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Book Reviews

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Book Reviews

Advocacy: The Art of Pleading a Cause

(Second Edition) by Richard A. Givens
Shepard's/McGraw Hill (1985)

As readers of this Journal are aware, the advent of clinical education in American law schools has resulted in a considerable number of students appearing as advocates in state administrative proceedings. However praiseworthy this trend may be in terms of the benefit conferred upon unrepresented parties, the educational value to prospective litigation attorneys of participating in a semi-formal administrative hearing is open to some question. Years ago, a student learned to try a case, if at all, only after graduation, in the context of formal litigation before judge and jury. A lawyer who could prevail in that arena had little difficulty in adapting his skills to the relaxed procedure of administrative hearings (see Impeachment, supra, p. 83). While the introduction of clinical education provides the much needed opportunity to train prospective lawyers in trial skills, the training may be worse than useless unless the student learns to try a difficult case under formal rules.

Of course, many contemporary law schools do offer trial practice courses in which students are taught to "do it right". It is as an adjunct to such courses that Advocacy, part of Shepard's Trial Practice Series, has its greatest value.

Richard A. Givens, a practicing New York lawyer, acknowledges that his book was inspired by Francis C. Wellman's 1903 classic, The Art of Cross Examination, which is still in print (Collier paperback, MacMillian Publishing Company) and which is, perhaps, the finest book of its kind in American legal literature. While there is some justification for updating Wellman (whose examples are dated and, accordingly, sometimes difficult to understand), Givens' most valuable contribution lies in the fact that he addresses all aspects of trial advocacy--not just cross-examination. He gives appropriate weight to such vital topics as preparation for trial and the presentation of a direct case. Indeed, not content with teaching litigation skills, Givens goes on to discuss negotiation (four chapters), advocacy to a public or private institution, legislative advocacy, economic argument and various forms of public advocacy.

This reviewer's only objection to Advocacy is that it is rather too long, even for a law school text (840 pps., plus index). As a good trial lawyer leaves something to the jurors' imagination, so Givens could have elaborated somewhat less on the fine points of his thesis. His discussion of matters outside the scope of courtroom litigation, while interesting, might have been the subject of another book. Nevertheless, as a text for aspiring litigators, Advocacy is a rich source of example and ideas, and is highly recommended.

Administrative Law and Practice

Charles H. Koch, Jr.
2 Volumes, West Publishing Company (1985)

Like Advocacy, reviewed above, Administrative Law and Practice is offered by its publishers as a handbook for experienced attorneys. Like Advocacy, this excellent treatise is better suited for use as a law school textbook.

A brief description of Administrative Law and Practice will illustrate the point. Volume I begins with an introduction to Administrative Law (50 pages). This is followed by the author's System For Analysis (75 pages) dealing, basically, with the distinctions between formal and informal rulemaking and adjudication. The remainder of Volume I is devoted to rulemaking (200 pages), especially rulemaking procedure under the APA, and what the author calls "trial type adjudication" (275 pages) comprised of sections devoted to pretrial proceedings, the hearing process, and due process rights. Volume II is comprised of sections on judicial review (250 pages), the Freedom of Information Act and related statutes (75 pages), and various appendixes.

It is true, as the publishers claim, that the orientation of the treatise is practical--it takes the reader, step by step, through the sequential phases of rulemaking, administrative hearings, and subsequent litigation. However, the work is too general and too discursive to serve as a practice guide.

The generality of the work stems from its focus on the fundamental rules of administrative law, particularly as embodied in the APA, rather than the substantive or procedural rules of any single agency. For each of the important, basic principles under discussion, the author attempts a detailed summary of the theory and status of the existing law.

Thus, from the standpoint of the practitioner, the treatise offers too little and too much: Too little, in that it will not answer questions a lawyer may rightly demand of a practice handbook (for example, it contains no forms). Too much, in the sense that a practicing lawyer, called upon to research a problem in administrative law,

will not have the time for the author's wide-ranging discussion of general principles. 1/

These drawbacks for the practitioner, however, are assets to the law student. Beginning with a premise that the reader knows something about law, but nothing about administrative law, Koch presents a well-written explication of a very interesting subject. Koch clearly loves administrative law. His approach is didactic, without being dry or pedantic. Within an academic context, the orientation of the treatise is practical, in the sense that moot court competition is a practical exercise. The cases he cites are either leading or current. His treatment of the topic is comprehensive and sound. In short, this is precisely the sort of book a student should read before graduating from law school. As such, it makes a fine companion to the casebook on administrative law of which Charles Koch is co-author.

1/ Where basic research is necessary, a lawyer is more apt to consult such standard works as K. C. Davis' five-volume Administrative Law Treatise, Second Ed., (K. C. Davis Pub. Co., San Diego, Cal.) frequently cited by Koch, or Pike and Fischer's eight-volume Administrative Law, Second Series, (Pike & Fischer, Inc., Bethesda, MD.)