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Review of “Federal Trial Handbook,” By Robert S. Hunter

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BOOK REVIEWS

FEDERAL TRIAL HANDBOOK. By Robert S. Hunter.¹ Rochester: The Lawyers Co-operative Publishing Co., 1974. Pp. xxxix, 869. \$40.00. Annual pocket part supplementation.

In 1964, Lawyers Co-operative published the first edition of Judge Hunter's *Trial Handbook for Illinois Lawyers*. That volume has been received quite favorably by Illinois practitioners and is now in its fourth edition. The *Federal Trial Handbook (Handbook)* is modeled upon this earlier publication and, like it, is motivated by the urge to answer those legal questions that arise without warning during a trial. As Judge Hunter stated this motivating purpose:

In the trial of a case, questions of law arise suddenly. Often, time does not permit exhaustive research. Judge and lawyer alike have need for a comprehensive statement of the law on the thousands of questions that arise, with little or no warning, during the trial.

Ideally, every question that arises during the trial should have an answer in a compact, readily portable book that can be carried into the courtroom in the lawyer's briefcase. This book seeks to fill that need.

The material begins with the calling of the case for trial and ends with the entry of judgment. Questions relating to pleadings, substantive law, pretrial and post trial procedures and appeals are beyond its scope.²

This volume, like its predecessor, is also intended to serve as an index to the publisher's other legal publications. Although there is great potential for benefit in such a design, conflicts and difficulties occasionally arise when this indexing format is intertwined with the ready, self-contained reference format.

An example of the problems caused by the publisher's domination of the text is found in the section on border searches.³ The major case citation given there is to a case that, not coincidentally, is reported in *ALR Federal Cases and Annotations* as the introductory case for that digest's treatment of the topic. Is this case, decided by a court of appeals in 1968, the leading case, either then or now? Or is it cited in

1. Formerly Circuit Judge of the Eighth Judicial Circuit of Illinois.

2. R. HUNTER, FEDERAL TRIAL HANDBOOK, at iii (1974) [hereinafter cited as HUNTER].

3. *Id.* § 75.12.

preference to other cases simply as an inducement for the attorney to consult *ALR*? Unfortunately, the failure to highlight the Supreme Court's decision in *Almeida-Sanchez v. United States*⁴ leads one to question whether there was more regard for the *ALR* annotation than for the leading cases.

Unrelated to this conflict, but also providing a potential source of difficulty for the attorney using this volume at trial, are shortened citation forms used in the text. For example, in the introductory section to chapter four,⁵ the reader will find mysterious references to "PDS" and to "FOTJ." Turning to the Table of Abbreviations at the front of the volume, one learns that these refer to *Providing Defense Services* and *Function of the Trial Judge*, respectively. Within the context of the section, it may be deduced that "PDS" refers to the ABA's *Standards Relating to Providing Defense Services*. If the attorney were to consult later sections,⁶ however, without having first checked the introductory section, he would not have the benefit of this intelligence. Furthermore, even the introductory section does not provide any more clues to what "FOTJ" is or where it might be located.

On the positive side, all citations to decisions of the federal courts of appeals indicate the circuit in which the decision was rendered. This practice has the obvious advantage of indicating to the practitioner whether the precedent upon which he is relying originated in his own circuit or in another, and thus indicating the weight that he should accord to the precedent.

Perhaps the most puzzling aspect of this book is the timing of its publication. This volume was produced when the new Federal Rules of Evidence (FRE) were being considered by the Senate Judiciary Committee. Thus, the FRE as incorporated in the *Handbook* are not the FRE as enacted by Congress. Although the Senate did not enact new drafts of the rules, it sometimes adopted the House versions, sometimes returned to the Supreme Court's proposals, and sometimes made its own modifications. The final version of the FRE was enacted after a Joint Conference of the House and Senate agreed upon a version that was accepted by both houses.⁷

4. 413 U.S. 266 (1973).

5. HUNTER § 4.1.

6. *E.g.*, *id.* §§ 4.2-6.

7. For a concise summary of the evolution of the new FRE, see J. MOORE, FEDERAL PRACTICE RULES PAMPHLET: PART 2: FEDERAL RULES OF EVIDENCE §§ 1-1 to 4-5

Although the majority of the Court's rules were substantially unchanged,⁸ certain significant alterations were made. For example, all of the Court's rules on privileges⁹ were eliminated. Thus, the attorney consulting the *Handbook's* chapter on privileges¹⁰ is confronted with rules and lengthy Advisory Committee notes to rules that were never enacted into the new FRE. Furthermore, although the *Handbook* incorporates the report of the House Committee on the Judiciary on the proposed FRE, it does not include the reports of either the Senate Judiciary Committee or the Joint Conference. These are serious omissions, for as Professor Moore has stated:

The history of the rules is extremely valuable in understanding various philosophies that underlay the more controversial rules, and in understanding how a particular rule should be interpreted and applied.¹¹

Judge Hunter assures us that this problem will be corrected by the 1975 cumulative pocket parts.¹² This promise only begs the question, however, why the Lawyers Co-operative rushed into print while the FRE were pending before Congress rather than withholding publication until the new rules could be incorporated. Indeed, the entire format of a hardbound volume supplemented by pocket parts seems to conflict with the concept of a ready tool for the lawyer in court. This design doubles the amount of time required to consult the *Handbook's* treatment of any given point. It would seem that either a looseleaf format or annual softbound editions of the *Handbook* would be a more appropriate method of achieving the goal of immediate reference.

Two possible reasons for adopting the present format come to mind. The first is that, to the extent that the *Handbook* serves as an index to other Lawyers Co-operative references, the hardbound format is more appropriate. Second, it may be that the publisher has in fact partly adopted the annual edition approach. Between 1964 and 1972 Lawyers Co-operative published four hardbound editions of Judge Hunter's *Handbook for Illinois Lawyers*, the equivalent of a new edition every other year. The only conclusion that can be drawn from this record is that the publisher recognizes the inadequacy of pocket part supplementation for this kind of work and finds biennial hardbound edi-

8. *Id.* § 3.-2.

9. Proposed Rules 501-13.

10. HUNTER §§ 49.1-.27.

11. J. MOORE, *supra* note 7, § 4.-1.

12. The new FRE became effective July 1, 1975. As of October 1, our firm's

tions more manageable than annual softbound or looseleaf editions, a conclusion with which many must agree, even if reluctantly.

Related to the problem of the inconvenience of the format is the method of indexing in the *Handbook*. A table of contents to chapter headings is conveniently placed on the inside front cover of the volume. A second table of contents in the introductory pages subdivides chapter headings into section headings. Finally, an alphabetical index is found at the end of the book. Each of these is, of course, useful and, indeed, necessary. The *Handbook*, however, does not include an index to section headings at the beginning of each chapter, nor does it include a table of cases or a table of the federal rules cited in the text. These latter omissions would be serious oversights even in a handbook designed for office research. In a volume designed for instant courtroom reference, such omissions seem indefensible.

Indexing questions also arise within the context of the checklists used throughout the volume. For example, the checklist of "Matters Governed by State Law"¹³ lists ninety-eight items in no discernible order, alphabetical or otherwise. The difficulty in using such a lengthy list should be obvious. Nevertheless, the book's dozen checklists are perhaps the book's most novel and potentially most useful feature. The reader should be alerted, however, that these lists are not identical in format. Each item in the list referred to above, for example, states a topic and a case citation in support of the statement. On the other hand, the citations in the checklist of "What Law Normally Governs in Particular Conflict of Law Situations"¹⁴ are to sections of *American Jurisprudence, Second Edition*, and the checklist of "The Rights of the Accused"¹⁵ refers the reader to the appropriate section of the *Handbook*.

Despite all of the aforementioned shortcomings, this volume is clearly a valuable addition to the library of any attorney practicing in the federal courts. The text proceeds from fundamental considerations of federal/state judicial allocation and conflicts to considerations of the attorney-client relationship, to questions of trial conduct, jury selection, evidence, and testimony, and finally to discussions of judgments, damages, and sentences. The text thus performs an admirable job of encompassing the entire sweep of federal civil and criminal trials into

13. HUNTER § 2.5.

14. *Id.* § 3.2.

15. *Id.* § 18.2.

just over eight hundred pages, a prodigious undertaking in any event.

The book's primary market will undoubtedly be among practicing lawyers, and its effectiveness can really only be tested by practitioner use of the book. If the success of the Illinois volume is any indication, the federal version is likely to meet a warm reception. Nevertheless, the prudent prospective purchaser might be well advised to await publication of a second edition, which would incorporate the new FRE as enacted by Congress. Based upon the history of the Illinois volume, a second edition might be expected within the next year. But, for the attorney who is not bothered by the necessity to use the promised pocket part supplementation, the amount of investment required for this volume seems well worth the potential reward.

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JUDGE LEARNED HAND AND THE ROLE OF THE FEDERAL JUDICIARY.

By Kathryn Griffith.¹ University of Oklahoma Press, 1973.

Pp. xi, 251. \$8.95.

Kathryn Griffith has written a book devoted primarily to the political philosophy of Learned Hand, with particular focus on his view of the role of the federal judiciary in our tripartite and federal system of government. As Ms. Griffith states: "[Judge Hand's] breadth of interest makes his work of special relevance to students of political theory and philosophy, as well as of law,"² and her book should have some appeal to persons in any of those classifications. Nevertheless, Ms. Griffith's classification of the "special relevance" of Judge Hand's work and the consequent separation of students of the law from students of political theory and philosophy points out a major weakness of the book. Ms.

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2. K. GRIFFITH, JUDGE LEARNED HAND AND THE ROLE OF THE FEDERAL JUDICIARY 15 (1973) [hereinafter cited as GRIFFITH]. This book was a recent monthly selection of the Lawyers Literary Guild Book Club, offered with L. HAND, THE SPIRIT OF LIBERTY: PAPERS AND ADDRESSES OF LEARNED HAND. (3d ed. I. Dillard 1974) [hereinafter cited as THE SPIRIT OF LIBERTY].