

Courtside

By Tony Mauro



Much More Than A Doorstop

The latest edition of the unquestioned bible for Supreme Court practitioners has arrived—all 1,427 pages of it.

The ninth edition of *Supreme Court Practice* has just been published by BNA Books, and its girth is a testament to the increased complexity of Supreme Court advocacy, even—especially—as its docket declines. In 1986, when the Court was deciding twice as many cases as it is now, the sixth edition of the book ran a mere 1,030 pages. The first edition in 1950 was 553 pages long and cost \$7.50. The latest edition goes for \$455.

It is a soup-to-nuts guidebook to everything lawyers need to know about petitioning, briefing, and arguing before the Supreme Court, with insights into the best ways of getting favorable attention from the Court at every stage.

One unnerving footnote reports that lawyers have fainted during oral argument on at least three occasions through history and advises, “Preparation, food, and sleep should stave off similar embarrassments.”

Elsewhere, the book advises lawyers to remain calm under the barrage of questions from the current bench. Anger or impatience should be “sternly suppressed,” the authors urge, adding that “counsel, like a salesman, is trying to purvey an idea, and no salesman ever persuaded a customer by irritating him.”

Co-author Stephen Shapiro, a partner at Mayer Brown, says the section on oral argument was beefed up because “newcomers before the Court are not always prepared for the onslaught.” The new edition also plumbs the mysteries of the shrinking docket and of how to win review.

Though much of the book is arcane—one chapter is titled “Preparing and Printing the Joint Appendix”—it has a special significance for lawyers who argue before the Court.

Veteran advocate David Frederick of Kellogg, Huber, Hansen, Todd, Evans & Figel can chart his career by the

editions of the book he owns. Frederick was a law student at the University of Texas when he won his first copy in 1987 as the prize in a moot court competition.

Frederick bought his next edition as he was about to clerk for Justice Byron White in 1991, then the next as he entered the Solicitor General’s Office, and the following one as he began private practice.

“This is an invaluable reference for anyone with cases in the Court,” says Frederick of the book, colloquially known as “Stern & Gressman,” after its original authors in 1950, Robert Stern and Eugene Gressman.

“It’s always within reach of my desk,” says Beth Brinkmann, of the D.C. office of Morrison & Foerster, who describes it as “an indispensable reference book that actually contains information that you cannot find on the Internet.”

Roy Englert Jr. of Robbins, Russell, Englert, Orseck, Untereiner & Sauber adds, “Considering how universally it’s accepted, it’s more like the Bible, the Quran, the Bhagavad Gita, and the Talmud all rolled into one.”

In addition to Shapiro, Mayer Brown partners Kenneth Geller and Timothy Bishop are also authors, as is Edward Hartnett, professor at Seton Hall University School of Law in New Jersey. The Court clerk’s office assists in ensuring accuracy of the book.

Last but not least, Gressman, one of the original authors, also worked on the ninth edition. Now 90 and a professor emeritus at University of North Carolina Law School, Gressman said in a telephone interview, “I’m very happy with the book.” So happy, in fact, that he has already begun work on the 10th edition. “I’m still active,” he adds. “I haven’t lost any marbles.”

Courtside is an occasional column on developments, large and small, at the Supreme Court. Tony Mauro can be contacted at tmauro@alm.com.