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BOOK REVIEW


JOHN S. MURRAY*

Textbooks intended for law school use should be evaluated in line with their intended purpose. The objective of Dispute Resolution is to provide law students with materials that describe, explain and raise questions about our society's processes for resolving disputes. An ideal textbook is thorough in its coverage of the substance and issues of the subject matter, usable in the sense of providing resources to help the teacher motivate students and channel class discussion, and readable in a student-friendly sense. In this essay I will review the Goldberg, Green and Sander text from the classroom perspective using these standards as a guide.

I have had an opportunity to use Dispute Resolution the past two years as the text for a two-hour required first-year course entitled Nonjudicial Process. The objectives of this course are to identify conflict resolving processes in our society, understand how they operate and interrelate, and develop skills that lawyers bring to their roles in each process.

The Goldberg, Green and Sander text should logically meet the needs for just such a survey class. The book is divided into five parts: an introductory overview of process; separate essays on negotiation, mediation, courts, arbitration and hybrid processes; process considerations within certain legal subject matter areas (Family, Consumer, Environmental and International) and forums (neighborhood justice centers, intra-institutional, intergovernmental and international); emerging process patterns in the current legal system; and selected dispute resolution problems for student critique.

Process courses generally, outside of Trial Advocacy and perhaps Legal Negotiation, lack the prestige and standing among law faculty and students of the more traditional substantive courses. The absence of a published text only adds to this handicap. Having taught Nonjudicial Process one year with duplicated materials, I am impressed with what Dispute Resolution contributes to motivation and understanding by its mere presence in student hands. But it offers much more.

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Dispute Resolution is an impressive anthology of excerpts of important articles, books and ideas in the dispute processing field. Selections have been well chosen and edited to represent some of the breadth and depth of thinking as well as the diversity of thinkers and practitioners in all the major process areas. The authors avoid the use of case law in developing the material. This strategy certainly emphasizes the distinctiveness of this process course but may lose some helpful teaching resources familiar to law students, especially in the parts dealing with courts and arbitration.

The bibliographies at the end of the chapters are comprehensive and quite useful in tapping the knowledge that the authors have in this field. As a minor criticism, the authors could have more frequently tied together the specific textual material and the bibliographic references to help students who want to research certain process ideas.

The existence of a course and textbook on dispute resolution assumes a recognition that the different processes have important principles in common which make their study in a single package beneficial. The authors identify and reinforce this primary objective in important ways. The relationships are illustrated by providing a useful descriptive taxonomy applicable to all processes (pp. 7-11), by describing the separate processes in a way that integrates them into the lawyer's life and the present legal system, and by stressing process interrelationships through practical problems and questions. The authors, by separating the subject matter and forum applications from the process descriptions, somewhat confuse the message that process considerations cut across traditional subject area boundaries.

The separate subject matter and forum chapters (ch. 6-12) provide an interesting and readable selection of articles. They demonstrate some of the diverse use of nonjudicial process, particularly in the Family (ch. 6), Consumer (ch. 9) and Environmental Law (ch. 10) areas. The specific case studies, such as Dorchester, Mass. (Neighborhood Justice), MIT (Intra-institutional), General Motors (Consumer), Snoqualmie River (Environmental) and Camp David (International), are especially helpful. They provide students with the practical guides to an understanding of the theoretical aspects of process. The case method of legal education is founded on inductive reasoning, and my students enjoyed this variation of the otherwise uniform law school theme.

The text does have some drawbacks for a first-year survey course. The section on courts (ch. 4A) appears to be both misplaced in the text and unbalanced in content. The typical law student, especially in the first year, thinks that appellate court opinions define the law and that litigation forms the operational foundation of the lawyer's role. The student compares the result of any other process to a speculative estimate of what a court would decide. Any survey course in law school should therefore begin by considering the pros and cons of courts and litigation. As long as students hold idealized views of courts as the sole providers of justice, they will not take as seriously other processes or their role in those processes.

Moreover, the articles in the court section are consistently abstract or
theoretical in their descriptions of the existing system. The authors have excluded the more practical information about litigation procedures, benefits, costs and burdens.¹ Actual case studies or a longer descriptive section written by the authors would help law students appreciate more the advantages, disadvantages and role of litigation.

The authors could also have included more introductory material on the sociology of disputes and the impact of social science research. Distinctions between grievances, claims and disputes,² and current data on how individuals perceive and use the judicial system³ are important first steps in getting law students to understand process and the interdependence of professions and disciplines. In my course I needed to supplement the text with additional material in the introductory and court sections to cover these basic ideas.

The sections on the mini-trial and other hybrid processes (ch. 5) are especially good, in large part because the authors themselves wrote the bulk of the material. They were able to intersperse theoretical issues with full descriptions of the processes and their impact within the justice system as a whole. The authors could have made the entire text better by writing more of the descriptive material in other sections rather than relying so heavily on excerpts of articles written for other purposes. The students need an initial organized perspective and some well-defined categories of inquiry for each process before exploring productively the significant issues and questions.

The subject matter and forum material (ch. 6-12) is not easy to use in a survey course. In order not to shift from a process orientation, I scattered these excerpts among the readings in the regular process chapters. Skipping about in the text created an unfortunate impression that the authors and I disagreed over the proper view of the field.

I was disappointed that the text overlooked two processes that the practicing lawyer uses frequently: the administrative and legislative processes. Many legal problems require an understanding of these two processes. Examples include land use planning changes, pollution control demands, export-import transactions, adoptions, spouse and child abuse complaints, tax audits and appeals, securities regulation, and state bar committee law revision activities. A survey course for law students in dispute resolution processes should cover these processes.⁴

³ See, e.g., Galanter, Reading the Landscape of Disputes: What We Know and Don’t Know (And Think We Know) About Our Allegedly Contentious and Litigious Society, 31 UCLA L. Rev. 4 (1983).
As the authors recommended, I used simulation exercises as vehicles for teaching the negotiation, mediation and arbitration sections. I found that the text's messages could be dramatized, explored and appreciated well in this way. In addition, active participation captured the interest of even the most skeptical of law students.

The questions throughout each section and those that comprise the entire final chapter help direct students toward the significant features of the various processes and contribute a strong sense of reality to the material. I was able to use them easily and effectively as the focus of general class discussion, formal in-class presentations, and outside written critiques. The Teacher's Manual contains useful explanations for these questions and problems. I discovered that a focused student critique of the questions in class often provided healthy supplements to the answers given in the Manual.

Overall, I was pleased with Dispute Resolution as a challenging and workable text for a first-year required survey course. It is thorough, usable and readable. I resolved the problems I encountered by using a limited documentary supplement and a careful selection of simulation exercises. The text may be even better suited for advanced courses and seminars with students who have a broader understanding of the law.

These authors have explored new ground in a non-traditional field and produced a unique text for a course that is not yet taught in most law schools. By pulling together materials in a thought-provoking way and adding insightful commentary, Stephen Goldberg, Eric Green and Frank Sander have contributed significantly to the legitimacy and worth of dispute resolution as a separate field of legal study.

ERNMENTAL PROCESS (1960); Symposium: The Administrative Procedure Act, 72 VA. L. REV 215 (1986). The teacher can refer to books and articles relevant to his or her specific state or region. See, e.g., R. KRAEMER AND C. NEWELL, ESSENTIALS OF TEXAS POLITICS (2d ed. 1983).