subheadings under the right chapter titles.<sup>23</sup> The book contains no other tables and no index, appendix, footnotes, or preface. None is needed.

The book has been criticized as seeming to suggest "that a defendant in need of a defense should simply make one up."<sup>24</sup> A better statement is that the author (1) stresses the importance to the litigant or other witness of giving responsive answers rather than evasions;<sup>25</sup> (2) stresses the perils both of the unrehearsed lie and the memorized lie;<sup>26</sup> and (3) concludes facetiously by suggesting that if one is determined to lie, his best chance is to memorize three different versions, all agreeing on the main essentials but each varying adequately in less important details.<sup>27</sup>

ELMER M. MILLION†

THE OFFENDERS. By Giles Playfair and Derrick Sington. New York: Simon and Schuster, 1957. Pp. viii, 305. \$3.95.

In this small volume of 305 pages, the authors advocate the overthrow of a foundation thesis of Anglo-American criminal law—that one must be punished who intentionally does an act forbidden by law.<sup>1</sup>

20. P. 120.

21. Pp. 40, 132.

22. Pp. 169-70. Similarly, Joseph H. Choate reportedly asked a witness, "Isn't it true that you are the modern Munchausen?" and received the angry retort, "You're the second blackguard that has asked me that in a week." The Choate Story Book 41 (1903). In a murder trial in England a prosecuting attorney saw the accused whisper to the attending policeman, and unwisely insisted that the policeman divulge the remark. The latter refused; then, after being sternly commanded by the judge, haplessly admitted that the prisoner, referring to the judge, had whispered, "Who is that hoary heathen?" Morton & Malloch, *Law & Laughter* 56 (1913).

23. Subheads listed under chapter 4 belong to chapter 5; those listed under chapter 5 belong to chapter 6; those listed under chapter 6 belong to chapter 4 (p. viii).

24. 25 *Kirkus* 507 (1950).

25. "Whether you are lying or telling the truth, the surest way to be a good witness is to answer the question directly." P. 149.

26. Pp. 181-83. Cf. p. 96.

27. P. 183.

† Professor of Law, New York University School of Law.

1. "Historically, our substantive criminal law is based upon a theory of punishing the vicious will. It postulates a free agent confronted with a choice between doing right and doing wrong and choosing freely to do wrong." Pound, *Introduction to Sayre, Cases on Criminal Law* (1927).

Without expressly saying so they appear to be ardent foes of the doctrine of free will. Otherwise it would be difficult to justify their repeated assertions in this book that the proper approach to crime is the curative one rather than the punitive. Their theme seems to be commitment rather than confinement for offenders. They disagreed with the sentence of death imposed on the traitors, the Rosenbergs. Instead they suggested a brain-wash by experts so that they could be won over to loyalty to the United States and to democratic ideas. This brain-washing would be done in some type of education center. The authors condemned the hanging of Irma Grese, who was executed for unspeakably cruel acts and killings while serving as an SS wardress in concentration camps. They would treat her as a "psychological casualty of war." Four other cases of sensational crimes are set out in considerable detail in this book. In each of them the authors seek to stress the better approach in dealing with these offenders was the curative rather than the punitive.

The writer of this review hastens to agree with the authors over their distress with the right and wrong test<sup>2</sup> for criminal responsibility when they contend that one in no better mental health than a gibbering idiot can satisfy it. And they do not lack support for their position in opposition to this outmoded test.<sup>3</sup> Many would also agree that literal life imprisonment is crueler than outright execution. It would be expected that the authors of this book would be strong in their opposition to capital punishment. Not only do they oppose it because they believe punishment is wrong, but they feel that its complete abolition is the first step in a program of penal reform. Their arguments opposing capital punishment are well stated but are also well known.

The format of this book is most interesting. Its preface sets the stage for the reader for the cases to follow. Then details of six notorious crimes are set out. Finally comes the summing-up with the views of the authors set out clearly. There is also a bibliography of the considerable materials consulted by the writers. While the reader may disagree with the underlying theme of this book—and this reviewer is in violent opposition to it—it does provide mental stimulation for the reader. It therefore justifies its publication.

J. WALTER MCKENNA†

---

2. M'Naghten's Case, 10 Clark and Fin. 200 (1843).

3. In a survey of 300 American psychiatrists, 80% believed the right and wrong test was unsatisfactory; out of 100 Canadian psychiatrists, 90% disapproved of it. See also *Durham v. United States*, 214 F.2d 862 (D.C. Cir. 1954).

† Professor of Law, New York University School of Law.