

## RECENT BOOKS

*Cases and Materials on Oil and Gas.* By William O. Huie, A. W. Walker, Jr., and Marion Kenneth Woodward. St. Paul: West Publishing Co., 1960. Pp. xxxvi, 848. \$12.00.

Like blind mice, musketeers, and little kittens, oil and gas casebook authors seem to be coming in packages of three. They also come from Texas. The first book to appear was Williams, Maxwell and Meyers,<sup>1</sup> and now we have Huie, Walker and Woodward.<sup>2</sup> The naturally proud people of what remains the largest non-glacial state in the Union can rightfully include the two books of these men among their more legitimate "Texas brags."

It is inevitable that the two casebooks will be compared. They are the most recent materials available, they are both the products of recognized and able scholars, and most law professors teaching oil and gas law will end up choosing one or the other. It seems most appropriate to precede any observations about either, however, with a few introductory comments about their somewhat unusual subject.

Anyone who teaches "oil and gas law," or studies it on his own, is immediately confronted with limiting the topics he means to include. One might as well try to define silly putty. This is because "oil and gas law" is somewhat unique in a law school curriculum in that, by designation, it is an attempt to organize "the law" around the problems of a single industry rather than general legalistic concepts.<sup>3</sup> Thus such a

<sup>1</sup> Howard R. Williams, Richard C. Maxwell and Charles J. Meyers. Their casebook, *Cases and Material on the Law of Oil and Gas*, appeared in 1956. Although at that time Williams and Meyers were teaching at their present law school, Columbia, and Maxwell at his, U.C.L.A. (where he is now Dean), each had spent time teaching at the University of Texas Law School: Williams from 1946-1950, Maxwell from 1949-1953 (and this past summer of 1960), and Meyers from 1949-1954. Even today, Meyers is referred to by a New York City newspaper as a professor "generally famed in Law School circles as one of its most eminent authorities on oil, gas and other things Texan. . . ." (emphasis supplied) 15 COLUM. L. SCH. NEWS (No. 2) 2 (Oct. 26, 1960). And see n. 37 *infra*. (Their book is cited throughout as WMM.)

<sup>2</sup> William O. Huie, A. W. Walker, Jr., and Marion Kenneth Woodward. Huie has taught at the University of Texas Law School since 1936; Walker taught there from 1925-1948; and Woodward since 1946. All are occasionally seen in Stetson hats. (The book is cited throughout as HWW.)

<sup>3</sup> Two other examples might be "admiralty" and, to a lesser degree, "insurance." Such courses are significantly different from subjects like "torts," "trusts," "contracts," and "corporations" that deal with a body of organized legal principles applied to a variety of industries (or "fact situations"). This characteristic of "oil and gas law" makes it resemble more closely the kind of practice confronting a lawyer representing any business—railroad, radio station, department store, or agricultural enterprise—with a broad spectrum of legal problems.

course *could* deal with such diverse legal matters as the tort or tax consequences of oil and gas transactions, or administrative regulation of the industry by state and federal agencies.<sup>4</sup> By practice, or professional agreement, however, the emphasis of "oil and gas law" casebooks and courses has been on the "real property law" aspects of the industry's exploration and production activities, rather than the legal problems related to transportation, refining and marketing.<sup>5</sup> The Huie, Walker and Woodward book is no break with tradition in this respect.

The first four of the book's nine chapters consume 336 pages and deal with a variety of issues relating to property interests in oil and gas reservoirs. They begin with a 126-page chapter on "correlative rights and regulation of production," dealing with such specific problems as drainage,<sup>6</sup> taxation,<sup>7</sup> trespass<sup>8</sup> and the limitations upon ownership im-

<sup>4</sup> "The legal department of an integrated major oil company might in one day consider the title to a twenty-acre drill site in Duval County, Texas, the collision of a company oil tanker en route to a refinery, an anti-trust suit based on the relations of the company with its service station retailers, a concession agreement with a Middle Eastern potentate, and a unit operations agreement for a gas field in Kansas." WMM xii. (This would still be quite a day in anybody's "integrated major oil company.") One subject that fully deserves treatment as a special course, and should at least be given some attention in an oil and gas course, is the growing body of law regarding the Federal Power Commission's regulation of the natural gas industry. As a special course it would have the advantage with students and faculty of being either "advanced administrative law" or "advanced oil and gas" depending on one's point of view. The literature of oil and gas taxation continues to flow like the gushers of old, and courses have sprung up to its honor. See note 46, *infra*. An excellent discussion of the problems surrounding "Tort Liability in the Oil and Gas Industry" is to be found in the articles under that title by Dean Page Keeton and Lee Jones, Jr., appearing in last month's issue, 39 TEXAS L. REV. 253 (1961), and in 35 TEXAS L. REV. 1 (1956).

<sup>5</sup> Although Williams, Maxwell and Meyers have attempted a more "functionally oriented" casebook than tradition would dictate, even they acknowledge in their preface that, "This book makes no effort to deal with all phases of the industry. As is customary with courses currently given in oil and gas law, it is limited to the legal problems arising from exploration for and production of petroleum." WMM xii. Huie, Walker and Woodward have said similarly of their casebook, "The application of principles of property and contract law to transactions involving oil and gas properties is given primary attention." HWW xi.

<sup>6</sup> Because a casebook is composed at least primarily of cases it seems appropriate to mention a few by name, and this has been done in the few notes that follow. The problem of drainage, for example, is discussed in the case of *Barnard v. Monongahela Natural Gas Co.*, 216 Pa. 362, 65 Atl. 801 (1906), HWW 1 (normal drilling); *Elliff v. Texon Drilling Co.*, 146 Tex. 575, 210 S.W.2d 558 (1948), HWW 28 (negligently caused "cratering," "blow out" and fire.)

<sup>7</sup> See *Stephens County v. Mid-Kansas Oil and Gas Co.*, 113 Tex. 160, 254 S.W. 290 (1923), HWW 7.

<sup>8</sup> See *Alphonzo E. Bell Corp. v. Bell View Oil Syndicate*, 24 Cal.App.2d 537, 76 P.2d 167 (1938), HWW 19; *Carter Oil Co. v. McCasland*, 207 F.2d 728 (10th Cir. 1953), HWW 153 (willful and unintentional trespasses as affecting trespasser's right to credit expenses); *Humble Oil & Ref. Co. v. Kishi*, 291 S.W. 538 (Tex. Comm'n App. 1927), *reversing on rehearing*, 276 S.W. 190 (Tex. Comm'n App. 1925), HWW 127 (loss of speculative value from trespasser's dry hole).

posed by such conservation measures as proration,<sup>9</sup> well spacing,<sup>10</sup> unitization and pooling.<sup>11</sup> There is material on the distinction between royalty and mineral interests,<sup>12</sup> the nature of bonuses, rentals and oil payments,<sup>13</sup> and the problems of co-tenancy.<sup>14</sup> From such "property" matters the book moves into the "contract law" of oil and gas leases.

Most oil land development is done under lease. In fact, the landowner's usual one-eighth royalty is as much a matter of common knowledge<sup>15</sup> as the 27½ per cent depletion allowance is a matter of national politics. It is to be expected, therefore, that "oil and gas law" will be largely a study of "lease law." This is certainly true of the Huie, Walker and Woodward book. The section in chapter three on the lessee's interest and that in chapter four on cotenants' leasing and production is only the beginning. The whole of chapters five through eight, some 400 pages of this 800-page casebook, is devoted to the subject of leases. All the usual problems are treated here in full: multiple-ownership leasing by fiduciaries<sup>16</sup> or those holding future interests,<sup>17</sup> the clause-by-clause analysis (*habendum*),<sup>18</sup>

<sup>9</sup> See *Railroad Comm'n v. Rowan & Nichols Oil Co.*, 311 U.S. 570 (1941), HWW 67; *Champlin Ref. Co. v. Corporation Comm'n*, 286 U.S. 210 (1932), HWW 53.

<sup>10</sup> See *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943), HWW 71; *Ryan Consol. Petroleum Corp. v. Pickens*, 155 Tex. 221, 285 S.W.2d 201 (1955), HWW 108.

<sup>11</sup> See *Hunter Co. v. McHugh*, 202 La. 97, 11 So.2d 495 (1942), HWW 118.

<sup>12</sup> See *Little v. Mountain View Dairies*, 35 Cal.2d 232, 217 P.2d 416 (1950), HWW 271; *Watkins v. Slaughter*, 144 Tex. 179, 189 S.W.2d 699 (1945), HWW 276.

<sup>13</sup> See *State Nat'l Bank of Corpus Christi v. Morgan*, 135 Tex. 509, 143 S.W.2d 757 (1940), HWW 259; *Schlitter v. Smith*, 128 Tex. 628, 101 S.W.2d 543 (1937), HWW 257.

<sup>14</sup> See *Prairie Oil & Gas Co. v. Allen*, 2 F.2d 566 (8th Cir. 1924), HWW 290 (rights after production); *Earp v. Mid-Continent Petroleum Corp.*, 167 Okla. 86, 27 P.2d 855 (1933), HWW 303 (role of lessees of cotenants); *Law v. Heck Oil Co.*, 106 W.Va. 296, 145 S.E. 601 (1928), HWW 288 (1/768th interest held up production); *Duhig v. Peavy-Moore Lumber Co.*, 135 Tex. 503, 144 S.W.2d 878 (1940), HWW 329 (analogy of "after acquired title" applied to interest retained if already outstanding in another).

<sup>15</sup> That one-eighth of production is the usual royalty is indeed more common knowledge than the ability to deal with fractions and percentages is a common skill.

"Landowners as a class are as intelligent and reasonable as other folks, and once the relative risks and rewards are explained a royalty agreement is usually readily reached. There are exceptions, of course, and now and then a landowner insists that an eighth is not enough and that she should have a tenth. Ask any experienced lease man whether he has not had such a demand at least once. Don't embarrass him by asking whether he granted it; most lease men are honest but all are human, and such a demand is a temptation. To their credit be it said that not many have yielded, but a few have been soft-hearted enough to 'raise' the royalty to a sixteenth or even a twentieth." BALL, THIS FASCINATING OIL BUSINESS 91 (1940).

<sup>16</sup> See *Avis v. First Nat'l Bank of Wichita Falls*, 141 Tex. 489, 174 S.W.2d 255 (1943), HWW 378.

<sup>17</sup> See *Youngman v. Shular*, 155 Tex. 437, 288 S.W.2d 495 (1946), HWW 341; *Davis v. Bond*, 138 Tex. 206, 158 S.W.2d 297 (1942), HWW 337.

<sup>18</sup> See *Baldwin v. Blue Stem Oil Co.*, 106 Kan. 848, 189 Pac. 920 (1920), HWW 401 (excuses and the role of delay rentals); *Clifton v. Koontz*, 325 S.W.2d 684 (Tex. 1959), HWW 420; *Garcia v. King*, 139 Tex. 578, 164 S.W.2d 509 (1942), HWW 415 (the meaning of "produced" in the clause "and so long thereafter as oil . . . is produced").

shut-in royalty,<sup>19</sup> proportionate reduction<sup>20</sup>), express and implied covenants<sup>21</sup> (seventy-six pages on the lessee's duty to drill<sup>22</sup>), and conveyances.<sup>23</sup>

The last chapter in the book, chapter nine, is titled "Pooling and Unitization." These terms refer to cooperative efforts by landowners to develop or produce oil and gas property jointly, thereby drastically curtailing the cost of drilling unnecessary wells and enabling the scientific recovery of reserves that would otherwise be lost. Like "oil and gas law" generally, the subject of pooling and unit operations involves questions of property law, contracts, procedure, tort liability, administrative regulation and taxation. Here again, however, the emphasis is on the impact of regulation upon private ownership. The chapter contains cases on unitization agreements and their validity,<sup>24</sup> their impact upon prior leases and royalties,<sup>25</sup> and the rights of non-joining owners.<sup>26</sup>

<sup>19</sup> See *Freeman v. Magnolia Petroleum Co.*, 141 Tex. 274, 171 S.W.2d 339 (1943), HWW 441 ("royalty . . . on each gas well . . . while gas therefrom is not sold . . . shall [result in its being] held to be a producing well" for purposes of keeping the lease in force "as long [as gas] is produced from said land").

<sup>20</sup> This clause automatically reduces the royalty due the lessor and keeps the lease in force when he turns out to have less interest in the land than supposed. See *Gibson v. Turner*, 156 Tex. 289, 294 S.W.2d 781 (1956), HWW 644; *Texas Co. v. Parks*, 247 S.W.2d 179 (Tex.Civ.App. 1952, error ref'd n.r.e.), HWW 638.

<sup>21</sup> HWW ch. 7.

<sup>22</sup> See *Suder v. Mid-Continent Petroleum Corp.*, 292 U.S. 272 (1934), HWW 569 (relief available for failure to develop with diligence, partial cancellation); *Hartman Ranch Co. v. Associated Oil Co.*, 10 Cal.2d 232, 73 P.2d 1163 (1937), HWW 559 (implied covenant to prevent drainage by a single lessee of adjoining lessors); *Carter Oil Co. v. Dees*, 340 Ill.App. 449, 92 N.E.2d 519 (1950), HWW 545 (repressurizing); *Clifton v. Koontz*, 325 S.W.2d 684 (Tex. 1959), HWW 578 (exploration of deeper horizons); *Gulf Prod. Co. v. Kishi*, 129 Tex. 487, 103 S.W.2d 965 (1937), HWW 551 (effect of specific development agreement); *Waggoner Estate v. Sigler Oil Co.*, 118 Tex. 509, 19 S.W.2d 27 (1929), HWW 519 (abandonment, and the implied covenants of exploration and development); *Texas Pac. Coal & Oil Co. v. Barker*, 117 Tex. 418, 6 S.W.2d 1031 (1928), HWW 529 (the "ordinary prudent operator" standard); *Guardian Trust Co. v. Brothers*, 59 S.W.2d 343 (Tex.Civ.App. 1933, error ref'd), HWW 510 (measure of damages for failure to drill well).

<sup>23</sup> HWW ch. 8. This includes cases involving the use of inappropriate forms. See *Hoffman v. Magnolia Petroleum Co.*, 273 S.W. 828 (Tex. Comm'n App. 1925), HWW 665 (apportionment of production among joint owners); *Japhet v. McRae*, 276 S.W. 669 (Tex. Comm'n App. 1925), HWW 669, (the use of "entirety clauses"); *Cockrell v. Texas Gulf Sulphur Co.*, 157 Tex. 10, 299 S.W.2d 672 (1956), HWW 678 (the statute of frauds); *Taber v. Pettus Oil & Ref. Co.*, 139 Tex. 395, 162 S.W.2d 959 (1942), HWW 706 (measure of damages for failure to continue drilling on land held for speculative purposes); *Whiteside v. Trentman*, 141 Tex. 46, 170 S.W.2d 195 (1943), HWW 716; *Phillips Petroleum Co. v. Taylor*, 116 F.2d 994 (5th Cir. 1941), *cert. denied*, 313 U.S. 565 (1941), HWW 729 (implied covenants owed on assignor of a mineral lease with a retained overriding royalty).

<sup>24</sup> See *Phillips Petroleum Co. v. Peterson*, 218 F.2d 925 (10th Cir. 1954), HWW 741.

<sup>25</sup> See *Scott v. Pure Oil Co.*, 194 F.2d 393 (5th Cir. 1952), HWW 773; *Southland Royalty Co. v. Humble Oil & Ref. Co.*, 151 Tex. 324, 249 S.W.2d 914 (1952), HWW 777; *Tanner v. Title Ins. & Trust Co.*, 20 Cal.2d 814, 129 P.2d 383 (1942), HWW 780.

<sup>26</sup> See *Tide Water Ass'n Oil Co. v. Stott*, 159 F.2d 174 (5th Cir. 1946), HWW

It is impossible to give full credit to this casebook merely by commenting upon its case content. It has much more. By way of example, the first thirty-nine page section contains eight principal cases. It also includes, however, thirteen textual notes of varying length, which cite approximately twenty statutes and administrative regulations, eighty-five books and law review articles, and 115 cases. This is representative of the whole book. As is typical in casebooks, there are no tables listing notes, statutes and cited articles<sup>27</sup> and it would be difficult to estimate how many the book contains. A rough calculation from the table of cases, however, would suggest that nearly 1,700 cases have found their way into this casebook either as full opinions, excerpts, or citations in footnotes. In addition to the authors' original note material, they have also included selections from some outstanding law review writing,<sup>28</sup> and an appendix of ten forms.<sup>29</sup>

In fact, it is remarkable that more practicing lawyers do not buy "case-

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801; *Dobson v. Arkansas Oil & Gas Comm'n*, 218 Ark. 160, 235 S.W.2d 33 (1951), HWW 796; *Bogges v. Milam*, 127 W.Va. 654, 34 S.E.2d 267 (1945), HWW 793.

<sup>27</sup> This undoubtedly has historical explanations; but now that much of the wealth of casebooks is contained in materials other than the cases themselves, see text following note 30, *infra*, it may be hoped that publishers will soon include tables to this material as well. See MCCORMICK & CHADBURN, *CASES AND MATERIALS ON FEDERAL COURTS* xxi-xxviii (3d ed. 1957).

The absence of organizational detail from the table of contents is also a disappointment to this reviewer. For example, the "Summary of Contents" (xiii) takes one full page, and yet the full-blown "Table of Contents" (xv-xvi) which follows takes only half a page more. This may be contrasted with the three and one-third page "Table of Contents" in WMM xvii-xx, and such ample tables of contents as the thirteen pages in Barrett, Bruton & Honnold, *CONSTITUTIONAL LAW: CASES AND MATERIALS*, xiii-xxv (1959) and the twelve pages in Lattin & Jennings, *CASES AND MATERIALS ON CORPORATIONS*, vii-xviii (3d ed. 1959). Foundation Press seems to be making a real effort in this direction. The nine chapters in HWW are divided into a total of twenty-five sections. This is an average of thirty-two pages per section, with section two of chapter one running eighty-eight pages, and section one of chapter seven containing seventy-six. Chapter seven is itself 148 pages long. This is not to say that the book is without organization. It is, on the contrary, very carefully thought out. It is just that this can be discovered only by reading and outlining the book.

Some might argue that detailed tables of contents are undesirable because they serve to ease the pain of the student's preparing his own outline of the course. Actually, any assist is probably well-deserved. Even if not, however, this reviewer feels that any such loss is more than offset by the insight provided in such an ever-present picture-of-the-whole.

<sup>28</sup> Walker, *The Nature of the Property Interests Created by an Oil and Gas Lease in Texas*, 7 TEXAS L. REV. 1 (1928), HWW 210; Hardwicke, *The Purchase of Producing Oil or Gas Properties by Use of a Production Payment*, 33 TEXAS L. REV. 848 (1955), HWW 709; Hardwicke & Hardwicke, *Apportionment of Royalty to Separate Tracts: the Entirety Clause and the Community Lease*, 32 TEXAS L. REV. 660 (1954), HWW 687. There are also two excerpts from STOCKTON, HENSEHAW & GRAVES, *Economics of Natural Gas in Texas* (1952), HWW 613, 622.

<sup>29</sup> These include leases, a tenant's consent agreement, assignments of leases, deeds, and division orders. HWW 807-831.

books" of this kind. Although they are relatively cheap as law books go,<sup>30</sup> even the most expensive law library is apt to have few casebooks on its shelves. This is undoubtedly largely a hang-over from the days when casebooks were literally that, with 500 to 1,000 pages of apparently unrelated cases set forth in their unexpurgated rambling glory. Yet it is probably as much the result of the title (*Cases and Materials on Oil and Gas*) and the red binding. If the publisher would call it *The Lawyer's Guide to Oil and Gas Law*, bind it in blue, and sell it for twenty-five dollars no practitioner would consider being without it. It is hard to imagine a more useful research tool than one in which problems are raised and discussed in the context of leading cases, statutes, regulations and significant law review and text writing.

It is true that much of this material concerns Texas, but while the emphasis cannot be ignored it need not be severely criticized. The authors acknowledge in the preface that although the book "is of national scope . . . a tendency to emphasize Texas law will be observed."<sup>31</sup> This is certainly true. Of the 145 principal cases included 89, or 61 per cent, are from Texas.<sup>32</sup> This is in contrast to a mere 35 per cent in the Williams, Maxwell and Meyers casebook.<sup>33</sup> It is interesting to compare these figures with a sampling of the total case material available. Volume four of the Oil and Gas Reporter (which contains the 1955 oil and gas cases) includes sixty-four cases from Texas in its total of 176.<sup>34</sup> Thus to the extent that 1955 was representative it would certainly seem that the balance of 35 per cent Texas cases in the Williams, Maxwell and Meyers book is more representative of the 36 per cent actually existing than the 61 per cent representation in Huie, Walker and Woodward. Nevertheless, it would not be fair to suggest that this casebook, like Huie's casebook on marital rights,<sup>35</sup> should be called *Texas Cases on Oil and Gas* and dismissed as mere provincialism. This is not a casebook on contracts or torts. It is a casebook on oil and gas law. A professor using an oil and gas casebook with *no* Texas cases would soon find he could not tell his class from a dry hole in the ground. But a casebook with *all* Texas cases could be

<sup>30</sup> The Huie, Walker and Woodward book sells for \$12.00. By contrast, the Summers treatise costs \$180.00, and the new Williams & Meyers treatise is coming out at \$25.00 a volume.

<sup>31</sup> HWW xi.

<sup>32</sup> When the thirteen Oklahoma cases are added to those from Texas the two jurisdictions are represented by 70 per cent of the principal cases in the book. An additional interesting feature is the inclusion in the appendix of the nine-page lease covering University of Texas lands. HWW 812. See note 29 *supra*. This hardly lends support to the "national scope" of the book. See note 31 *supra*.

<sup>33</sup> Of the eighty-six principal cases, thirty are from Texas and seventeen from Oklahoma.

<sup>34</sup> This computation does not include the eighty-one cases categorized under the topics "Natural Gas," "Taxation," and "Canada."

<sup>35</sup> HUIE, TEXAS CASES ON MARITAL RIGHTS (1955).

used in any law school in the country with little or no supplementary material. Moreover, there are fifty-six principal cases that are not from Texas—the precise number contained in Williams, Maxwell and Meyers. With 1,700 cases in the book, there are few really significant non-Texas cases omitted entirely. Furthermore, the selection of principal cases for a casebook may turn on many factors other than equal, or proportionate, geographical or jurisdictional representation. Finally, a large number of the lawyers, professors, and law students using this casebook will be Texans.<sup>36</sup> Nevertheless, on balance, it seems unfortunate that the Texas emphasis is so heavy.

Another distinctive feature of the Huie, Walker and Woodward book of historical interest is its reliance upon the earlier work of one of its authors, A. W. Walker, Jr. Walker has had a creative and far-reaching impact upon oil and gas law, and Williams, Maxwell and Meyers are among the first to acknowledge their debt to him.<sup>37</sup> His direct contribution to the new Huie, Walker and Woodward book is specific and substantial, however, and requires brief comment. The last edition of Professor Walker's casebook appeared in 1949.<sup>38</sup> This edition contained 150 principal cases. Only twelve have been entirely left out of the Huie, Walker and Woodward book, and all of these are from 1942 to 1948. Eighty-five of Walker's 150 appear as principal cases in the new book, twenty-three as excerpted cases, and thirty as footnote citations. As seventy-one of the 145 principal cases in the Huie, Walker and Woodward book were decided between 1942 and 1959 it would appear that the case content of the new casebook is largely an up-dating of the old. However, even had the authors done nothing but bring back into print the excellent 1949 Walker book they would have performed a considerable service, and of course they have done much more by filling nearly half of the casebook with cases from the last twenty years, and adding all the additional material throughout.

Insofar as this casebook is now the most recent available, and roughly one-third of its principal cases are less than ten years old,<sup>39</sup> it is appropri-

<sup>36</sup> See text at note call 46, *infra*. Only forty law schools out of the 107 examined offer a course in oil and gas law. Six of these are in Texas: Baylor, South Texas, Southern Methodist, Texas Southern, University of Houston, and the University of Texas.

<sup>37</sup> "It is only fair to say, however, that our work is built on the earlier work of others. In particular, our casebook reflects the work of A. W. Walker, Jr., now of the Dallas, Texas, bar, but for 25 years professor of law at the University of Texas. His splendid writings in the field are frequently cited and quoted in this collection. Moreover the acquaintance of each of the editors with the law of oil and gas was first acquired through study of his casebook, and his contribution to the education of the editors was tremendous. One of the editors first studied oil and gas as a student of Professor Walker, and another of the editors began teaching as his colleague. All of us have profited from his scholarly example." WMM xii.

<sup>38</sup> These materials were published in a limp-cover edition by an Austin, Texas bookstore.

ate to discuss the desirability of the recent cases in the new casebook. The Williams, Maxwell and Meyers book was also strong on recent cases. It contained thirty-nine from 1950-1955 and twenty-nine from the 1940's, leaving only eighteen of its eighty-six (non-tax) principal cases to represent the first fifty to sixty years of the industry's growth. The casebook's most current cases were eleven from 1954 and 1955. It is perhaps significant to observe that in the Huie, Walker and Woodward casebook only three of these appear as principal cases, one as an excerpted case, six are merely mentioned in footnotes and two do not even receive that dignity.<sup>40</sup> It has already been mentioned that the twelve cases from the earlier Walker casebook that were omitted entirely by Huie, Walker and Woodward were all from the six-year period prior to its publication. What conclusions can be drawn from these observations? The sampling is small, but it seems fair to conclude that the "recent cases" in a casebook, those which make it "up-to-date," tend to be short-lived. If a casebook were intended to be a monument to the great cases of all time it might follow that, like a history book, the less said in it about the events of the current generation the better.<sup>41</sup> The fact remains that no law school subject (with the possible exception of constitutional law) has enough "great cases" to make up a book anyway, and that the poor opinion may be a better teaching tool than the product of genius. Moreover, whether students are being taught "how to think like lawyers" or merely how to memorize principles of substantive law, most professors would agree that recent cases make more realistic working materials. It is as difficult to pick tomorrow's "leading cases" from advance sheets as it is to pick lead-

<sup>39</sup> Forty-seven of the 145 principal cases are from the 1949-1959 period.

<sup>40</sup> Phillips Petroleum Co. v. Peterson, 218 F.2d 926 (10th Cir. 1954), WMM 599, HWW 741; Welborn v. Tidewater Ass'n Oil Co., 217 F.2d 509 (10th Cir. 1954), WMM 450, HWW (not cited); Williams v. Continental Oil Co., 215 F.2d 4 (10th Cir. 1954), WMM 157, HWW 26 n. 39; Harrel v. Atlantic Ref. Co., 123 F. Supp. 70 (E.D.Okla. 1954), WMM 233, HWW 474 n. 80; Seeligson v. Eilers, 131 F.Supp. 639 (E.D.Kan. 1955), WMM 441, HWW 313 (excerpt from case on appeal, Shell Oil Co. v. Seeligson, 231 F.2d 14 (10th Cir. 1955)); Hanson v. Ware, 224 Ark. 430, 274 S.W.2d 359 (1955), WMM 514, HWW 247; Texas Co. v. Newton Naval Stores Co., 223 Miss. 468, 78 So.2d 751 (1955), WMM 71, HWW 351 n. 31, 352 n. 36; Young v. West Edmond Hunton Lime Unit, 275 P.2d 304 (Okla. 1954), WMM 643, HWW (not cited); Woody v. State Corp. Comm'n, 265 P.2d 702 (Okla. 1954), WMM 612, HWW 125 n. 86; Irick v. Hubbell, 280 P.2d 733 (Okla. 1955), WMM 590, HWW 739 n. 9; Woods v. Sims, 154 Tex. 59, 273 S.W.2d 617 (1954), WMM 531, HWW 692.

<sup>41</sup> Perhaps the enduring quality of Charles Warren's history of the Supreme Court is in part attributable to this passage from the preface written in 1922:

"I have not attempted a detailed description of the Court and of its important cases later than the close of the Chief Justiceship of Waite. [1888] The succeeding thirty years of Chief Justices Fuller and White comprise a period so recent and so clearly within the view of living men as to render such detailed treatment unnecessary. Moreover, the proper historical perspective is lacking. Accordingly, I have given but a broad general outline of the leading cases and doctrines during the years 1888 to 1918."

1 WARREN, *THE SUPREME COURT IN UNITED STATES HISTORY* vii (rev. ed. 1928).



ing statesmen while they are still in their cribs. Their leading status is largely dependent upon future events, including, for the cases, their future selection by judges, lawyers, law reviews and text and casebook authors. But the need justifies the effort and excuses the mistakes. The fact that the Huie, Walker and Woodward book contains twenty-one principal cases from the 1956-1960 period which followed the Williams, Maxwell and Meyers casebook makes it to that extent a closer representation of current law. And this is so whatever happens to these twenty-one cases in future editions of either book.

It has already been noted that the casebook presents the traditional approach to oil and gas law. As such it represents not only an extraordinary wealth of material, but also the curriculum at the University of Texas where two of the authors teach. This creates problems, however, for that majority of law school professors who teach in schools offering only one oil and gas course or those who would prefer to approach the material in some other way. At the University of Texas Law School, where the entire curriculum is divided into five categories,<sup>42</sup> "oil and gas" is included as a three-hour "property" course—indeed, one for which the course in "Texas land titles" is a prerequisite. The authors make clear in their preface, for example, that "oil and gas tax law is not included. . . ."<sup>43</sup> The contents of the book bear out this promise. By contrast, the Williams, Maxwell and Meyers book contains a seventy-three page chapter on oil and gas taxation.<sup>44</sup> Certainly Huie, Walker and Woodward would be among the first to recognize the tremendous significance of taxation in the planning of oil and gas transactions. This realization is evidenced by the fact that the University of Texas has a separate two-hour course called "oil and gas taxation" (which, for the inquisitive, is classified under "public law," see note 42, *supra*). And although the administrative law aspects of the industry's problems tend to be slighted in the casebook, they, like taxation, are similarly represented in a special seminar in "oil and gas practice before the Railroad Commission of Texas."<sup>45</sup> Thus, the problem at the University of Texas is not one of teaching this material in the

<sup>42</sup> There are five "groups" of courses, and students are required to take a certain number (generally eight) units from each group rather than specific courses. The groups include commercial law, public law, property, procedure and general. University of Texas Catalogue, part VIII, School of Law, 1958-1960, 45.

<sup>43</sup> HWW xi.

<sup>44</sup> WMM chapter 11, 666-738. The chapter includes sections entitled, "Depletion," "Operator's Expenditures," "The Property Unit," and "Tax Consequences of Selected Oil and Gas Conveyances."

<sup>45</sup> For the curious non-Texans it is here footnoted that the Texas "Railroad Commission" is Texas talk for a state administrative agency regulating more oil and gas operators than railroads. By contrast, California calls its state agency the "Oil and Gas Division." The reader will be left to draw his own conclusions. See note 4, *supra*, regarding the Federal Power Commission.

basic oil and gas course or ignoring it altogether, but rather a choice between teaching it in one course and teaching it in three.

But Texas, as in so many other things, is atypical here as well. An examination of the catalogues of 107 law schools discloses that forty of these schools now offer one or more courses in oil and gas law. However, thirty of these forty schools provide only the one basic course—often in two semester (thirty classroom) hours. The remaining schools offer a total of from two to four courses in this general area, one of which is usually oil and gas taxation.<sup>46</sup> There is no reason why a professor in one of the thirty schools cannot use the Huie, Walker and Woodward book. Indeed, there are many reasons why he should. If he does, however, he should do so with his eyes open to his inevitable choice between offering thorough coverage of a limited part of oil and gas law, or gathering together substantial quantities of supplementary material. In either case, if he is allowed only two semester hours, he will have to prune out a considerable quantity of the cases provided.

Whether a school offers one oil and gas course or five, and wholly aside from the saving of class hours there is something to be said for showing students the operation of an industry in its legal context.<sup>48</sup> As Professor Warren said in his review of the Williams, Maxwell and Meyers book,<sup>49</sup>

“Much of the value of a law school course in oil and gas lies in the breadth and scope of the subject matter. . . . In inventorying the means by which the coercive forces of the community—judicial, legislative, and administrative—are brought to bear on a single economic activity—the production of petroleum—a law school course in oil and gas law affords the student an admirable opportunity to observe the full sweep of law in action. By this test . . . the Williams-Maxwell-Meyers book is an excellent one.”

As Huie, Walker and Woodward have made no pretense of attempting such a goal they are certainly not to be criticized for not achieving it.

<sup>46</sup> The following schools have courses in oil and gas and oil and gas tax: University of Houston, University of Oklahoma, South Texas College of Law, and Tulane. Baylor has courses in oil and gas and oil and gas office practice. Southern Methodist has courses in oil and gas, oil and gas tax, government regulation of oil and gas, and unit and co-operative oil and gas operation. Courses at the University of Texas are discussed in the text. George Washington University is in the unusual position of having a course in oil and gas tax, but none in oil and gas.

<sup>47</sup> There are 831 pages of text and appendices in HWW compared with 770 pages in WMM.

<sup>48</sup> See notes 2 to 5, *supra*, and accompanying text. Professor Addison Mueller's case-book, *Contract in Context* (1952) might be cited as a successful example of a somewhat similar effort in another field. But see, Mueller, *There is Madness in our Methods*, 3 J. L. Ed. 93 (1950), for its author's sales pitch.

<sup>49</sup> Warren, Book Review, 42 CORNELL L.Q. 607, 608 (1957). And see Professor Merrill's review of WMM, 34 TEXAS L. REV. 966 (1956). WMM avoids “the criticism, so often made of courses in such specialized fields, that too much time is spent in merely going over specific applications of principles already mastered. [They] create a sense of industry in action, which should prove very stimulating to the students.” *Id.* at 967.

Some would argue that such a goal is neither desirable nor possible. Moreover, where the time is available in a curriculum some legal educators might believe that their students gain a better understanding of the industry-in-its-legal-context from a thorough study of the property, tax and administrative law aspects one at a time than by trying to comprehend them all at once. For those who would like to teach such a course, however, and this reviewer is one, there is presently no casebook that adequately approaches oil and gas law in this way. Williams, Maxwell and Meyers make an attempt and have come close. But one would hope, for this purpose, not for separate chapters on "Oil and Gas Taxation,"<sup>50</sup> "Unitization and Pooling"<sup>51</sup> and special sections on "Conservation of Oil and Gas" and "Selected Problems in Well Spacing and Pro-rationing."<sup>52</sup> These problems, or those of any other client, have a way of coming to the lawyer in a kind of blend unlike anything a law student ever sees in a traditional law school course. Any practicing lawyer dealing with oil and gas clients could very easily draft, for example, a single student exercise involving problems of conveyancing, interpretation of leases, statutory control and overriding tax considerations. A casebook conceived in such a spirit might provide a sufficient educational challenge for the forgotten third-year student to justify any possible reduction in quantity of "law" covered during the semester. It would be particularly useful in those schools that offer only one course.

In the meantime, we can welcome with enthusiasm this new product of three very able men. Here is not only a "law finder" with more references per cubic inch than most textbooks, but a broad and deep collection of basic teaching materials as well. For those who want to teach the basic property law approach to oil and gas this book is tailor-made. Those who wish to formulate something different—from a minor deviation to a whole new approach—have available in this one volume the bulk of the material they will want to use. Lawyers, judges, students and teachers are all in the debt of Huie, Walker and Woodward for the production of this great contribution to the literature of oil and gas law.

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<sup>50</sup> WMM ch. 11.

<sup>51</sup> WMM ch. 10.

<sup>52</sup> Sections 1 and 2 of ch. 3, WMM.

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