

OLD-AND-IMPROVED

THERE IS ROOM for at least two authoritative treatments of almost every subject in the law. For federal procedure there are Moore and Wright & Miller. For contracts there are Corbin and Williston. For constitutional law there are Nowak & Rotunda and Tribe. And so on. On the subject of practice before the Supreme Court of the United States, however, there is only one: Stern & Gressman.

Since the first edition appeared in 1950, it has been appreciated as the best source of “everything, outside of the field of substantive law, that a lawyer would want to know in handling a case in the Supreme Court.” That first edition was 553 pages long. The law and legal institutions being the creatures they are, the new eighth edition is well over twice that length.

According to co-author Stephen Shapiro, “Every chapter in the book has been extensively revised to reflect changes in the Supreme Court’s rules and new developments in precedent. Beyond that, we have added new discussion of oral argument technique in the increasingly active argument environment in the Supreme Court, and new recommendations for drafting effective merits briefs, amicus briefs, certiorari petitions, and oppositions to certiorari. Readers will also find an expanded discussion of the Supreme Court’s screening procedures for certiorari petitions and a guided tour through the Court’s data bases on the web. We hope the book will be useful for Supreme Court practitioners, appellate lawyers generally, professional and amateur Court watchers, and law students gearing up for their first moot court.”

Notwithstanding its ongoing aspiration to comprehensiveness, out with the old and in with the new is not necessarily the order of the day when it comes to new editions of Stern & Gressman. Although footnote 6 in the preface

to the new edition reports as follows – “We produced two supplemental pamphlets to explain the 1995 and 1997 rule changes, entitled SUPREME COURT RULES: THE 1995 REVISIONS and SUPREME COURT RULES: THE 1997 REVISIONS. The contents of those pamphlets have been incorporated into this Eighth Edition.” – the book does on occasion refer the reader to those pamphlets. For example, in the discussion of amicus briefs and Supreme Court Rule 37.6, we find the following: “For a more detailed discussion of the requirements of Rule 37.6, see R. Stern, E. Gressman, S. Shapiro, & K. Geller, *Supreme Court Rules – The 1997 Revisions* (1997).”

The lesson: old-and-useless does not necessarily follow from new-and-improved.

The *Green Bag* also approves of the tasteful color selected by the Bureau of National Affairs for the binding on the eighth edition.

Robert L. Stern, Eugene Gressman, Stephen M. Shapiro & Kenneth S. Geller, *SUPREME COURT PRACTICE* (BNA 8th ed. 2002).

A TRUST COMMITTED BY ALL

THE CATO INSTITUTE takes its name from the series of letters written by John Trenchard and Thomas Gordon, and originally published under the pseudonym “Cato” in English newspapers between 1720 and 1723. In the fifteenth and most famous of those letters, Cato declared:

That men ought to speak well of their Governors, is true, while their Governors deserve to be well spoken of; but to do public Mischief, without hearing of it, is only the Prerogative and Felicity of Tyranny: A free People will be shewing that they are so, by their Freedom of Speech.

It should come as no surprise that the modern, libertarian, Institutional Cato believes that our judicial governors do not always deserve to be well spoken of. The first

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edition of its new annual, the *Cato Supreme Court Review*, is divided about 50-50 between essayists who approve of various aspects of the work of the Supreme Court, and those who do not. Richard Epstein, for example, is unhappy with the Court's most recent regulatory takings case: "Justice delayed is justice denied is an old theme that has found a new home in the *Tahoe* view of the Takings Clause." While James Swanson is cautiously optimistic about the future of political speech after *Republican Party of Minnesota v. White* (the Minnesota judicial speech case), and Clint Bolick is understandably euphoric about the prospects for school voucher programs after *Zelman v. Simmons-Harris*.

From the standpoint of institutional culture, the new *Review* is also a reminder that the Cato Institute is a disarmingly or alarmingly (depending on your point of view) forthright campaigner for its libertarian vision. Consider the following from the Introduction:

[T]he *Cato Supreme Court Review* has a singular point of view, which we will not attempt to conceal behind a mask of impartiality. I confess our ideology at the outset: This *Review* will look at the Court and its decisions from the classical Madisonian perspective, emphasizing our first principles of individual liberty, secure property rights, federalism, and a government of enumerated, delegated and thus limited powers.

John Trenchard & Thomas Gordon, 1 CATO'S LETTERS, no. 15 (3d ed. 1733) (Russell & Russell 1969 reprint); CATO SUPREME COURT REVIEW 2001-2002 (Cato Institute 2002).

THIS JUST IN FROM a *Green Bag* editor who was not involved in the work on "Ex Ante" for our previous issue:

I have just read the Summer issue's extended "Ex Ante" entry on "some quotation marks omitted." See *Hold Some of My Calls*, 5 GREEN BAG 2D 360 (2002). Though it is amusing, I wonder why it does not mention the most-logical reason for not including all of those internal quotation marks. The Court obviously felt that it was useful to give a partial-but-not-complete pedigree for its quotation, establishing the "identical words" principle as far back as 1986, but not troubling to go farther – a decision that was perhaps justified by the notion that the Court's statutory-interpretation history neatly divides into two eras: pre-Rehnquist-Court and Rehnquist Court. (If you can provide one case from each era, you have, for all intents and purposes, covered the waterfront.)

"Ex Ante" does not quibble with the partial pedigree, but instead ponders those omitted quotation marks. But isn't it clear that the Court has calibrated its quotation marks to match its citation information? It gives us ACF and tells us ACF is quoting *Sorenson*. Thus, it shows us the relevant quotation marks for both ACF and *Sorenson*. If it used only one set of quotation marks, then it would not be quite so clear that all seventeen words of the quotation were also in *Sorenson*. Because it has decided we don't need to know about the primordial existence of *Helvering* and *Atlantic Cleaners* anyway, why confuse us with extra (and unexplained) quotation marks? *GB*