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## Book Review

Thomas L. Esper

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## Book Reviews

Reviewed by Thomas L. Esper\*

PERSUASION: THE KEY TO DAMAGES, Edited by Grace W. Holmes, Institute of Continuing Legal Education, Ann Arbor, Michigan (1969) 395 pp.

*Persuasion: The Key to Damages* is the edited transcript of the Twentieth Annual Advocacy Institute sponsored by the Michigan Institute of Continuing Legal Education. The theme of the Twentieth Institute was persuasion.

The book is a narrative of the mock trial given by the faculty of the Institute and private practitioners. An evaluation panel offers a critique of the performance of the lawyers at various stages of the presentation, which is perhaps the most significant contribution of the book.

Persuasion is an art practiced from *voir dire* through closing argument. Extensive direct and cross-examinations are included in order to illustrate this art in practice. Comparative cross-examinations, especially of the medical expert witness, provide an insight into the various methods and styles of interrogation employed to persuade the jury. Styles range from the mildly humorous to the aggressive.

If persuasion is the key to damages, communication is the key to persuasion. The lawyer uses verbal and non-verbal communication in order to convince the trier of fact that his analysis is correct. This is where the evaluation panel makes its contribution. Does the jury get the intended message? If not, the lawyer is not communicating effectively. If he is not communicating, he is not persuading.

What are the elements of persuasion? Briefly, according to Dean Joiner of Wayne State University, they are speech, behavior, audience, law, and fact. All of these elements must be used effectively in combination in order to achieve the desired results of communication and persuasion. To insure a fair trial, however, persuasion should be based upon relevancy as defined in the rules of evidence.

One of the subheadings under the plaintiff's closing argument is "find your own style." The Michigan Institute of Continuing Legal Education, in presenting the Annual Advocacy Institutes and publications of their proceedings, is attempting to help the lawyer to do just that—to find his own style. Many different approaches and styles by experienced faculty and practitioners are set forth for evaluation or

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rejection as best fits one's personality. If one finds his own style, it can then be inferred, he will be more persuasive, as he has learned to use Dean Joiner's elements of speech and behavior effectively.

This book is highly readable and, hopefully, instructive to those engaged in trial practice. It should especially appeal to younger lawyers who have not yet developed their own styles of presentation.

*Reviewed by Richard F. Gonda\**

POINTS OF REBELLION, by William O. Douglas, Random House, Inc., New York (1970), 97 pp.

If points were given for content, readability, or editing it would be a love game for the liberal Associate Justice of the country's highest bench who authored *Points of Rebellion*.

In the first volume of what is to be a trilogy on dissent and rebellion, Justice William O. Douglas names a score or more problems that face the United States today, many of which, such as poverty, prejudice, pollution, Viet Nam, the growing military-industrial complex, inequitable laws, and unequal opportunities, are real. Others, however, such as personality testing, computer data banks, and other innocuous things, appear to be problems to no one but the author. One has the feeling that in his lifelong quest to maintain his youthful spirit, Justice Douglas out-protests the protesters in looking for windmills.

The outspoken jurist blames the Establishment (characterized as a modern-day George III) for the plight of America today, and warns that violence, while it has no constitutional sanction, may be the only effective response when grievances mount and most of the elected spokesmen represent the Establishment. Even as George III was not responsive to the grievances of the colonists and a revolution ensued, so too, Justice Douglas feels, if the Establishment does not heed the cries of today's dissenters for a vast restructuring of laws and institutions, the redress must also be revolution. Whether the revolution that is coming will be a repetition of 1776 depends, the author feels, upon the wisdom of the Establishment, which, if timely exercised, may limit the revolution to merely an explosive political regeneration. Otherwise, if the Establishment attempts to suppress the dissenters with arms, the author warns that America will be faced with an "unlawful ordeal."

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