

## **BOOK REVIEW:**

***Persuasive Written and Oral Advocacy  
in Trial and Appellate Courts*** (Aspen 2002)

by Michael R. Fontham,  
Michael Vitiello  
David W. Miller

**A \$40 Diamond**

Reviewed by Sidney Powell

### **A. BUY THIS BOOK. IT IS ONLY \$40.**

One of my favorite teachers of oral advocacy skills, Mike Fontham, has co-authored a book entitled *Persuasive Written and Oral Advocacy In Trial and Appellate Courts* (Aspen Law & Business 2002). Mike has taught the oral argument segment of our Fifth Circuit Appellate Practice and Advocacy Seminar for the last several years, and has brought to the seminar an engaging and informative presentation in preparation for hearing live oral arguments in regularly scheduled cases.

An appellate and trial practitioner with Stone Pigman in New Orleans, Mike brings a wealth of experience into this practical and useful work on legal writing and advocacy. Co-authors Michael Vitiello and David W. Miller are Professors of Law at the University of the Pacific, McGeorge School of Law. Together they have produced a helpful book for practitioners and valuable teaching tool for any level of legal advocacy.

The book was carefully written to be useful to the experienced, the inexperienced, to the teacher, the student, and last but not least—to the practitioner. It includes a case file from which practical exercises may be drawn, a separate teaching manual, and a comprehensive work on the practical advice needed for persuasive advocacy. Those who want to improve their legal writing in their practice—but do not teach or speak on the subjects—need only read the main volume.

There are at least 10 reasons why you should buy this book:

1. It tells you things you need to hear about briefwriting regardless of whether you realize you need to hear them. No matter how experienced a practitioner and briefwriter you are, you should read it with an open mind to improve your writing.
2. It has a terrific list of footnotes citing to every valuable article or book on these topics.
3. It is only \$40!
4. You owe it to yourselves and your clients to think about your writing and to work to improve it.
5. It is in paperback. If you never do any teaching, you would not need the case and teaching

volumes, but the main volume itself is more than worth the price being charged. The main volume also includes a sample Petition for Writ of Certiorari and a sample Supreme Court brief.

6. It is lightweight and easy to carry around with you.
7. You can mark it up and use it daily.
8. The teaching tools are excellent and will make preparation for any advocacy class or seminar easier. It is a superb guide on how to teach the material.
9. You won't have to search for a case file or exercises any more!
10. Copies of the teaching manual are available to teachers on diskette at no additional charge once they have adopted the casebook.

## **B. PRACTITIONERS SHOULD USE THIS BOOK. IT WILL HELP YOU BE A BETTER WRITER.**

Even the most experienced writer and advocate can benefit by re-examining his own work in light of the suggestions and teachings of this book. Moreover, the book applies as much to trial advocacy as it does to appellate. One of the book's most important messages, which Fontham also always conveys in his teaching on the subject, is the need for a clear and convincing theme to flow through the case, the brief, or the argument. There should be a distinct thread that runs through the fabric of the argument—oral or written—that will stick with the audience and make sense when the listeners or readers think about it later. Good legal writing and advocacy is critical to an attorney's success in any venue.

The book is comprised of four main parts: Persuasive Legal Writing, Oral Argument, Trial Proceedings, and Handling Appeals and Writs. One of the most helpful and needed sections of the book describes a formula for writing a persuasive argument that the writers have acronymed CRAC: CONCLUSION, RULE, ANALYSIS, CONCLUSION. The book and the teaching materials explain and give concrete examples for learning and applying this outline. Many briefwriters, in my experience, simply overlook explaining to the court how the law applies to the facts. The CRAC method is well described in the book, and it walks the reader through what needs to be done.

## **C. THE CASE FILE PROVIDES A NUMBER OF INTERESTING ISSUES.**

For those of you in the never-ending search for small, self-contained records from which virtually real-life legal research and writing exercises can be drawn, this work is a great relief. The teachers have compiled or created a case file of 188 pages that includes critical documents/pleadings and transcripts. The teacher's manual then guides the instructor in creating assignments of varying degrees of difficulty. The venue for the problem is federal court, based on the fact that federal rules of practice are common and accessible to all law students. The issues that these materials focus on

are service of process and personal jurisdiction, but inherent in the problem are also more complicated issues of the First and Fifth Amendments, choice of law, and substantive tort. The case file is appropriately not annotated.

The facts of the problem are interesting. A young, female rookie police officer fatally shot a prisoner in the back. An investigative journalist seeks to obtain confidential psychiatric records after the department exonerates her and the family settles its civil case and seals the file. Meanwhile, an unethical psychiatrist leaks tapes of her patient's most critical sessions. The journalist wants to publish the leaked tapes on his website, and litigation by the police officer ensues. The police officer is in Tennessee and the reporter is in New York. The police officer lures the reporter to Tennessee, then serves him with her lawsuit. The stage is nicely set for a number of issues to be explored.

**D. THE TEACHING MANUAL MAKES IT EASY TO TEACH FOUR COURSES: BASIC LEGAL WRITING; PERSUASIVE LEGAL WRITING; PRETRIAL LITIGATION; and, ADVANCED LEGAL WRITING.**

For those of you who teach advocacy and adopt the course materials, you will find the Teaching Manual particularly helpful. The manual lays it all out in an organized and logical manner. At least four courses can be taught from the materials, and the manual includes lectures on all the important topics: Introduction to Good Writing; Introduction to Oral Argument; Answering Questions During Oral Argument; Editing; Bringing Research to Life; The Decision to Appeal and Preserving Issues for Appeal; Standard of Review on Appeal; and Components of the Brief. It also includes specific research drills, CRAC exercises, editing assignments, and a syllabus.

Everything needed for a **Basic Legal Writing** course is grouped in Part I, which, as the authors explain, focuses on logical organization, clarity and conciseness. It is also written to teach **Persuasive Legal Writing, Pretrial Litigation, and Advanced Appellate Advocacy**. I enjoyed the Persuasive Writing chapters in the main volume as they offer good examples and practical advice for being a true advocate for your client without being obnoxious or unfair. Many law students, especially those who have worked on law reviews, should take particular heed of these sections in the main book. The book clearly explains appropriate and effective ways to write persuasively. While it is important for legal writing to be balanced and judicious, one of a lawyer's most valuable strengths is the ability to use facts, authorities and language to maintain interest and to persuade.

Another important part of the book focuses on Pre-Trial Litigation as that is really where most legal work is done, and it a topic often ignored in other courses. The last part of the work deals with Advanced Appellate Advocacy which includes topics of preservation of error, standards of review and applications for discretionary review. It also deals with oral argument.

Whether you are a teacher, a student, or a practitioner, your writing and those who read it

will benefit from your use of this book.