that we have to read cases about music copyright infringement without listening to the music itself, or read a judge's decision about two photographs without necessarily seeing the photographs. The Internet is changing much of that situation, but in the meantime, both practitioners and courts will continue to rely on the written word. And as Magritte's paintings emphasize, words do not equate with objects and vice versa. Copyright lawyers often engage in such surreal exercises as applying principles developed in cases involving sculptures of puppies to cases involving rock music.

Fortunately, the Library of Congress (of which the Copyright Office is a part) seems to be taking up the challenge of explaining copyright to the world in an exciting way. Go to www.loc.gov, and, with a little effort, you can find John Grisham's novels and the names of the companies that own his screenplays. Explore some more and read the registration forms, and you'll get an idea of the type of subject matter that is copyrightable. Copyright Office publications are downloadable, well-written and well-labeled, and useful. As *Copyright Law: A Practitioner's Guide* makes clear, research into copyright ownership is much more complex than an Internet search, and the Internet is in no danger of putting copyright researchers and attorneys out of business.

The "big" treatise in copyright law is *Nimmer on Copyright*. It's an expensive and exhaustive multi-volume set that you'll need to invest in if you're going deeply into copyright. For the litigator researching a particular difficult question of law, it's a wonderful resource and is relied on extensively by courts (except where it's expressly rejected).

But what about the practitioner trying to engage in some basic problem solving? What works can be copyrighted? How long does protection last and when does a work revert to public domain? How do transfers of ownership and renewals work? What rights and remedies does a copyright owner have in infringement cases? How will copyright survive the Internet? Not everyone has the time to read a multi-volume treatise to get a handle on a legal problem, but *Copyright Law: A Practitioner's Guide* helps to answer these questions.

Even if you have the $1,300 and the shelf space that *Nimmer* requires, *Copyright Law: A Practitioner's Guide* provides the tools necessary to unlock key concepts of copyright law and litigation. Its footnotes are deep and excellent, and it is written without authorial self-indulgence, shying away from the theoretical and remaining relentlessly clear, practical, and helpful. I read it from cover to cover and picked up an enormous amount of new information, including rules for testamentary succession I'd never even heard of and cases with which I was not familiar. TFL

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Adversarial Legalism: The American Way of Law

By Robert A. Kagan

Harvard University Press, Cambridge, MA, 2001. 339 pages, $55.00 (cloth), $19.95 (paper).

REVIEWED BY MICHAEL COBLENZ

In recent years a parade of books have claimed that lawyers (and America's litigiousness) are destroying American society. The subtitle of Catherine Crier's bestseller, *The Case Against Lawyers* articulates this view: *How the Lawyers, Politicians, and Bureaucrats Have Turned the Law Into an Instrument of Tyranny*. Many of these books are little more than partisan screeds intent on casting blame.

Robert Kagan has written a scholarly assessment of American litigiousness that is in many ways an antidote to the screeds. Kagan seeks causes rather than casting blame. He defines "adversarial legalism" as the use of litigation to solve social as well as legal problems. And, although Kagan recognizes that litigiousness has both positive and negative effects, he concludes that the drawbacks outweigh the benefits.

Adversarial Legalism compares the American legal system with that of other, primarily European, countries. It contrasts, for example, dredging polluted harbors in California and in the Netherlands. In both, government bureaucracies developed similar plans, but the Netherlands' plan was implemented immediately and the harbor was dredged. In the United States, there were 10 years of litigation challenging the plan before the harbor was finally dredged, and the challenges increased the cost by 500 percent. Kagan explains the difference primarily by the two countries' vastly different theories of government. The Netherlands, like most European countries, has a hierarchical system with a strong central government and powerful bureaucracies that implement government policy. The United States has a widely diffused government with federal, state, and local components, weak bureaucracies at each level, and a powerful judiciary that is highly responsive to public demands and is willing to review and strike down executive and legislative branch policies.

The reason that the American system takes this form is obviously historical, but Kagan unfortunately skims over this history. He does note that, although, we were not always as litigious as we are today, we have always been more litigious than other countries are. He suggests that the reasons are "popular demands for fair treatment, recompense, and protection, combined with mistrust of government and fragmentation of political and economic power."

Our founders enshrined mistrust of government in the Constitution by limiting governmental powers through separation of powers among the three branches of government and the establishment of the federal system with states often coequal to the federal government. They also provided for fair treatment and protection of individuals with the Bill of Rights.

Initially, few citizens used the Bill of Rights to challenge federal government power — probably because the federal government was fairly small until after the Civil War, when industrialization and rapid westward expan-

sion created problems that could be solved only by the national government. As a result, government began to grow rapidly in the early 20th century — first to regulate growing national businesses, and then, during the New Deal, to provide social programs.

The balance between individual rights and governmental powers shifted dramatically in the 1960s. In the best section of the book, Kagan discusses the "rights" explosion during this era and how it led to a dramatic increase in litigation.

This "rights" revolution began during the civil rights movement of the 1950s, and Kagan notes that civil rights lawyers shrewdly framed their claims opposing discrimination in terms of a right to equality enshrined by our founders — a right to more than "separate but equal," but to fairness. Liberals used this model again and again throughout the 1960s and 1970s to create a wide variety of rights, from voting rights to the right to a clean environment.

The central thesis of *Adversarial Legalism* seems to be that we do not recognize the inherent conflict between our desire for limited government and our wish for individual rights; the conflict lies in the fact that we rely on government to enforce our rights. Kagan fails to mention that, unlike Europeans, who view government primarily as a protector of individual security, Americans often see government primarily as a threat to individual liberty.

Kagan notes that, though our system of limited government prevents certain types of governmental abuse, it creates other problems, such as a lack of national standards to limit individual decision-makers' autonomy.

Kagan illustrates this problem in the criminal justice system. There was once a time when local police and judges had enormous power. Kagan cites examples of police routinely rounding up and torturing suspects for confessions, and then judges convicting and sentencing them on little more than the word of the arresting officer and the coerced confession.

This was manifestly unfair, and one possible solution to this problem would have been the adaptation of a European-style criminal justice system, with national standards administered by a trained bureaucracy of police, prosecutors, and judges. But this would have run counter to our political heritage and philosophy of government, so we tried a different solution. Courts instead allowed criminal defendants to challenge police, prosecutorial, and judicial decisions. The Supreme Court guaranteed attorneys for criminal defendants, and these attorneys helped create rights for criminal defendants regarding searches, arrests, interrogations, prosecutions, and appeals. These rights forced the modernization of the criminal justice system and the professionalization of the police and prosecutors. Unfortunately, these rights also created a litigation explosion, as defendants began to challenge every aspect of their arrest, trial, and conviction.

The two interests — limited government and individual rights — are always in conflict, and the balance is always shifting. Individual rights have expanded greatly since the 1960s, but this expansion has clearly created excesses. Books like Crier's focus almost exclusively on these excesses, but Kagan wisely attempts to find the cause in our conflicting desires.

My main criticism of *Adversarial Legalism* is its dry academic prose. Crier's book is entertaining though not informative, while Kagan's book is highly informative, but not entertaining. Unfortunately, Americans want to be entertained, and so Crier's book was a best-seller. But those of us who work in the legal system have an obligation to understand its problems, and reading this book is a good way to start. TFL

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Defending Mohammad: Justice on Trial

By Robert E. Precht

Cornell University Press, Ithaw, NY, 2003. 183 pages, $22.95.

REVIEWED BY HEIDI BOGHOSIAN

It is simply not practical for a Legal Aid attorney to argue that the government may have been involved in the 1993 World Trade Center bombing — even if the theory has merit. After all, a lawyer could incur the wrath of a prickly presiding judge. And the judge, once riled, could toss the defense attorney off the case. Worse still, the courts could cancel the New York Legal Aid Society's contract.

Defense trial strategy is just one example presented in *Defending Mohammad* of how issues of magnitude are informed by the mundane. Robert Precht's true account of being jolted out of "mid-career doldrums" into the limelight with a high-profile assignment grapples with the integrity of the justice system. A central question emerges through his informative, sometimes self-critical, analysis of the legal and human factors involved in meting out justice: Is a fair trial possible for defendants accused of acts of terrorism against the United States? This question is especially relevant a decade after the events described.

Written for a lay audience, Precht sets the book's fast pace from the first paragraph, when Precht misses his piano lesson because of subway delays caused by the World Trade Center bombing. By page 4, this federal public defender from the New York Legal Aid Society is assigned to represent Jordanian immigrant Mohammad Salameh, the renter of the van that carried the bomb, in the first case of terrorism on U.S. soil. By page 10 we are hooked by a gripping mix of testimony and statements taken verbatim from the trial transcripts.

Precht's determination to ensure that Salameh receives a fair trial is a metaphor for preserving the rule of law. Readers will identify with the courtroom blunders that mark Precht's first few encounters with U.S. District Court Judge Kevin Thomas Duffy. Precht angers the judge by challenging a gag order. He fails to shepardize a case and misspells the name of another one. We root for greater justice while knowing that these errors will affect the outcome. Who hasn't had a thorny dynamic with a judge and feared offending him or her? Here, such fear damages the defense's effectiveness when Precht shirks from making an objection that could have been

REVIEWS *continued on page 54*