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Indiana Law Journal

Volume 65 | Issue 4 Article 3

Fall 1990

Understanding Civil Procedure, by Gene R. Shreve and Peter Raven-Hansen

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Understanding Civil Procedure

BY GENE R. SHREVE* AND PETER RAVEN-HANSEN**
MATTHEW BENDER AND CO., NEW YORK, N.Y., 1989.
PP. XXV, 462. $22.95.

Reviewed by WILLIAM M. RICHMAN***

Professors Gene Shreve and Peter Raven-Hansen have written a superb book, but that should not come as much of a surprise to those who are familiar with their work.[1] As the title—probably an oxymoron to most first-year law students[2]—indicates, the emphasis is on understanding; the book is a compact student treatise on civil procedure.

Before beginning to catalogue the book's many virtues, however, it is useful to consider whether there really is a need for such books, and particularly for one in procedure. The format for the book goes far toward answering those questions. It is comprehensive, covering the entire first-year course as well as treating some related areas.[3] Nevertheless, it is compact; at 462 pages it is a little more than half the length of the conventional hornbook-style treatments of the topic,[4] with corresponding advantages in bulk and price.[5] Its compactness, however, is deceiving; it

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1. Between them, the authors have produced three books and twenty-three periodical articles on various aspects of public law. Among the most recent items are W. BANKS, A. BERNEY, S. DYCUS & P. RAVEN-HANSEN, NATIONAL SECURITY LAW (forthcoming 1990); Raven-Hansen, *Nuclear War Powers,* 83 AM. J. INT'L L. 786 (1989); Raven-Hansen, *Regulatory Estoppel: When Agencies Break Their Own "Laws,"* 64 TEX. L. REV. 1 (1985); Shreve, *Letting Go of the Eleventh Amendment,* 64 IND. L.J. 601 (1989); Shreve, *Interest Analysis as Constitutional Law,* 48 OHIO ST. L.J. 51 (1987); Shreve, *Preclusion and Federal Choice of Law,* 64 TEX. L. REV. 1209 (1986).

2. Probably, I am estopped via the "clean hands" doctrine from making this point, having collaborated in producing an even more egregious oxymoron for third-year law students. *See* W. RICHMAN & W. REYNOLDS, UNDERSTANDING CONFLICTS OF LAWS (1984).

3. The book includes chapters on selecting a proper court, personal jurisdiction, notice and opportunity to be heard, subject matter jurisdiction, venue, the *Erie* problem, simple pleading and practice, complex pleading and practice, discovery, judgment before trial, trial and post-trial motions, appeal, remedies and judgments.

4. *See, e.g.,* J. FRIEDENTHAL, M. KANE & A. MILLER, CIVIL PROCEDURE (1985); F. JAMES & G. HAZARD, CIVIL PROCEDURE (3d ed. 1985).

5. At about twenty-two dollars, the book is two-thirds the price of the larger hornbooks; the civil procedure course usually requires a casebook and a statutory supplement whose total cost often exceeds fifty dollars, so the price of a companion treatise is an important issue for first-year students.

bears no resemblance (beyond its paperback covers) to the typical student aid or outline material. The books of the West Nutshell series, in many respects the benchmark for that genre, are much shorter and less ambitious.[6] Unlike *Understanding Civil Procedure,* their references are textual rather than in footnotes and usually extend only to primary material. The more conventional footnote format of Shreve's and Raven-Hansen's book permits citation of a wide variety of source material as well as discussion of satellite issues, which otherwise would be omitted or would clutter the text.

The book fills a useful niche between the unwieldy hornbook and the much less complete student aid material. It is typical of a growing number of impressive compact student treatises which have appeared in American legal education. An early example, Graham Lilly's *Introduction to the Law of Evidence,* seems to enjoy considerable success, as does the "Understanding the Law" series[7] by Matthew Bender & Co., of which *Understanding Civil Procedure* is a part. The success of that series is particularly gratifying to me since I coauthored its first entry.[8] Forgive me then for feeling some avuncular pride in succeeding volumes like Shreve's and Raven-Hansen's.

Using compact student treatises as casebook supplements[9] presents both opportunities and challenges for the teacher and, along the way, poses some fairly fundamental questions about legal teaching and scholarship. I have used such books for years,[10] usually preparing a very detailed syllabus that coordinates casebook and treatise readings. Some of the advantages appear quickly and obviously. The first thing I notice is that classes are more efficient; students who read from both sources need less time to understand the basics and get to the point where more difficult issues and policy analysis can be explored. Sometimes the books also perform a useful clerical function during lecture, review, and introductory portions of classes. Here an inevitable conflict develops between the students' understanding and recording

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6. The very fine entry in this subject is M. KANE, CIVIL PROCEDURE IN A NUTSHELL (2d ed. 1985).

7. The capable general editor of the series is Clark Kimball (J.D., 1977, University of Virginia; Ph.D., 1971, Indiana University; B.A., 1966, Butler University), of Matthew Bender's Law School Division.

8. W. RICHMAN & W. REYNOLDS, *supra* note 2. The other volumes in the series are: J. DRESSLER, UNDERSTANDING CRIMINAL LAW (1987); J. DRESSLER, UNDERSTANDING CRIMINAL PROCEDURE (1990); W. FOX, UNDERSTANDING ADMINISTRATIVE LAW (1986); M. FREEDMAN, UNDERSTANDING RULES OF LAWYER'S ETHICS (forthcoming 1990); R. JERRY, UNDERSTANDING INSURANCE LAW (1987); M. LEAFFER, UNDERSTANDING COPYRIGHT LAW (1989); M. STEINBERG, UNDERSTANDING SECURITIES LAW (1989); E. SULLIVAN & J. HARRISON, UNDERSTANDING ANTITRUST AND ITS ECONOMIC IMPLICATIONS (1988).

9. Some casebooks contain enough commentary to do the job of both casebook and hornbook. *See, e.g.,* R. CRAMTON, D. CURRIE & H. KAY, CONFLICT OF LAWS, CASES-COMMENTS-QUESTIONS (4th ed. 1987); M. GRAHAM, EVIDENCE: TEXT, RULES, ILLUSTRATIONS, AND PROBLEMS—THE COMMENTARY METHOD (1983).

10. The books I have most experience with are G. LILLY, AN INTRODUCTION TO THE LAW OF EVIDENCE (2d ed. 1987) and W. RICHMAN & W. REYNOLDS, *supra* note 2.

functions. Students may be so anxious to copy down definitions, hypotheticals and basic rules as not to be able to understand them. The books help here because I can isolate key passages and refer the students to them instead of having to dictate them or reproduce them on the board or in handouts.[11] Nothing seems to generate student attention quite as much as, "Don't write this down; you don't need to; it's on page 281 at lines four to seven; instead think about it for a minute."

At the same time, using the compact treatises poses some interesting pedagogical questions. From time to time, I will call on a student to recite the facts and procedural stance of a case and notice that the student refers not to a written brief or a casebook margin brief, but rather to the treatise and her marginal notes in it. A bit taken aback at first, I was led to consider a raft of questions I have yet to resolve. Do students who rely on the treatises ever learn the case reading and analysis skills we pride ourselves on teaching? Does it matter? Are the teaching efficiency gains worth the price? Putting aside the treatise problem for a minute, can students learn the case reading skills they need from today's modern casebooks with their highly edited selections (compare the full report of, for example, *Marie v. Garrison,*[12] about 218 pages, or *Hilton v. Guyot,*[13] about 120 pages, with their two-to-five-page casebook selections).[14] Do the students gain some skills and useful research habits from exposure to the treatises that they cannot obtain from reading only the casebooks? Learning to read and digest a scholarly treatise (or special research service) and use it as a research tool to find cases and periodical commentary is also a valuable skill for a modern advocate.[15] Today, for example, a canny federal litigator—as well as the

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11. The clearest example in my own teaching is the review of the domestic law of claim preclusion and issue preclusion that I conduct in my conflicts course. In order to understand the recognizing or enforcing state's obligation under the full faith and credit clause, the students need to recall and understand certain preclusion issues treated two years before in their civil procedure courses: What is the dimension of a "cause of action" for purposes of claim preclusion, i.e., when has the plaintiff "split" his cause of action? When is a judgment "on the merits"? Who is bound by and who may use the results of a prior litigation? Although these issues have been covered in civil procedure, they are difficult, and students need substantial review. Using the student treatise in this area enables me to review these difficult issues much more quickly. I can reiterate the crucial definitions and hypotheticals by referring the students to the text and thus avoid imposing an additional clerical burden on them. *See* W. RICHMAN & W. REYNOLDS, *supra* note 2, at 273-77.

12. 13 Abb. N. Cas. 210 (N.Y. 1883).

13. 159 U.S. 113 (1895).

14. W. REESE & M. ROSENBERG, CASES AND MATERIALS ON CONFLICT OF LAWS 223-27, 554-55 (8th ed. 1984).

15. An interesting question, of course, is whether the skills generalize. Will using a student treatise in law school make the graduate more likely and better able to use the multi-volume treatise or specialty research service in practice? I suspect the answer is yes, but I am not sure how I could defend my intuition.

courts before which she practices—probably will rely more on the two great multivolume federal practice treatises[16] than on particular case holdings.

The merits of the compact treatise genre probably warrant further attention, but in this space it makes more sense to concentrate on the one particular specimen at hand. *Understanding Civil Procedure* is an excellent piece of work that has uses beyond the law school setting. Practitioners will admire its compact yet complete treatment of material too recent to be covered in their own law school careers. The recent amendments to Rule 11 provide an excellent example.[17] Once a relatively toothless admonition to litigators to do the right thing, Rule 11 now has real teeth and can be ignored by the practitioner only at her peril.[18] Accordingly, Shreve and Raven-Hansen devote considerably more space and attention to it than do earlier works.

They begin by introducing the topic of care and candor requirements in pleading as a rein on the abuse and sharp practices that might seem to be fostered by liberal modern notice pleading standards. After a preliminary treatment of the seldom used verification requirement (directed primarily at parties)[19] the authors explain in detail the more sensible certification requirement of Rule 11, which is directed at *attorneys,* the ones who have real control over the problem of abusive pleading.[20] Once requiring only that a pleading have "good ground to support" it, the rule now requires that to the best of the pleader's "knowledge, information, and belief formed after reasonable inquiry [the pleading] is well-grounded in fact and is

16. C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE (2d ed. 1987); J. MOORE, J. LUCAS, H. FINK, D. WECKSTEIN & J. WICKER, MOORE'S FEDERAL PRACTICE (2d ed. 1989).

17. Another example is the problem of inter-system preclusion: what preclusive effect must a court of one system give to the judgments and findings of a court of another system? The problem arises in the state-to-state, federal-to-state, and state-to-federal contexts. Must the recognizing court give the judgment as much preclusive effect as the rendering court would? Can it give the judgment *more* preclusive effect? *Understanding Civil Procedure* treats these questions in Part C of Chapter 15, concentrating principally on the Supreme Court's recent opinion in *Marrese v. American Academy of Orthopedic Surgeons,* 470 U.S. 373 (1985). The discussion of this difficult area is more complete and sophisticated than any other available in a one volume text. For even more depth, the authors refer the reader to a wealth of periodical literature. *See, e.g.,* Shreve, *Preclusion and Federal Choice of Law,* 64 TEX. L. REV. 1209 (1986); Burbank, *Interjurisdictional Preclusion and Federal Common Law: Toward a General Approach,* 70 CORNELL L. REV. 625 (1985).

18. FED. R. CIV. P. 11. The frequent and veteran federal litigator probably will not feel the need to consult a student treatise on a matter so crucial and recurrent as Rule 11. Given the increased incidence of sanctions and their impact upon the practitioner, the regular federal litigator will have gotten up to speed on Rule 11 before the publication date of this volume and will remain so via the multi-volume treatises or specialty reporters. I see this volume's coverage of recent amendments to Rule 11—as well as Rules 16 and 26—being more useful to the occasional federal practitioner (most of whose litigation occurs in state courts) or to the non-litigator (office lawyer or in-house corporate counsel) who must refer work to federal litigators and understand the constraints under which they operate.

19. G. SHREVE & P. RAVEN-HANSEN, UNDERSTANDING CIVIL PROCEDURE 187 (1989).

20. *Id.* at 187-93.

warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law . . . ."[21] The authors then describe in considerable detail what the reasonable inquiries into fact and law require, relying on reported cases, advisory committee notes and commentary by other legal scholars.[22] The treatment of Rule 11 ends with a compact discussion of sanctions (much more common after the rule's revision)[23] and a useful effort to place the changes in Rule 11 in context in the history of pleading reform:

> Rule 11 will impose an important restraint on the generosity of notice pleading. Kitchen-sink pleadings and mechanical Rule 12 motions, if not extinct, may be an endangered species. At the same time, over-zealous enforcement of Rule 11 risks a return to the problems of unfairness and inefficiency which plagued code pleading.[24]

The discussion of the recent cases on personal jurisdiction will also prove a useful update for the practitioner. In the last six years, the Supreme Court has shown surprising interest in the area, deciding six major cases.[25] In one, *Helicopteros Nacionales de Colombia, S.A. v. Hall,*[26] the Court adopted the general/specific jurisdiction distinction originally proposed by Professors von Mehren and Trautman.[27] General jurisdiction exists when the defendant's contacts with the forum are so pervasive that the court can exercise jurisdiction over the defendant based on any cause of action, even one entirely unrelated to the forum.[28] Specific jurisdiction, by contrast, describes the situation where defendant's forum connections are relatively few, and the court can exercise jurisdiction only over those claims against the defendant that arise out of defendant's forum activities.[29] Shreve and Raven-Hansen wisely have chosen to organize their coverage of the recent cases around this pivotal distinction,[30] a decision that will aid the practitioner

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21. FED. R. CIV. P. 11.

22. G. SHREVE & P. RAVEN-HANSEN, *supra* note 19, at 188-92.

23. *Id.* at 192.

24. *Id.* at 193 (footnotes omitted).

25. Asahi Metal Indus. Co. v. Superior Court, 480 U.S. 102 (1987); Phillips Petroleum Co. v. Shutts, 472 U.S. 797 (1985); Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985); Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408 (1984); Calder v. Jones, 465 U.S. 783 (1984); Keeton v. Hustler Magazine, 465 U.S. 770 (1984).

26. 466 U.S. at 408.

27. *Id.* at 414 & nn.8-9; von Mehren & Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis,* 79 HARV. L. REV. 1121 (1966).

28. The classic example is an action against a domiciliary of the forum based upon an automobile accident outside the forum. The defendant has pervasive contacts with the forum, so she is amenable to its jurisdiction even though the claim, based on the out-of-state tort, has nothing to do with her forum contacts. The same principle applies in the corporate context; thus, a corporation incorporated in the forum is amenable to its general jurisdiction.

29. Suppose an Ohio domiciliary visits Indiana and is involved in an auto accident there. Although he has only one contact with Indiana, the tort claim arises out of that one contact, so the forum has specific jurisdiction.

30. G. SHREVE & P. RAVEN-HANSEN, *supra* note 19, at 65-83.

in supplementing her jurisdictional learning with the new model. The authors also offer a suggestion for the development of the law: Jurisdiction should be available in cases that fall between the two paradigms, cases "where the forum has both types of contacts [contacts related to the plaintiff's claim and contacts unrelated to the plaintiff's claim] with a nonresident defendant, but neither in sufficient quantity to alone support personal jurisdiction."[31] This recommendation, not yet adopted by the Court, is quite useful and has provoked considerable controversy among jurisdiction scholars.[32]

The authors also emphasize another significant recent jurisdictional development useful to the practitioner. In *Asahi Metal Industry Co. v. Superior Court,*[33] a majority of the Supreme Court concluded that the forum might not have jurisdiction over a defendant—even though the defendant had established minimum contacts with the forum—if the exercise of jurisdiction failed a separate "reasonableness" test. While the Court had often spoken of a reasonableness requirement,[34] it had never based a jurisdictional holding on it. To the practitioner, whose law school treatment of jurisdiction emphasized "minimum contacts," the holding may come as a surprise. Exactly what its portents are, the authors cannot tell us, but they wisely advise that "[a]t the very least, *Asahi* makes it necessary to frame some due process issues differently."[35]

In addition to its coverage of the most recent procedural developments, *Understanding Civil Procedure* has another feature to attract the experienced reader—its extraordinarily complete documentation and citation of useful sources. Like many student treatises, it cites the major statutory and case law sources, as well as the best known one-volume treatises.[36] This volume goes further, however, including frequent references to the two major multivolume federal procedure treatises[37] and to specialty treatises (unfamiliar to many practitioners) in particular areas of practice.[38] Finally, it

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31. *Id.* at 77.

32. *Compare* Brilmayer, *How Contacts Count: Due Process Limitations on State Court Jurisdiction,* 1980 SUP. CT. REV. 77, 88 (jurisdiction should not exist in cases that fall between the two paradigms) *with* Twitchell, *The Myth of General Jurisdiction,* 101 HARV. L. REV. 610, 650-65, 679-80 (1988) (jurisdiction should exist in such cases). *See also* Richman, *Review Essay,* 72 CALIF. L. REV. 1328, 1336-46 (1984) (proposing a sliding scale to deal with cases falling between the two paradigms); Lewis, *A Brave New World for Personal Jurisdiction: Flexible Tests Under Uniform Standards,* 37 VAND. L. REV. 1, 34-38 (1984) (suggesting courts "blend" claim-related and non-claim-related contacts in such cases).

33. 480 U.S. at 102.

34. *See, e.g., Burger King Corp.,* 471 U.S. at 474; World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 292 (1980).

35. G. SHREVE & P. RAVEN-HANSEN, *supra* note 19, at 80.

36. J. FRIEDENTHAL, M. KANE & A. MILLER, *supra* note 4; F. JAMES & G. HAZARD, *supra* note 4; C. WRIGHT, FEDERAL COURTS (4th ed. 1983).

37. C. WRIGHT & A. MILLER, *supra* note 16; J. MOORE, J. LUCAS, H. FINK, D. WECKSTEIN & J. WICKER, *supra* note 16.

38. *See, e.g.,* R. CASAD, JURISDICTION IN CIVIL ACTIONS (1983); D. DOBBS, HANDBOOK ON THE LAW OF REMEDIES (1973); R. HAYDOCK & D. HERR, DISCOVERY: THEORY, PRACTICE, AND PROBLEMS (1983); A. VESTAL, RES JUDICATA/PRECLUSION (1969).

contains references to a wealth of periodical literature,[39] giving the practitioner a useful tool to find the most helpful items in the bewildering profusion of commentary.

While *Understanding Civil Procedure* has much to offer the practitioner, its principal beneficiaries will be students of the first-year civil procedure course. To that bewildered group it presents a wide array of helpful features. To start with, it provides a useful introductory chapter, a rare item in the world of law school casebooks and treatises. After a preliminary section defining civil procedure and dispelling some frequent law student misconceptions about it,[40] the chapter proceeds with a useful discussion of the sources of procedural law. The authors list and describe the usual sources—the Constitution, statutes and case law—and then go on to explain in detail the federal rulemaking process, a procedure that manages to elude many law students. They also describe several less obvious sources of procedural law: local circuit and district rules, individual judges' rules, party stipulations and codes of professional responsibility. The chapter closes with two useful sections advising students how to brief assigned cases and how to approach drafting and research problems in civil procedure.[41]

Another student-friendly attribute of the book is the tight and clear organization of the text. The organizational schemes of chapters, parts and sections are varied, sometimes conceptual, other times chronological or historical. But the key to organization, particularly of a student treatise, is not simply to have it, but also to communicate the plan to the reader at every step of the way. This the authors accomplish with useful road maps and analytical summary paragraphs at the beginnings and ends of the chapters, parts and sections.[42]

Another elegant organizational device is the use of transitions between concepts that cut to the very heart of the difference between the item just covered and the one about to be introduced. Thus, for example, the authors move from the discussion of party joinder to class actions by isolating the key distinction between the two devices, active participation:

> Parties brought in through the joinder devices we have considered so far share active participation with all other parties in the case. Modern rules of procedure [and] consolidated litigation . . . enable courts to accommodate many active participants in a single case.
>
> There are limits, however. Exercise of the prerogatives of party participation is time-consuming. . . .

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39. The area of procedure where I am most familiar with the periodical literature is personal jurisdiction. In my judgment the authors' selection is excellent.

40. G. SHREVE & P. RAVEN-HANSEN, *supra* note 19, at 1-6.

41. *Id.* at 6-14.

42. *See, e.g., id.* at 265 (useful road map explaining the book's coverage of discovery); *id.* at 152-53 (helpful analytical summary of the *Erie* doctrine).

> The special contribution of the class action device is to facilitate adjudication of additional claims without enlarging the number of active parties.[43]

Experienced teachers, the authors are well aware of some of the liabilities of their audience and have offered useful devices to remedy the deficits. Thus, they seem to understand the first-year student's desire to try to make sense of the law's every quirk and fillip; mercifully they save the student some time by explaining that some legal rules simply do not make sense and have occurred by historical accident.[44] Having seen repeatedly how procedural explanations can founder when students lack background in the relevant substantive law, they often supply the missing material. The best example is the useful explanation of indemnity, contribution, subrogation and warranty, the substantive theories typically underlying impleader claims.[45] Without that background students have a hard time seeing how the third party defendant "is or may be liable"[46] to the third party plaintiff. Finally, the authors understand how easily first-years can become lost in theory, and, to overcome the problem, often supply useful and lively examples,[47] constantly reminding the reader of the practical reasons for[48] and the tactical

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43. *Id.* at 248-49 (footnotes omitted).

44. *See, e.g., id.* at 185 ("Unfortunately, the aggregation rules [which determine when claims can be added together to reach the $50,000 jurisdictional amount in the diversity statute] do not track the joinder rules and do not follow transactional or any other apparent logic.").

45. *Id.* at 238-39.

46. FED. R. CIV. P. 14(a).

47. Thus, they explain to the first-year student that Federal Rule of Civil Procedure 12(f) can be used to strike from an opponent's pleading "any redundant, immaterial, impertinent, or scandalous matter," but the point does not come alive until the reader learns that the rule has been used to strike language referring to a car as a "death trap," a labor agreement as a "yellow dog contract," and plaintiff's associates as "strong arm men" and "racketeers." G. SHREVE & P. RAVEN-HANSEN, *supra* note 19, at 198.

48. An excellent example is the authors' explanation of the Supreme Court's holding in *Hanna v. Plumer,* 380 U.S. 460 (1965), effectively insulating the Federal Rules of Civil Procedure from any attack based on the *Erie* doctrine. In *Erie Railroad Co. v. Tompkins,* 304 U.S. 64 (1938), and its progeny, the Supreme Court interpreted the Rules of Decision Act (codified as amended at 28 U.S.C. § 1652 (1982)), to require federal courts sitting in diversity cases to apply state decisional law to all substantive issues. The Court has articulated a fairly rigorous and complicated analysis for the district court to undertake when an item of federal decisional law is challenged upon *Erie* grounds. *See* Byrd v. Blue Ridge Rural Elec. Coop. Inc., 356 U.S. 525 (1958); Guaranty Trust Co. v. York, 326 U.S. 99 (1945). The Court held in *Hanna,* however, that a much more deferential approach applies when the challenged federal rule is one of the Federal Rules of Civil Procedure. After explaining the legal/theoretical basis for the Court's decision, the authors add this helpful practical explanation based upon the Court's role in the rule-making process:

> The position taken by the Court is not altogether surprising. It is natural for the Court to be concerned about the resilience of procedural law governing federal litigation. Moreover, the Rules Enabling Act assigns to the Supreme Court a major role in the creation of most rules. The Court must give serious thought—albeit in the abstract—to the constitutionality and Rules Enabling Act validity of rules before it transmits them to Congress for final approval. All this may explain why the Supreme Court has never invoked the abridging-substance limitation of the Act to deny effect to a Federal Rule of Civil Procedure.

G. SHREVE & P. RAVEN-HANSEN, note 19, at 159.

implications of legal doctrine.[49]

As the preceding paragraphs demonstrate, I am very impressed with *Understanding Civil Procedure*. Such compact student treatises occupy a useful niche in the literature between the more extensive one-volume treatises and the more superficial student aids. They can help the practitioner approach an area where her background is weak or outdated, and they can serve as a useful companion to the casebook in a law school course. Because of its completeness, depth of documentation, organizational crispness, and elegant explanatory prose style,[50] *Understanding Civil Procedure* performs these functions most admirably.

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49. A fine example is the discussion of the tactical dilemma posed by Federal Rule of Civil Procedure 15(b) for a party whose opponent introduces evidence relevant to an unpleaded issue. G. SHREVE & P. RAVEN-HANSEN, *supra* note 19, at 212. Another is the thorough discussion of the strategic advantages and disadvantages of direct and collateral attack on a court's territorial jurisdiction. *Id.* at 36-38. The value of these tactical discussions transcends their practicality; they serve as a reenforcement of the explanation of legal doctrine and as a test for student comprehension. If the student has trouble understanding a particular tactical discussion, she has a pretty good indication that somewhere along the way she has failed to comprehend the underlying legal concepts.

50. Many examples could be cited, but this short passage struck me. Explaining why our system prefers jury determinations of close factual questions, the authors point out the crucial legitimating function of the jury:

> When the evidence provides reasonable bases for conflicting results, perhaps there is no right result. Yet the need for decision remains, and what the judicial process in such cases lacks in precision it can try to make up for in pageantry. Trial before and decision by a jury gives the loser his "day in court" in the fullest popular sense. It seasons resolution of controversies which the law is powerless to decide with a measure of public opinion.

Id. at 360 (footnotes omitted).

NOTES

INDIANA LAW JOURNAL
VOLUME 65, NUMBER 4