

2-1-1951

EFFECTIVE APPELLATE ADVOCACY. By
Frederick B. Wiener. New York: Prentice-Hall, Inc.,
1950.

Thomas A. Thomas

Follow this and additional works at: <http://repository.law.miami.edu/umlr>

Recommended Citation

Thomas A. Thomas, *EFFECTIVE APPELLATE ADVOCACY*. By Frederick B. Wiener. New York: Prentice-Hall, Inc., 1950., 5 U. Miami L. Rev. 342 (1951)

Available at: <http://repository.law.miami.edu/umlr/vol5/iss2/23>

This Book Review is brought to you for free and open access by Institutional Repository. It has been accepted for inclusion in University of Miami Law Review by an authorized administrator of Institutional Repository. For more information, please contact library@law.miami.edu.

ment, as an attempt on the part of the Mexicans themselves to seek a purely Mexican solution—or, at least, one satisfactory to Mexicans—to those political, social and economic problems which in different manner and degree are plaguing most of the rest of the world. Foreign influences and ideologies have been important, of course, but they have not been slavishly accepted and blindly followed by the Mexicans. It is the original quality of the Mexican dream which has exerted such magical charm on its admirers for the past few decades. Tannenbaum was—and is still to be—numbered among these, but in this book he has presented a sober, down-to-earth, honest analysis of the gains achieved so far that is a valuable contribution to the current literature about Mexico. Most people will probably agree that it is still too soon to speak objectively about such a vital, controversial subject as the Mexican Revolution, and few will dispute the fact that the bibliographical materials are still lacking to make such a study complete and definitive. On the other hand, after four decades, it is time to take stock and Professor Tannenbaum has performed that task extremely well.

From the point of view of a scholar or one interested in further research into specific aspects of the general problems discussed in this book, this study would have been much more valuable if it had included footnote references or at least an annotated bibliography. Such quantities of material of varying value have appeared about Mexico in the past few years that some guidance through the maze by an experienced hand would have been most welcome. In all other respects, *Mexico: The Struggle for Peace and Bread* is a distinguished, stimulating and yet satisfying report on the progress made by one of our nearest and boldest neighbors in an experiment which has attracted and held world attention for the past two generations.

IONE STUESSY WRIGHT

ASSISTANT PROFESSOR OF HISTORY
UNIVERSITY OF MIAMI

EFFECTIVE APPELLATE ADVOCACY. By Frederick B. Wiener. New York: Prentice-Hall, Inc., 1950. Pp. 574. \$8.50.

An attorney defeated in the trial court has the alternative of either accepting defeat or taking an appeal. The shelves of American law libraries containing reports of decisions in appeal cases is evidence of the important role the right to appeal has played in our legal system. It constitutes the client's last chance; consequently, it is little wonder that an appeal is regarded as the big moment for attorney and client alike. If the cause has been won in the trial court, it becomes the duty of counsel on appeal to retain that important advantage. If the cause was lost, the attorney on appeal

must impress upon the court the inequities of the lower court's holding. This requires a knowledge of appellate advocacy—the art of persuading appellate judges by written brief and oral argument to act favorably. Too often attorneys make the big mistake of assuming that since judges are well versed in the law, the only purpose of an appeal brief is to acquaint the court with the proceedings in the lower court and consequently, there is no real purpose in applying persuasive techniques in writing the brief nor is there any benefit to be derived through oral argument. The hard and brutal fact remains that a large number of cases are won or lost depending upon the effectiveness of appellate advocacy in brief writing and oral argument.

Since brief writing and oral advocacy are not dependent upon any single approved formula, they can be learned through at least standards of general applicability. An excellent starting point for both the novice at the bar and the veteran is *Effective Appellate Advocacy* by Frederick B. Wiener. Going on the theory that wise men learn from the experience of others and only fools rely solely upon their own bitter experiences, this expertly written and comprehensively illustrated book contains the result of the invaluable experiences of many able jurists. The essential aspects of a well written brief are explained in very readable and understandable terms with the view to equip the reader with the art of preparing a brief which will leave the appellate judges with an impression of conviction and which will dispel their curiosity. Reflecting a recognition of the difficulties inherent in the preparation of an effective brief, the author has offered helpful suggestions, including general considerations on research, to facilitate preparation. The finer points in brief writing, *i.e.* manner of making citations and importance of accuracy, are discussed in a meticulous endeavor for perfection. Strong emphasis is justly given to the importance of oral advocacy particularly since many appellate judges form an impression from oral argument before reading the brief. All the parts of an oral argument are discussed including principles of good public speaking and arrangement for greater effectiveness. This discussion constitutes one of the most important and beneficial parts of the book since too many lawyers in the role of the advocate do not argue persuasively. In the words of a justice of the United States Supreme Court, "four out of every five oral arguments are not good."

A helpful feature of *Effective Appellate Advocacy* is its simplicity derived through illustrations. Examples are given of briefs that obtained review, briefs that resisted review, successful briefs arguing questions of law, successful briefs arguing facts and a transcript of the oral argument in the very closely contested case of *United States v. Line Material Co.*, 333 U.S. 287 (1948). Although the book concerns itself specifically with brief writing and oral argument on appeal, many of the principles discussed are equally applicable to written and oral arguments in courts of first impression. To the new recruit to the bar, this book will assist you in developing

the good habits of an advocate. To the veteran attorney, this book will be helpful in reflecting some of your shortcomings as an advocate.

THOMAS A. THOMAS

ASSOCIATE PROFESSOR OF LAW
UNIVERSITY OF MIAMI

LABOR LAW—CASES AND MATERIALS. By Russell A. Smith. Indianapolis:
The Bobbs-Merrill Company, Inc., 1950. Pp. xxxi, 1450.

The legal instructor who spends more than a little of classroom time lecturing to his students is not fulfilling his function properly. Many legal educators have echoed this opinion. It is based upon the hypothesis that the instructor is in a unique and superior position to develop and train the student in legal argumentation and analytical perception, and such time as he can devote towards the accomplishment of these ends should be sacrificed no more than is necessary for the lecture, which can so easily and adequately be substituted by the printed word. Under the pure or slightly modified Langdell casebook system, the instructor was burdened with developing too many principles or rules of law involved directly or indirectly in case studies; furthermore, much of his time was consumed in citing authoritative sources, commentaries and the like; moreover, in many instances, the teacher undertook completely the function of disseminator of information. This has been, and unfortunately is today where it is practiced, a criminal waste of time; law reviews, treatises, restatements, summaries and the instructor should perform their proper respective functions—*suum cuique*. The modern tendency has been to compile course materials with the view of freeing the teacher wholly or partially from functions which he should not properly discharge and at the same time preparing the student in the most efficient and adequate manner for a classroom session which will allow the instructor to discharge his function most efficaciously.

This modern tendency has been developed and refined by Professor Smith in his book *Labor Law—Cases and Materials*, which is worthy of deep consideration by legal pedants in hereafter selecting or compiling materials for courses. The book is designed to give the teacher maximum time to interrogate, argue and discuss the law without stinting on other aspects of legal education. (This, of course, is particularly valuable to the more mature law student such as one finds in *Labor Law*.) It is a partial usurpation of much of the instructor's traditional function of information dissemination. Much background material such as general historical surveys of the labor movement, early common law doctrine and labor legislation are briefly set forth by the author's original text. The free use of forewords to chapter and subchapter topics sets the stage, so to speak, in a way superior