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Book Review: The Art of Persuasion in Litigation

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the scope of this review (as it is beyond the competence of this reviewer). It may be enough to suggest what it entails, however, to quote from one of the best known critics of the *Brown* case; the writer is excluding from his criticism certain features of the case when he says of its problem:

Nor is it that history does not confirm that an agreed purpose of the Fourteenth Amendment was to forbid separate schools or that there is important evidence that many thought to the contrary; the words are general and leave room for expanding content as time passes and conditions change.⁷

Precisely because of this characteristic of Constitutional interpretation—well understood before and at the time of the Civil War Amendments—it is necessary in trying to fix limitations on the permissible expansions of the meaning of constitutional terms to explore broadly what degree of ambiguity or flexibility the conflicting parties among the framers may have intended, or may have been forced by compromise, to leave in their final product. If ambiguity or breadth of possible construction appears, it is to impute stupidity to the framers to suppose that they thought the future scope and effect of the terms was immutably fixed by a narrow contemporary meaning. Yet unless I seriously mistake the purposes of the editor and publishers of the volume under review, it is their hope and belief that some such restrictive conclusion will result from the use of this work as a source.

It would be pleasant to conclude that this compilation has made it possible to avoid the drudgery of seeking out and winnowing the original sources in the process of arriving at an independent assessment of “whether the judicial decisions as well as legislation, past and future, comport with the reconstruction amendments as originally understood and intended.”⁸ Regretfully, I conclude the opposite.

*Thomas M. Cooley II**

THE ART OF PERSUASION IN LITIGATION. By *Al J. Cone* and *Verne Lawyer*.
: The Dean-Hicks Company, 1966. Pp. . \$.

The authors of *The Art of Persuasion in Litigation* are prominent members of the plaintiffs' trial bar and national officers of the American Trial Lawyers Association, an organization which for years has worked toward developing increased expertise among plaintiffs' personal injury lawyers. It

7. Wechsler, *Toward Neutral Principles of Constitutional Law*, 73 HARV. L. REV. 1 (1959).

8. Preface.

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is not surprising, therefore, that the tone of their book is somewhat reminiscent of ATLA seminars. The scope of the material, however, is broader than that of most seminars, since the authors have attempted to cover the problems of a litigation proceeding from the initial client interview through the trial. Although the book is not an exhaustive treatise, the material which is covered is generally well done, and it is obvious that it has been written by lawyers who have learned their art first hand.

The book's most outstanding feature is its practical applicability to situations common to personal injury litigation. It contains a great number of excellent examples of commonly encountered problems. In setting forth these examples the authors effectively use the device of "re-enacting the scene." For example, in the chapter entitled "The Initial Interview" the material is almost like a stage script with the reader supplying the stage directions such as "Place: the lawyer's office; time: the present; characters: the lawyer, seated behind the desk, the client (probably somewhat bandaged or braced) in front of him." The reader feels somewhat like an eavesdropper overhearing an actual private conference and learning all the trial practitioner's "secrets."

This method is employed again in the treatment of a group witness conference wherein the lawyer, right before trial, meets with all the witnesses together and begins to prepare their testimony for trial. One of the tips mentioned concerns the handling of a hostile witness, with some specific suggestions as to how to make him a little less *positive* that his position is right.

In several of the areas dealt with there are spelled out long checklists of items to be covered or information to be obtained. In the "Initial Interview," for example, the interview sheet lists detailed questions designed to save time in preparing answers to interrogatories, in preparing the client for a medical examination, etc. The "investigation" chapter has a simple investigative checklist which reflects imagination as well as thoroughness. The treatment of the preparation of a client for depositions is sufficiently detailed to serve as a quick reference guide in most cases. Here again there is an exhaustive checklist to use as a guide for taking defendants' depositions.

The chapter on medical testimony sets forth a sample letter of request to a doctor and details the method of preparing his testimony. The treatment of these subjects is realistic and practical although the suggested medical report form seems to be too unwieldy and long. Included also is a summary of the information one finds in a hospital chart together with a glossary of common medical abbreviations.

Interestingly, the material dealing with the actual trial is not nearly so thorough as that on preparation. While the authors do make some practical specific suggestions, such as using "Motions in Limine" (preliminary motions out of the hearing of the jury) and a few suggestions on opening and

closing addresses, the trial itself is dealt with rather summarily. Perhaps this treatment reflects some belief that the art of persuasion requires more preliminary work than courtroom glamour. On the other hand, perhaps the actual trial tactic "secrets" are not easily divulged.

In summary, *The Art of Persuasion in Litigation* is a worthwhile book for a lawyer who represents the injured person. It is obviously written for and about the plaintiff's side of the counsel table and would interest a defendant only in helping him to anticipate and rebut his opponent.

Roslyn M. Litman*

ORGANIZING AND THE LAW. By Stephen I. Schlossberg. Washington, D. C.: The Bureau of National Affairs, Inc. 1967. Pp. xiii, 254. \$8.50.

Organizing and the Law by Stephen I. Schlossberg is a compact handbook with explanations, guides and answers to problems relating to organizing workers into unions. The author outlines the key sections of the Labor-Management Relations Act, commonly known as the Taft-Hartley Law, and shows how the Law is applied to the practical day-to-day work of union organizers, management-labor representatives and even labor lawyers.

The title of the book and the fact that its author is General Counsel for the United Automobile Workers may lead one to believe that *Organizing and the Law* is a one-sided guide for labor. This is not so. This book should be as helpful to management-labor representatives as to labor organizers. Labor lawyers will also find this compact volume most valuable.

Mr. Schlossberg prepared this book while a practicing labor lawyer; his goal is to explain the law, not to criticize or discuss its merits. He plunges into his task from the very first page. He points out the "do's" and "don'ts" under Taft-Hartley and backs up each statement with either a quotation from the Act, a Board rule or an actual case decision of the NLRB or the court's covering the latest law on the subject. The reader is not left to ponder the legal phraseology of the Act or of a court decision. The author explains or paraphrases wherever necessary. His case illustrations give a synopsis of the facts and the kernel of the law in language the layman can understand and remember. Not only does the author discuss and explain employer unfair labor practices but he also covers unfair union labor practices. He gives valuable pointers as to what to look for in recognizing and evaluating evidence that may be useful to counsel in the presentation of unfair labor practice charges to the Board.

The complicated problems regarding the determination of appropriate bargaining units in Board representation election cases are handled with great

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