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Stryker: The Art of Advocacy-A Plea for the Renaissance of the Trial Lawyer

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THE ART OF ADVOCACY—A PLEA FOR THE RENAISSANCE OF THE TRIAL LAWYER. By Lloyd Paul Stryker. New York: Simon & Schuster, 1954. Pp. 320. $5.00.

NOT since 1903, when Francis L. Wellman first published *The Art of Cross-Examination,* has there appeared such an authoritative book as Mr. Stryker's on the subject of advocacy. Of itself this dearth of literature reflects the depth to which a high calling has fallen. With the increasing complexity in the social and economic structure of our country, many lawyers have found little time, and indeed little inclination, to concern themselves with the problems of litigation, particularly criminal litigation. And the public lost interest in the work of the trial courts and in the lawyers who practiced there. Indifference to the courtroom is, of course, understandable during the turmoil of two World Wars and the unrest that has followed the second. These factors have been the primary causes of the decline in the art of the American advocate from the Golden Age of Daniel Webster, Rufus Choate, and Abraham Lincoln. But now that active war, at least for the time being, has been quelled, public interest in litigated matters is increasing, stimulated by television coverage of congressional investigative proceedings of both an adversary nature and otherwise. Mr. Stryker's book should do much to bring about the renaissance for which he hopes.

No person in America today is better able to discuss the craft of the trial lawyer than is Mr. Stryker, who for many years has been one of the recognized leaders of the trial bar. *The Art of Advocacy,* based on a series of lectures delivered at Yale Law School, is written primarily for the courtroom lawyer and those who would aspire to that calling. But the layman will find considerable interest in the author's illustrative anecdotes from famous trials and in his provocative views on such subjects as the propriety of newspaper reporting of trials or the public intolerance of those who undertake the defense of unpopular causes.

In the first part of his book, Mr. Stryker discusses in considerable detail his views on how a case should be conducted by trial counsel. His description of each step from the first interview with the client through the closing arguments of counsel before the jury should be invaluable to all lawyers who engage in litigation. Instruction in the preparation and trial of a case before a court is almost totally lacking in the law school curriculum; the young lawyer can learn only by painful experience and by observing more experienced trial lawyers at work. Mr. Stryker's book affords the professional reader, novice or veteran, an opportunity to profit from the experience and knowledge of a master.

The preparation for any trial must consist primarily of learning what the facts are. The author suggests that lawyers and law schools of today have perhaps overemphasized the importance of the "law" as a universal concept unrelated to the factual situation involved in a particular case. Without in any way minimizing the importance of a sound understanding of legal principles,

Mr. Stryker convincingly points out that the facts are the foundation of any case and that complete mastery of them is essential to a proper trial. In order to learn what these facts are, it is necessary to examine the client and other principal witnesses an unlimited number of times, for you can never tell when the client "will drop a comment that throws a new light on the whole case . . . ."[1]

Mr. Stryker's rule for courtroom conduct is easily stated: "be yourself, be simple, avoid pretension."[2] His description of the conduct of a trial is filled with many colorful and instructive examples from his own experience and from some of history's famous trials. He recounts the opening address of Brougham in the defense of Queen Caroline, the wife of George IV of England. He cites examples of masterful cross-examinations, including Joseph Choate's cross-examination of Russell Sage in the celebrated case of *Laidlaw v. Sage*[3] and the cross-examination of Oscar Wilde by Edward Carson in the defense of the Marquis of Queensbury on a charge of criminal libel. Thomas Nelson's defense of President Andrew Johnson in his impeachment trial is selected for its outstanding closing argument.

The second phase of *The Art of Advocacy* deals with the larger role of the advocate in our adversary system of justice and particularly in criminal prosecution. Despite its subtitle, "A Plea for the Renaissance of the Trial Lawyer," the book pleads for the rebirth of the "advocate" in this broader sense. Mr. Stryker's vivid portrayal of the innocent being convicted of crime is convincing proof of the need for improvement of advocacy in the defense of the accused. He blames this recurrent travesty in large part on the ineptitude of defense attorneys. But the press must share in the blame, for too often it conducts a trial outside the courtroom. Because "no advocate can contend" against this form of hue and cry, many cases are left either unattended or poorly defended. And the public itself is not without fault. There is a marked increase in the tendency to frown upon lawyers defending persons accused of unpopular crimes. Lawyers of the caliber of Josiah Quincy, Jr. and John Adams defended the British soldiers accused of murder in the Boston Massacre. Mr. Stryker's query whether if today "a lawyer who had conducted such a defense could become President of the United States"[4] is telling.

In order to improve the art of the advocate in our jurisprudence, Mr. Stryker suggests that the American Bar adopt the English system of a separation of functions between barrister and solicitor, except that he does not recommend following the English barrister's detachment from the facts of a case committed to his charge. Only by this division of labor, Mr. Stryker says, can the American trial lawyer become the equal of his English counterpart. There can be no doubt that a specialized trial practice would help to unclog court calendars and would promote the ends of justice, but the method suggested by Mr. Stryker is probably not presently attainable.

1. P. 13.
2. P. 42.
3. This took place in one of the five trials of this case. The final Court of Appeals decision can be found at 158 N.Y. 73, 52 N.E. 679 (1899).
4. P. 212.

The Art of Advocacy is far more than a treatise on preparation and conduct of a trial, although for that limited purpose it is a worthwhile addition to the trial lawyer's personal library. As a program for the advocate in an era of intolerance toward those who undertake to defend unpopular causes, it is a book that the older lawyer should find educational and the young lawyer, embarking upon a career in trial practice, inspirational.

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