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Books in *The News*:

Legal-War Stories

By Michael S. Quinn

THE BEST DEFENSE: The Courtroom Confrontations of America's Most Outspoken Lawyer of Last Resort (Alan M. Dershowitz; Random House, \$16.95, 425 pp.).

TRIAL lawyers love war stories. It's one of their (or our) occupational diseases: like alcoholism, divorce, egomania and pomposity. Nevertheless, lawyers are not alone in their addiction to courtroom fact and fable. The lay public gobbles up these reminiscences, in print and over cocktails, in what some regard as unhealthy amounts.

The public's high gobble rate is not a hard fact to explain. Tales of heroic exploits — even true ones — are often exciting, especially the first time you hear them, and lawyer stories have extra ingredients as well. They are usually funny; and they are frequently warm or convivial — sort of like good ole boys, or maybe good, old whiskey.

IN *THE Best Defense*, Professor Dershowitz has given us an unusual, interesting bevy of tales. Naturally, the professor-author is the epic hero, leading his learned, well-disciplined troops into and through a series of apocalyptic battles in the defense of the good, the right and the true.

Dershowitz skillfully weaves concrete narrative with abstract observation, without becoming boringly didactic. Still, the professor has a point of view: he

staunchly defends an ACLU view of the Bill of Rights. "Porno? Si! (If you like that sort of thing.)" "Execution? No!" "I believe in one god the Exclusion Rule Almighty . . .", one can almost hear him intone.

While Dershowitz is not overly preachy, he is somehow abrasive. Even relatively innocuous assertions spark public outrage. He says, for instance, that policemen lie under oath. Big news!

MANY prosecutors, defense attorneys and judges have told me that they believe that policemen lie to obtain convictions. But policemen are not alone. These same people also say that defendants routinely lie. And so do others. A federal judge recently remarked to me that the worst class of liars he sees are bankers. And yet, Dershowitz has been pilloried repeatedly for his remark about the police. Perhaps there is something about the tone of this man, whom a former colleague has described as a "dedicated . . . street fighter," which just makes you want to kick the tar out of him.

Curiously, though, even given the professor's leftward leanings, which are not to be confused with Soviet sympathies, there is much here for even an individualistic conservative to love — once he has got over his initial rage. For one thing, Dershowitz sees individuals — not groups — as the true focus of moral action. For another, he is deeply suspicious of the pervasively corrupting influence of institutions. These

are good conservative themes, if ever there were any.

So this is an attractive and provocative, if light, book, and one worth the reading if you like tales of lawyer-knights. Still, it's troublesome. Is the author what he claims to be? He trumpets from the start that the reader will be treated to cases lost, and yet Dershowitz himself, even in defeat, appears never to be wrong.

The author sets forth 13 "rules" for understanding the legal system, which are akin to social scientific laws. No. 1 says that "almost all criminal defendants are, in fact, guilty." And yet, none of Dershowitz's clients are ever themselves guilty of quite the crime with which they are charged. I should be so lucky.

FINALLY, the author embraces a kind of radical individualism, yet defends his clients not for *their* sakes, but for the greater glory of our adversary system. Is this not to treat people merely as means, as opposed to ends, in themselves? If so, are we not given a profoundly inconsistent individualism?

Ah, well. Haven't I implied that Dershowitz is a literary (or at least ideological) provocateur passing himself as a mere warhorse of war stories? Haven't I myself been provoked? If any of you enjoy this kind of provocation, then take this book with you on your holiday this summer, and let it heat up some rainy afternoon.

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