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An Advocacy Primer

Lee Stuesser

Scarborough, Ont.: Carswell, 1990, 280 pp.

Reviewed by Cynthia Chewter*

Lee Stuesser's *Advocacy Primer* is never going to make it as a trial practice text because it is too much fun to read. He does himself an injustice by referring to it as written in "lecture format"; the book is refreshingly conversational in tone and ought to be retitled *Fireside Chats with Professor Stuesser*.

Stuesser addresses his book as a text or manual for the beginner advocate. In the preface he articulates his concern that other commercially available texts do not address pre-trial preparation or appellate advocacy. Furthermore, such texts are often written for jury trials, which is a somewhat unrealistic premise for a beginner's manual. Stuesser has eschewed this approach entirely and focusses on trials before a judge alone.

Although this book will be quickly outgrown by the practising litigator, it keeps its promise to the beginner advocate. It is sensitive to the fact that the biggest problem many students and young lawyers face is not how further to hone their cross-examination skills, but where to sit in court, how to address the judge, and how to object. In order to comfort apprehensive counsel, Stuesser relates an anecdote told by the preeminent criminal lawyer, Edward Greenspan, about one of Greenspan's first cases:

I thought there may be a proper, formal way to [object] but I had no idea what it might be....Needing advice desperately, but too ashamed to admit that I wasn't familiar with such a rudimentary procedure, I said to [an experienced Crown], "I know there are many individual ways of objecting in court, but, as a matter of interest, how do *you* do it?" "Me?" [the Crown] asked. "I guess I just say: 'I object!'"

The primer is clearly organized, with a detailed table of contents, index, and numerous headings throughout the text. At the end of each chapter is a list of

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"Chapter Highlights," a point-form summary of what the student should remember about each topic. The text itself lays out how to proceed at each stage of a case, from the formation of a theory of the case and drafting of pleadings through to appeal, and, as such, encompasses much more than just the traditional oral component of advocacy. There is also a set of problems and sample answers for each chapter tucked away at the back of the book.

For each area of discussion, the basic principles of advocacy are laid out with examples, pointers, and caveats. Stuesser takes care to indicate at each stage the many ways in which novice counsel can inadvertently annoy and vex a judge: poorly prepared pleadings; loquacious, impassioned opening or closing statements; and briefs that are all but brief. Thorough preparation is stressed time and again, but rather than just repeating a hollow adage, Stuesser goes on to explain to the fledgling advocate exactly how thorough preparation is achieved.

Particular emphasis is put on the pre-trial process. Professor Stuesser notes bluntly that "many impatient litigators view the pre-trial preliminaries as unnecessary tedium....These counsel are also fodder for good litigators."¹ In one chapter, the basic purposes and methods of conducting a discovery are discussed along with an exhortation not to forget to prepare the client for discovery, too. This prevents opposing counsel from eliciting embarrassing answers such as, "Oh, I don't know. My lawyer drew this up."

With regard to the trial stage of an action, the book contains some interesting ideas on creating a trial notebook and many more general hints, such as keeping a list of common objections (with phrasing) handy during the examination of witnesses. Counsel are reminded that many more cases are won on direct examination than on cross.

The chapter on cross-examination is prefaced with a statement that "you are new counsel and you will make mistakes and disasters will befall you."² Stuesser adds that generally, it takes 25 jury trials to become good at cross-examination. This may be unsettling to aspiring Perry Masons, but Stuesser warns them in the opening paragraphs of the book. He emphasizes that the television image of a trial lawyer is misleading in that it portrays trial advocacy as spontaneous. To make the point, the student is asked to imagine a theatre company that has not rehearsed, or an athlete that has not trained.

Numerous examples illustrating almost every point provide continuity to the book largely because Stuesser has chosen to craft them around fact situations presented in the problem section at the back of the text. In this way, the book quite literally follows a few cases from beginning to end, and assists the student

¹ L. Stuesser, *An Advocacy Primer* (Scarborough, Ont.: Carswell, 1990) at 25.

² *Ibid.* at 116.

in understanding the principles addressed. It also provides a ready base for the instructor.

There are only two problems with this primer, and one of them is a minor quibble. Professor Stuesser liberally cites other sources throughout the work, and it would be very beneficial to collect all these sources together in a "Further Readings" section at the end of each chapter or at the end of the text.

The other difficulty is more serious. This primer is aimed at the beginner advocate, but it contains no information on the classic stomping grounds of the beginner: motions and small claims work. This inexplicable oversight mars what is otherwise an excellent starting reference. To be fair, *Fundamentals of Trial Techniques*,³ a standard text on trial advocacy, does not address these areas either. But that text does not claim to be anything more than a (jury) trial manual. One can only hope that this oversight will be corrected by Professor Stuesser in subsequent editions. In the meantime, hapless students will have to turn to another excellent reference, *The Articling Handbook*,⁴ that contains sections specifically on motions and small claims files.

An Advocacy Primer may not be quite as thorough in some areas as other texts, but it makes up for this with the scope of its coverage, its emphasis on basics, and its eminent readability. For those instructors and students who place a premium on the medium as well as the message, *An Advocacy Primer* is sure to satisfy.

³ T.A. Mauet, D.G. Casswell, G.P. Macdonald, *Fundamentals of Trial Techniques*, Canadian Edition (Toronto: Little, Brown and Company, 1984).

⁴ A. Rosen, M. Raycroft, and R. Awerbuck, *The Articling Handbook* (Toronto: Butterworths, 1988).