

BOOK REVIEWS

Criminal Law Advocacy edited by Sidney Tilmouth and Nicholas Pengelley (Wakefield Press, South Australia, 1986) pages 1–154. Price \$17.50. ISBN 0 949268 445.

The last decade has seen the emergence of a whole new field of interest and learning. That field is advocacy. 'Criminal Law Advocacy', a collection of papers and commentaries delivered by well-known legal practitioners and forensic scientists, is a significant contribution to the fast-growing body of literature on the subject. One of the contributors, Marcus Einfeld Q.C., writes:

It has often been said that you cannot teach the art of cross-examination but you can teach the skills. I agree with the first statement but I have doubts that the second is right. I am not so sure that it is possible to teach somebody to cross-examine at large, in theory or in general.

I do not share the writer's doubts. My own experience is that many of the skills of the advocate, cross-examination included, can and are being successfully taught in workshops in Australia and elsewhere. The Victorian Bar Readers' course is one of the most outstanding examples. I would rather say that one cannot be taught to be a great or perhaps even a good advocate, but many can, and have been taught to avoid being bad.

The main contribution in this area is being made by practitioners who give of their own experience and who, in order to understand how and to what extent advocacy can be taught, observe and analyse those qualities which go to make a good advocate. As well as learning by experience, the young advocate in particular benefits from reading and absorbing such information as is contained in this collection and applying it to personal experiences. The topics so well chosen in this book, and their treatment by the authors and commentators, are instructive and useful, both to the aspiring advocate as well as to the experienced one.

The opening paper by Marcus Einfeld Q.C. on cross-examination in criminal trials and the final paper by James Glissen Q.C. on credibility and cross-examination, together provide some interesting and well illustrated pointers for cross-examiners. At the same time, it is made perfectly clear that there are many approaches and styles of cross-examination and there are no absolute rules. I particularly like the emphasis Marcus Einfeld places on the need for cross-examiners, and I would add advocates generally, to have a considerable degree of human experience, cultural development and sophistication. These qualities, as he points out, are essential for the better understanding of human nature and human conduct. It would be difficult to conduct the type of cross-examination which James Glissen discusses in his paper without considerable understanding of such matters, because such a cross-examination concerns itself with the way in which human beings perceive the conduct of others.

The third paper, which deals with advocacy, is by Brian Martin Q.C., and it concerns itself with advocacy in the appellate court. Not as much has been written on this topic as on cross-examination, yet it is an area where good advocacy is so important. Brian Martin rightly, in my view, emphasizes that advocacy as the art of persuasion is not limited to the trial court. He goes on to discuss some very useful techniques and to give important hints for the appellate advocate. Sydney Tilmouth's comments reinforce these propositions.

The other four papers concern themselves with forensic aspects of the trial process. Marie Shaw discusses the most important topic of preparation of a trial involving expert scientific witnesses. The consideration and preparation of expert evidence is of course a most important pre-trial function of any advocate. Dr Ken O'Brien deals with the forensic psychiatrist and the courts. As well as looking at the rôle of the forensic psychiatrist, he deals more specifically with such topics as fitness to plead, diminished responsibility and intent and a number of what he calls 'post trial issues'. Dr D. M. Thomson, an extremely experienced forensic psychologist and a consultant to the Australian Law Reform Commission, discusses the topical and somewhat controversial issues in the area of reliability

and contamination of evidence. His comments on identification parades and eye witness testimony are the result of much research, learning and experience.

It is little wonder that in this collection of papers the forensic flavour prevails. This book, after all, emanates from South Australia. It is most appropriate that it includes an interesting paper by Professor Tilstone entitled 'Life After Splatt — Forensic Science in South Australia Today' which discusses the rôle and duties of the expert witness. With the report of the Royal Commission in the Azaria case just published, the article by Professor Tilstone makes interesting and topical reading.

At the end, Sidney Tilmouth draws a few threads together. He speaks of the growth of a 'new professionalism' and of the importance of a strong and independent Criminal Bar. I commend those views and this collection of papers to all advocates.

GEORGE HAMPEL*

* Justice of the Supreme Court of Victoria. Chairman of the Leo Cussen Institute of Victoria.