

"playing it close to their vests" without divulging any secrets or information, and enjoying and heeding the old adage, "Oh, if my enemy would only write a book."

*Tom H. Davis**

By Love Possessed. By James Gould Cozzens. New York: Harcourt, Brace, 1957. Pp. 570. \$5.00.

Cozzens has succeeded again¹—this time in painting forty-nine hours of a small-town lawyer's life with a brush so elegant that all literate America is agog with acclaim. In doing so he subjects his portrayal to a three-fold analysis of his accuracy by attorneys: (1) substantive and procedural law, (2) the sociometric position of a community-pillar lawyer, and (3) problems of legal ethics.

The courts and pleadings are called by proper names (is Cozzens' "Brocton" in Pennsylvania?), and if (hero) Arthur Winner seems too quick with extemporaneous exposition of legal propositions we can chalk it up to his intellectual maturity and years (like Cozzens, he is fifty-three) of experience. Moreover, it seems realistic enough that such a man be the hub around which the members of his community turn and look for direction, emotional balance, relationship to each other, to him and to themselves.

It is in the field of legal ethics that Cozzens should succeed in setting the whole profession to pondering its ethical presuppositions. What should an attorney do upon finding that his partner has for many years been juggling the books of trusts and commingling funds with a resulting discrepancy in excess of \$75,000? The Canons say, "Lawyers should expose without fear or favor before the proper tribunals corrupt or dishonest conduct in the profession. . . ."² This is strong—and simple—language. For to ask a problem of legal ethics in these sterile, abstract terms is nearly always to answer it. George Sharswood was referring to the lawyer's life, not the opinions of his ethics committees, when he observed over seventy years ago, "There is certainly, without any exception, no profession . . .

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¹ The *Just and the Unjust* (1942) and Pulitzer Prize-winning *Guard of Honor* (1948) most recently preceded *By Love Possessed*.

² CANONS OF PROFESSIONAL ETHICS OF THE AMERICAN BAR ASSOCIATION 29 (1937). See also Canon 11 ("Money of the client . . . or other trust property coming into the possession of the lawyer . . . should not under any circumstances be commingled with his own or be used by him.") and 2 SCOTT, TRUSTS §§ 179-179.2 (2d ed. 1956) (duty to keep trust property separate).

in which so many delicate and difficult questions of duty are continually arising."³

Cozzens poses this ethics question for Arthur Winner in more life-like terms. Many persons in Brocton invested heavily in a local street railway company. To Noah Tuttle—middle-aged, kind-hearted friend of them all, who had recommended the venture—fell the task of preparing the books when it went into receivership. Unknown to anyone, he borrowed over \$100,000 from clients' trust funds at that time, donated it to the railway's assets, and thereby considerably reduced the local investors' losses. He gained nothing personally by the transaction. And so far no one has lost. Book juggling and transfer of funds has put every trust in order when necessary, and shrewd investment has returned most of the discrepancy. Though he commingled trust funds with others, and his own, he remained unselfish, and honest, and kept complete and accurate (albeit informal) records of every fund. Twenty years later Arthur Winner, his partner, discovers these facts. Disclosure seems necessary, yet what are the consequences? Noah Tuttle is elderly now, and the heartbreak would likely cause his death. Serious financial hardship would be imposed upon Arthur Winner's family (and that of Julius Penrose, the other partner). Much of a well-earned and valuable local reputation would be lost. Ethically most important is that nothing would be gained by such action. Public interest (bulwark of the Canon's rationale) is equally (or better) served by doing nothing. No one has yet lost money, and no one ever will. Noah is earning it back; and if he should not, it would be personally made up by Arthur Winner and Julius Penrose, if and when necessary. What is to be gained by disbarment or discipline of Arthur Winner, who otherwise represents the epitome of all a good lawyer should be?

Arthur Winner struggles, and then ignores the command of the Canons for individual considerations. (This novel is not spoiled by telling the ending. It has many endings, and much more to commend it than mere suspense.) We criticize his choice, while saying, with Anne Frank, "I still believe, in spite of everything, that people are really good at heart"⁴—at least so far as Arthur Winner (and even Noah) are concerned. We are at least caused to briefly wonder what wisdom there could be in a blind enforcement of absolute standards when criminal selfishness and the public welfare are not at issue.

But this is just one of the problems of being "by love possessed." The book is full of many more: all imaginable loves, and real-life characters for each—portrayed with a delicate understanding and masterful, sensitive, perceptive, descriptive detail.

³ SHEARWOOD, AN ESSAY ON PROFESSIONAL ETHICS 55 (1884).

⁴ GOODRICH AND HACKETT, A DRAMATIZATION OF THE DIARY OF ANNE FRANK 168 (1956).

The only (initial) shortcoming (that this reviewer could see) of the book—and it quickly fades—regards Cozzens' style (subjects so far from objects; long sentences), that tends—until the reader's pace becomes the author's—to make it something like (though, need it be said, more interesting!) statutes; compensated—when reading—only by the fuller (vivid background details), freer expression this makes possible.⁵

Wags who analyze the elements of successful novels have suggested titles like "Lincoln's Doctor's Dog," and "Pray Your Fat Away." Lawyers and love appear to be equally appealing elements (especially to lawyers), and Cozzens' *By Love Possessed* has combined them with a skill that well deserves the unanimous enthusiasm the book has received in legal and literary circles everywhere.

Nick Johnson

⁵ Like this. Of course, brevity is not the sole virtue of sentence structure. It's possible to remove the meat by adding Flesch. As Professor Fred Rodell appologizes: "Forgive me for falling momentarily into the chopped-sentence chit-chat style which Mr. Curtis affects and which some have admired. Not I. Like this. See?" Book Review, 56 *YALE L.J.* 1462, 1463 (1947).