Review of W.A.N. Wells, *Evidence and Advocacy*, Sydney: Butterworths, 1988. pp. i-viii, 1-327.

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It is a fact that despite the bewildering proliferation of statutes, much of our law is still to be found by reference to the cases. Law students are inducted into the mysteries of the learned profession by analysis of judgments contained in the law reports.

As courts eschew the delivery of hypothetical opinions, every case represents the result of an adversary contest between two parties.

It is therefore surprising that so little attention is paid to the process by which the case came to be argued or the facts presented. Law schools, indeed, the practising profession, seem to ignore the conduct of the litigation and the nature of the issues and arguments. Although Appeal Cases and Commonwealth Law Reports summarise the arguments of counsel, how often are they ever read? We concentrate upon the judgment which is the last step in a long road. Yet every judgment owes its existence and its form to the strategic and tactical decisions taken by counsel at trial, to the manner in which the parties choose to present their evidence, and to the forensic ability of the barrister employed by each party.

It is a dismaying discovery that there are few books on advocacy and that the practise of this forensic advocacy is so ignored in the understanding of judgments. Even Professor Julius Stone in *Precedent and Law*[1] all but ignores the contribution of the advocate to the formation of precedent.

It is therefore always interesting to receive a book which deals with advocacy and the more so when that book is an Australian

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1. Stone, *Precedent and Law: Dynamics of Common Law Growth* (Sydney: Butterworth, 1985).

publication. W.A.N. Wells, the author of *Evidence and Advocacy*, is well qualified to speak on his subject, having been a long practising barrister, Queens Counsel, Solicitor General for South Australia and latterly a Supreme Court Judge in that State.

The temptation for writers of books on advocacy is often to indulge in anecdotal explanation of the points the writer wishes to make. This is sometimes fascinating but is generally of limited use and does not advance the understanding of forensic advocacy greatly, although it is helpful in the understanding of techniques. The author of *Evidence and Advocacy*, to some extent, succumbs to this temptation and also does not resist the giving of many little homilies and advices, some of which sound quaint in the high stress ruthless practice of law in the 1980s.

The book deals traditionally with the steps in a trial and relates forensic skills and techniques to those steps. Thus there are chapters on opening through to closing, encompassing examination-in-chief, cross-examination, addresses, and the like. These sections are straightforward and contain helpful, commonsense advice.

One of the few books to incisively analyse the advocatory technique is the previously unobtainable but now reprinted treatise by Munckman *The Technique of Advocacy*.[2] Munckman analyses the technique, particularly of cross-examination, in a way which is without peer. Interestingly, both Wells and the other writer of a major Australia text on forensic advocacy, Glissan in *Cross-Examination Practice and Procedure: an Australian Perspective*[3] draw strongly on Munckman when dealing with cross-examination.

All told, Wells' advices on advocacy are useful but largely unoriginal reworkings of matters already found in books on advocacy. The book is clearly aimed at the new and inexperienced barrister who, however, will find much that is helpful.

The strength of the book, to my mind, is its simple but effective treatment of the law of evidence. This section of the book explains, in a way not often found, the inter-relationship and relative importance of the discrete topics of the law of evidence. It is most

2. Munckman, *The Technique of Advocacy* (London: Steven & Sons, 1951)
3. Glisson, *Cross Examination Practice and Procedure an Australian Perspective* (Sydney: Legal Books, 1985).

useful not only to the novice barrister but also to the inquiring law student and the senior practitioner.

The author in chapter 6 even attempts to explain how the principles of evidence have grown in response to the demands of the community in its system of justice. While it is possible to be critical of his arguments, the author makes his point in a challenging and persuasive way. Importantly he is prepared to treat the subject of evidence not in isolation but in its relevance to the course of a trial and the due process of justice. Further, he is able, to some extent, to interleave practical evidential difficulties with forensic skills to overcome them.

Overall, *Evidence and Advocacy* is a worthwhile if not overly inspiring text which will be of considerable assistance to the new practitioner. That was the objective of the writer and he has amply fulfilled it.

By going beyond a discussion of the mere technique of advocacy the author has opened the way for someone in Australia to write a definitive study of forensic advocacy and the jurisprudence of partisan justice.