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Book Reviews

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BOOK REVIEWS

SUPREME COURT PRACTICE. Third Edition. By Robert L. Stern and Eugene Gressman. BNA Incorporated, Washington, D C. 1963, Pp 691. \$13.75.

There is a question in my mind as to just what a book review should contain. It seems to me that a reviewer all too often commits one of two mistakes or both. First, he fills his review with useless information such as there are — pages on jurisdiction, or listing the contents of each chapter when the title of the book itself conveys sufficient information as to its broad content. Second, the reviewer assumes an opprobrious attitude toward the author, revealing himself as the prime authority over the subject matter, and condescendingly praises and criticizes as he moves along. Having resolved to avoid such pitfalls, I am now confronted with the task of deciding just what a book review should contain which poses a greater problem than deciding what it should not contain. A reader of a book review is concerned with only one question: Does the book serve well the purpose for which it was intended? The writer will confine himself to answering this one inquiry

It is certainly not an exaggeration to confess that the average lawyer seldom has occasion to practice before the Supreme Court of the United States and as painfully noted in the book “about 80 - 90 per cent of the petitions for certiorari are denied.” A lawyer may consider himself fortunate if he argues a case before the Supreme Court once in his lifetime. As a result both from a time saving and an economic point of view most lawyers are not interested in filling their libraries with exhaustive treatises on the subject of Supreme Court practice. This fact was uppermost in the minds of the authors when they sought to evaluate their own work and observed that it is not a treatise which exhausts all the cases but that the authorities cited will serve as leads to further research. To be sure, it is not an exhaustive discussion of all possible variations and illustrations of the general rules. If one were expecting to find in it a digest

of detail, he would be disappointed, for the work does not purport to be encyclopedic in character; certainly much of its value as regards style, arrangement and necessary emphasis, would have been lost had the authors attempted a detailed treatment. Nevertheless, Stern and Gressman give us a clear and scholarly analysis of fundamentals. Its emphasis is on fundamentals with little space devoted to evaluating the law, advocating reform, pointing out weaknesses in the law, urging improvement, or offering itself as an oracle as to what the law ought to be. What more could the "average lawyer" want for his "one case" before the Supreme Court?

Your reviewer was struck with one outstanding feature, it supplies answers to practical questions not found in the "cases" or very few places elsewhere. For example, the floor plan of the Supreme Court Building is found just inside its cover, a handy check-list of procedural steps to be taken in both certiorari and appeal cases, a listing of law libraries where the records and briefs of the Supreme Court cases can be examined. Our "average lawyer" will find the answer to such matters as where the Supreme Court building is located in Washington, D. C., the amount of advance payment of fees and costs, printing fees, procedure when not a member of the Supreme Court bar, excerpts from speeches and writings of Justices of the Supreme Court otherwise not easily available. He will find suggestions as to the length of petitions for certiorari, helpful suggestions in the preparation of the brief, courtroom etiquette, dress, where he may eat during noon recess, the content of his oral argument and other practical "How-To-Do-It" advice with which even the experienced lawyer may not be familiar. The esoteric proceedings of the court in determining to take jurisdiction are particularly interesting as well as the chapter on factors motivating the exercise of jurisdiction.

The arrangement of the subject matter is orderly. It quite properly divides jurisdiction from procedure, Certiorari from Appeal and review of judgments of federal courts from that of state court judgments. However, it was noticeable that criminal appeals were not given separate treatment other than making specific reference to the criminal case in

instances where a different mode of procedure arose. Perhaps this is not a shortcoming although it resulted in devoting less attention to the criminal phase of Supreme Court review than otherwise might have been done. A worthwhile chapter is, however, devoted to applications to the Court or to individual Justices to release individuals on bail and to stay a lower court judgment pending review

I believe the chapter devoted to Forms will prove particularly valuable to our "average lawyer" To those who feel at home in practicing before the Supreme Court the forms may be academic but they are the exception rather than the rule. Furthermore, frequent references are made to the forms in the general discussion of jurisdictional and procedural aspects of Supreme Court practice. The Rules of the Supreme Court and pertinent statutes are also included.

The subject index could have been more detailed, however, in a one volume treatise that fault can be easily forgiven.

The authors realistically admonish the reader that while prior authority is not to be ignored he should in his brief and in oral argument place more importance "on convincing the court on grounds of reason and principle, apart from authority" Further, "Past authority alone can be relied on with confidence only when the prior decision is that of a majority of the *presently* sitting Justices in an identical situation — and few cases of that nature reach the Court." This observation is made as a "fact of life" without reference to whether the Court should or should not be more devoted to the principle of stare decisis. One may view this with alarm or approval depending upon his own predilections. Inasmuch as Stern and Gressman eschew revealing their own point of view your reviewer will forego the luxury of disclosing his own.

Reverting back to my original query, "Does the book serve well the purpose for which it was intended?" the answer is a definite "Yes." It is a practical investment for those attorneys across the land who must keep their libraries within bounds. This book is indeed a one-volume library Its

range and scope is adequate, its citation of authorities is deliberately kept at a minimum. It will serve as an excellent short course for those who have made no formal study of the field, and in passing I would heartily recommend the treatise to the law student as well.

ORVILLE C. WALKER*

TORT AND MEDICAL YEARBOOK. By Albert Averbach and Melvin M. Belli. Bobbs-Merrill Company, Inc. Volume 2, 1962. 1080 pp. \$25.00.

How does one review a book such as this? Ostensibly with the assistance of a Selection Advisory Board consisting of ninety-eight distinguished judges, lawyers, physicians and teachers, Albert Averbach and Melvin M. Belli have put together the 1962 edition of *Tort and Medical Yearbook*, a potpourri of sixty-nine articles of widely varying interest and merit. It is the second volume in what apparently will be an annual series. The articles, as in the 1961 Yearbook, have been chosen for their appeal to the Modern Trial Lawyer and to the members of the medical profession with whom he works in marshalling and presenting medical evidence.

The book is divided into three sections, Tort Articles, the report of a decision nominated by the editors as the most significant judicial decision of the year, and Medical Articles. The first tort article is a speech on The Modern Trial Lawyer which was delivered a number of years ago by Mr Belli, the apotheosis of the Modern Trial Lawyer, at a convention of the International Academy of Trial Lawyers. It seems to be Belli's view that compensation for the injured person is the only, or at least the paramount, social objective served by tort law. He has elsewhere and in many mediums dramatized his concept of compensation in the phrase, The Adequate Award. The Saskatchewan plan, the pre-trial plan, the impartial medical testimony plan, the workmen's compensation commission plan are all condemned by him with equal vigor and with the suggestion that they are not

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consistent with democratic ideals and the American Way of Life. Some of the plans, according to Belli, make Stalin's pronouncement of Five Year Plans seem democratic in comparison. The speech must have sounded better than it reads for it met with "long and sustained applause."

The next contribution is by the co-editor, Mr Averbach. It, too, was originally a speech. It is on the subject of the medical witness and was delivered to an audience of physicians. In it Mr Averbach says the things a lawyer usually says when he addresses a group of doctors, the need for mutual understanding and courtesy and problems of terminology

Then follows an article by Mr Belli's law partner, Mr Lou Ashe, titled *So You're Going to Try a Products Liability Case*. The title is descriptive of content and treatment. The article is well written and spiced with excerpts from the records in illustrative cases. There is an appendix which includes model pleadings and instructions. The article is utilitarian and will be of considerable value to a lawyer with a products liability case in the office.

The remainder of the articles in the tort section are largely reprints of law review articles and case notes. They deal with various aspects of personal injury cases with emphasis on problems of proof and damages. Mention should be made of several selections, a scholarly and imaginative article by Professor Millard H. Ruud of Texas *The Vendor's Responsibility for Quality in the Automated Retail Sale*, an article by Robert E. Powell of the Maryland Bar on *Admissibility of Hospital Records into Evidence*, a comprehensive article on *Sufficiency of Proof in Traumatic Cancer Cases* by George R. Parsons, a student at Cornell Law School at the time, and a short article by Thomas F Lambert, Jr of NACOA with the splendid title *How Much is a Good Wife Worth*.

The next section is separated from the tort articles by a golden page and bears the impressive legend *Nominated By The Editors Most Significant Judicial Decision of the Year*. Actually, each section of the book is set off by a similar golden page. The case is *Pritchard v Liggett &*

Myers Tobacco Co., 295 F2d 292 (3rd Cir 1961) As one might suspect it is a cigarette cancer case. The opinion is printed in full, but without comment. The selection of one such case each year (the feature appeared last year as well and the case was mis-cited) seems a trifle absurd, a gimmick that adds nothing to the worth of the book.

The medical section which follows has been greatly expanded from the 1961 yearbook. From eight articles covering a little more than one hundred pages it has grown to forty-seven articles covering more than five hundred pages. It would be futile to attempt to list or discuss them. Most originally appeared in medical journals and following the style of such publications are quite brief. The range of topics is enormous and there is something for everyone, from hypnosis to erythroblastosis fetalis, from traumatic neurosis to football injuries. Several articles deal with medical jurisprudence and are written by physicians for physicians. Few would want to read this section, or the tort section for that matter, from beginning to end, but the reader with an inquiring mind will enjoy dipping into it from time to time.

A few words are in order concerning the physical characteristics of the book. The table of contents is unnecessarily and often ridiculously detailed. The listing of Mr Ashe's article takes two pages. An article with the imposing title *Hospital Immunity Abandonment*, an informal four page discussion of largely local interest by two Michigan lawyers of one of their cases, in addition to the conventional listing of title and authors has the further subdivisions: The Facts. .290, The Going Was Tough. .290, Trust Funds. 291, and Practical Effects. .292. At the end of the book there is an index covering both this and the prior volume. Most of the tort articles and some of the medical articles are introduced with a short discussion and accompanied by citations to A.L.R. and law review articles, as well as to publications of Mr Belli and Mr Averbach.

No review could be complete without mention of the binding. It is an iridescent gold. The 1961 volume was an iridescent cranberry red. This reviewer thinks they are garish; his secretary thinks they are beautiful. In any

event, with these books displayed side by side a law library will sparkle - at least from the outside.

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