Lincoln and the Constitution

By Brian R. Dirck

Southern Illinois University Press, Carbondale, Illinois, 2012. 168 pages, $19.95.

Reviewed by Henry S. Cohn

Brian Dirck's *Lincoln and the Constitution* is a departure from his previous book, *Lincoln the Lawyer*, which pictured Lincoln as a folksy, pragmatic Western populist. In his new book, Dirck shows how Lincoln's constitutional thinking increasingly matured, as he considered issues such as the expansion of slavery into the territories, the right of states to secede from the Union, the President's war powers, and postwar reconstruction.

In his early career, as a struggling attorney, Lincoln revered the Constitution because it had been drafted by men he regarded as heroes for having risked their lives in the Revolutionary War. Starting in 1854, however, when enactment of the Kansas-Nebraska Act prompted Lincoln to become politically involved in the fight to keep slavery out of the territories, he gave deeper thought to the Constitution. The Kansas-Nebraska Act had been designed by Sen. Stephen A. Douglas to allow settlers in those two territories to determine through "popular sovereignty" whether to permit slavery in each territory. Lincoln developed his views on the Constitution in his 1854 speech in Peoria, Ill., in his 1858 debates with Douglas, and in his 1860 Cooper Union address. Lincoln saw the Constitution as the "silver frame" designed to preserve the "golden apple" of the Declaration of Independence. The Declaration of Independence stated that the government derives its powers from the consent of the governed, but slavery violated this principle by allowing a master to govern his slaves without their consent. As Lincoln said in his Peoria speech, "The doctrine of self government ... depends upon whether a negro is *not* or *is* a man. ... If he is *not* a man, why in that case, he who *is* a man may, as a matter of self-government, do just as he pleases with him. But if the negro *is* a man, is it not to that extent, a total destruction of self-government, to say that he too shall not govern *himself*?" Lincoln used arguments such as this not only against popular sovereignty, but later against Justice Roger B. Taney's opinion in *Dred Scott v. Sandford* that members of the "negro race" were "altogether unfit to associate with the white race either in social or political relations, and so far inferior that they had no rights which the white man was bound to respect, and that the negro might justly and lawfully be reduced to slavery for his benefit."

When Lincoln became President, his views of the Constitution became less tied to the Declaration of Independence. According to Dirck, Lincoln now "saw the Constitution and the rule of law it represented as a vehicle designed to get Americans somewhere, some place higher and better than where they had been: a more perfect union." Saving the Union became his goal, as he strongly rejected Confederate President Jefferson Davis' opinion that it was a "monstrous fiction" that, in 1787, the states had "acted as one people 'in their aggregate capacity'" rather than "as distinct and sovereign political communities."

Lincoln's exercise of his presidential powers as he tried to lead the Union to victory met with some knotty constitutional problems. One issue was the power to suspend the writ of habeas corpus. Soon after the war began in April 1861, with Maryland's pro-Confederate citizenry preventing Union troops from reaching Washington, D.C., and with Congress out of session, Lincoln took the position that he could suspend habeas corpus without congressional approval, even though Justice Taney, in *Ex parte Merryman*, found that, because the power to suspend is in Article I—the part of the Constitution that governs Congress—it belongs only to Congress.

Lincoln also had to navigate a constitutional minefield to decide how to treat rebel property after the Union Army seized it. Congress passed the First and Second Confiscation Acts declaring that such property was forfeited to the Union. The constitutional problem was whether it could be confiscated permanently. Article III, section 3, of the Constitution prohibits forfeiture as a punishment for treason "except during the Life of the Person attainted" (the rebel slave owner). Lincoln feared that heirs of slave owners might claim that the Constitution had been violated if their property was taken. At Lincoln's request, therefore, Congress passed a joint resolution, which became law the same day as the Second Confiscation Act (July 17, 1862), providing that the Second Confiscation Act shall not be "construed as to work a forfeiture of the real estate of the offender beyond his natural life." Dirck inaccurately writes that Congress "amended" the Second Confiscation Act (rather than enacting a separate joint resolution), and he writes as if the joint resolution applied to slaves, and not just to real estate. Section 9 of the Second Confiscation Act declared that slaves who escaped to Union lines "shall be forever free," and the joint resolution did not change that.

Next, Lincoln determined to go further toward freeing the slaves. He decided that to deprive the Confederacy of its slaves' labor and to allow the slaves to join the Union army was a military necessity that could be implemented pursuant to his power under Article II, section 2, as the commander in chief of the Army and Navy. On Sept. 22, 1862, he issued a preliminary Emancipation Proclamation stating that, on Jan. 1, 1863, all slaves in any state that remained in rebellion "shall be then, thenceforward, and forever free." He kept his word and issued the Emancipation Proclamation on the date promised.

As the Civil War neared its end, Lincoln realized that his war powers might not be sufficient to ensure the demise of slavery, so he lobbied Congress to pass the 13th Amendment. Although the Radical Republicans saw

the amendment to imply a national guarantee of basic citizenship rights, Lincoln took a more conservative approach and sought merely to end slavery. After his death, the Radicals Republicans would succeed with the adoption of the 14th and 15th Amendments.

Lincoln was pleased with Congress' passage of the 13th Amendment (the states adopted it after Lincoln's death), telling a celebratory crowd on Feb. 1, 1865, that "this amendment is a King's cure for all evils" of the war. "[I]t winds the whole thing up ... the fitting if not indispensable adjunct to the consummation of the great game we are playing." In April 1865, Lincoln advocated giving "the elective franchise ... to the colored man"—conferring it immediately "on the very intelligent, and on those who serve our cause as soldiers." John Wilkes Booth was in the audience for that speech and reacted to Lincoln's proposal by seething to a fellow conspirator, "now, by God! I'll put him through."

Dirck concludes that, "[w]hile [Lincoln] greatly valued and cherished both the Constitution and the rule of law it represented, it was always for him a means to a higher, greater moral end—some 'apple of gold.'" We should be grateful to Dirck for explaining how Lincoln's worship of the Constitution translated to government policy during his administration. **TFL**

Henry S. Cohn is a judge of the Connecticut Superior Court.

In Chambers: Stories of Supreme Court Law Clerks and Their Justices

Edited by Todd C. Peppers and Artemus Ward

University of Virginia Press, Charlottesville, VA, 2012. 472 pages, $34.95.

Reviewed by Harvey Gee

In Chambers: Stories of Supreme Court Law Clerks and Their Justices is a collection of previously published as well as new essays on select justices and their clerks, illuminating how the personal relationships between justices and clerks affect the Court. The contributors—some of them former Supreme Court law clerks—include law professors, judges, academics, and legal journalists, and they provide first-hand accounts of the inner workings of the justices' chambers. The book is divided into three parts: "The Origins of the Clerkship Institution," which discusses, among other justices, Holmes, Brandeis, and Cardozo, and their clerks; "The Premodern Clerkship Institution," which discusses, among others justices, Black and Frankfurter, and their clerks—including the first female clerk; and "The Modern Clerkship Institution," which discusses clerking for Warren, White, Marshall, Powell, and others.

For recent law school graduates, a clerkship on the High Court is an opportunity of a lifetime, because this highly coveted position offers keys to the doors of power. Almost every law clerk is hired primarily on the basis of academic achievement, is a graduate of a top-tiered law school, and has clerked for a U.S. Court of Appeals judge who is a personal friend or a former clerk of the Supreme Court justice for whom the clerk works. Increasingly, clerkship committees at law schools also push select applicants.

In the summer of 1875, Chief Justice Horace Gray became the first U.S. Supreme Court justice to hire recent law school graduates, but he hired three of them as legal secretaries without legal duties and he personally paid their salaries. Moving forward in time, Scott Messinger explains that, for Oliver Wendell Holmes Jr. as well as for Gray, a clerk did not dispense advice on legal matters or help to draft opinions, but, for Holmes, neither was he a mere secretary. Rather, his job was to minister to the justice's needs "in a wide variety of private and professional matters. Such duties might be as pedestrian as helping Holmes to balance his checkbook, but they could also be as interesting as providing him with a live audience for his opinions about his fellow justices or about the politics of the day—opinions that the cloistered nature of the judicial profession prohibited him from voicing elsewhere." Holmes, therefore, expected his clerks to be "familiar with recent cultural and intellectual developments." Under Justice Louis Brandeis, a law clerk's duties expanded, and Brandeis' clerkship model was the precursor for the modern clerkship institution.

Every justice has had a distinctive approach to tackling the chambers workload, including deciding how much writing a clerk would do. Andrew Kaufman writes that Justice Benjamin Cardozo made pre-argument work the clerk's major responsibility, but did his own legal research and opinion writing. Cardozo was productive, often writing his opinions on a pad while pacing. Kaufman explains that Cardozo would have a draft on Sunday, which his "clerk-secretary" would type the next day. But Cardozo was a private person, and he seems never to have had a close relationship with his clerks.

In their essay, Todd Peppers and Beth See Driver write that Felix Frankfurter, with his serious demeanor, considered the law clerks to be his junior partners. Frankfurter believed that it was not a good use of time to have clerks reviewing petitions for certiorari, and instead he wanted his clerks to draft opinions. Frankfurter would tell the law clerks what the case was about, where he stood, and what he wanted, and he would, of course, review the clerk's draft.

Justice Hugo Black did most of his own legal research, and, "[w]hen he was assigned a case for an opinion, he immediately plunged into reading the record and all the briefs." He drafted his own opinions and discussed the drafts with the clerks, but he usually "had his mind made up on the substance" and "[d]ebate was mainly on choice of words and organization," with "a surprising amount of controversy about commas." According to Daniel Meador, who clerked for Black, his boss saw his role as defender of the Constitution and protector of the individual, and Meador remembers that Black freely shared his views with his clerks.

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According to contributor Judge John M. Ferren, Justice Wiley Blount Rutledge Jr. and Justice Frank Murphy took more expansive views of individual rights than did the other two liberal justices of the 1940s, Hugo Black and William O. Douglas. Rutledge's writing was "eloquent but ... splendorous," tending "to embrace long sentences, as well as redundant clauses and unnecessary adjectives."

A clerk's working for a term with a justice and his or her co-clerks can create bonds that remain indelible. Hugo Black and his clerks would eat lunch together in the public cafeteria on the ground floor of the Supreme Court building, with the justice often displaying his sense of humor as he told tales of his law practice, senatorial campaign, and time as a senator. Some justices invited clerks to their homes, considering them part of their extended family, and, after the clerkship term, maintained relationships with their clerks through reunions.

In Chambers is at its best when it discusses the intimate confines of judicial chambers, showcasing the justices' sometimes-quirky personalities and work habits. In his contribution, "Fifty-Two Weeks of Boot Camp," Bruce Allen Murphy describes the tumultuous relationship between William O. Douglas and his clerks. Douglas expected his staff to work hard, and earned the reputation of being one of the most demanding justices to work for. Douglas would often yell at and scold his law clerk. "Everyone in the office feared Douglas's unpredictability and wrath over missteps, both real and perceived. He wasn't the sweetest person you'd ever want to meet." In his defense, Douglas was a hard worker and expected the same from his clerks.

In Chambers illuminates the nuts and bolts of serving as a Supreme Court law clerk, and it provides a peek into the relationships between justices and clerks. Even regular Court watchers may be surprised by the nuggets it offers of this exclusive world. **TFL**

Harvey Gee is an attorney with the Federal Defenders of the Middle District of Georgia, Inc. He was a U.S. Supreme Court Fellows Program Finalist, 2012.

Tilted: The Trials of Conrad Black (2nd ed.)

By Steven Skurka

Dundurn Press, Toronto, Ontario, 2011. 348 pages, $26.99.

Reviewed by Elizabeth Kelley

As legal issues swirl around media mogul Rupert Murdoch and his embattled newspaper, *News of the World*, this is a particularly good time to read the second edition of *Tilted: The Trials of Conrad Black*, by Steven Skurka. Skurka is a Toronto-based criminal defense lawyer and a legal analyst for Canadian Television (CTV). He covered the trial of Conrad Black that was held in 2005 in federal court in Chicago. Black, along with several co-defendants, was charged with multiple counts of defrauding his company, Hollinger International, of $60 million. After a jury trial that lasted approximately three months, he was convicted of fraud and obstruction of justice. As Skruka covered the trial, he struck up an acquaintance with Black.

Conrad Moffat Black is a Canadian-born member of the British House of Lords. Before his trial, he was the third-largest newspaper publisher in the world. After he was released from federal prison in the spring of 2012, he vowed to fight to clear his name.

Tilted follows Conrad Black's trial as well as the labyrinthian post-conviction proceedings: his appeal to the Seventh Circuit, the decision by the U.S. Supreme Court to narrow the scope of the honest services fraud statute and remand the case for re-sentencing, the resentencing itself, and Conrad Black's return to prison after having been released on appellate bond.

What makes *Tilted* more than just a chronicle of a criminal case 'round and 'round the "appeal-go-round," as Skurka calls it, are the wonderfully human details that make trials and their aftermath the compelling dramas that they are: Black's wife fainting at his resentencing; the line of prisoners cheering Black when he was released on appellate bond; Amy St. Eve, the judge at Black's trial, sitting in the Supreme Court during oral argument of the case; and Black's assistant and a defense witness selling T-shirts outside the courthouse that read "Conrad Will Win."

If you read only one chapter of *Tilted*, make it the first, which is a no-holds-barred analysis of the American legal system. Some readers might be offended that an outsider is voicing these criticisms, but others might find Skurka's criticisms valid. He expresses dismay at our system of discovery and the way that information is either not disclosed at all or not disclosed in a timely manner. He marvels at our over-incarceration and our ever-expanding criminal laws. He can't get over the huge number of cases that resolve in a plea rather than go to trial. But perhaps his biggest criticism is of the extraordinary sentences defendants receive for being convicted after exercising their constitutional right to a trial instead of pleading guilty. Indeed, the word "tilted" in the title refers to the fact that, to Skurka, the system seems extraordinarily tilted in favor of the prosecution.

Tilted is fun to read, and, if you care about the future of our criminal justice system, it is also important to read. **TFL**

Elizabeth Kelley is a criminal defense attorney in Ohio. She has a special commitment to representing individuals suffering from mental illness and mental retardation. She frequently provides legal commentary for TruTV, CNN, and MSNBC, and she is host of Celebrity Court Radio on BlogTalkRadio. She also serves on the board of the National Association of Criminal Defense Lawyers and is chair of its Mental Health Committee and former chair of its Corrections Committee. She can be contacted at ZealousAdvocacy@aol.com. You can listen to her interview with author Steven Skurka at www.tobtr.com/s/3404277.

Life Among the Cannibals: A Political Career, A Tea Party Uprising, and the End of Governing as We Know It

By Sen. Arlen Specter with Charles Robbins

Thomas Dunne Books, New York, NY, 2012. 384 pages, $26.99.

Reviewed by Elizabeth Kelley

I was in law school during Justice Clarence Thomas' confirmation hearings. For me, as for many Americans, those hearings were a transformative experience. To this day, some people cannot stomach former Sen. Arlen Specter for his questioning of Anita Hill. Indeed, the very name of Arlen Specter inspires strong reactions, whether from conservatives blaming him for preventing the confirmation of Robert Bork to the Supreme Court or from the National Association of Criminal Defense Lawyers honoring him in 2008 with its Champion of Justice Award.

Life Among the Cannibals is a political biography, but, more fundamentally, it is a biography of a senator who was trained as a lawyer, worked as a lawyer, and has never stopped being a lawyer. Indeed, most of the landmark events in this book are connected to the law. Specter quotes his former law partner as saying that Specter will be remembered for developing the single bullet theory as a young lawyer on the Warren Commission and for his questioning of Anita Hill. The senator adds that he will also be remembered for voting "not proven" during the impeachment trial of President Clinton. *Life Among the Cannibals* is an enjoyable and educational portrait of the five-term senator from Pennsylvania and of the intersection of law and politics throughout his career.

Politics drove Specter to write this book. The then 79-year-old senator was defeated in the Democratic primary after having switched from the Republican to the Democratic Party—a move that was consistent with his ideology as well as practical, given the changing nature of the GOP. The very title of the book shows that there is no doubt as to where he stands. It derives from what he observes was the growing and alarming practice of senators campaigning against members of their own caucuses: "And they did it with relish, like cannibals devouring colleagues with condiments." The opening sentence of the preface continues that theme:

> The United States has provided worldwide negative leadership in amassing gigantic annual deficits and a staggering national debt, resulting in the emergence of the Tea Party, which produced gridlock and a dysfunctional government. European nations followed the U.S. lead in spending more than taxpayers were willing to pay, producing economic crises in Ireland, Spain, Portugal, Italy, and riots in Greece.

Specter paints in vivid detail the decline and disappearance of moderate Republicans—and moderate Democrats—in the Senate. But he also describes the decline in senatorial collegiality in general. This was the man who rode the train with Sen. Joseph Biden and spent time in the Senate gym with Sen. Edward Kennedy. This socializing made them all more productive legislators because their social relationships, combined with common political ground, forged bipartisan compromise and action.

Many of Specter's actions were courageous as well as touching. When Sen. Robert Packwood of Oregon was virtually abandoned by everyone because of allegations of sexual harassment, it was Sen. Specter's office that Sen. Packwood's staff called when they feared that their boss was going to commit suicide—and Specter hurried to Packwood's office. When Sen. Larry Craig of Idaho was exposed for an embarrassing incident in a Minneapolis airport restroom, Specter encouraged Craig to get an attorney and attempt to vacate his guilty plea. And, when Sen. Ted Stevens of Alaska was convicted of seven counts of corruption, Sen. Specter defended him on election eve on Alaska radio, criticizing the behavior of the prosecutors. Indeed, Specter proved prophetic, given the release last March of the special counsel's findings of misconduct by Department of Justice prosecutors during the investigation and trial of Sen. Stevens.

A reader will find it impossible to pigeonhole Sen. Specter. Not only did he switch parties, but he has been all over the map when it comes to issues. For example, I found myself cheering his criticism of the treatment of detainees and of warrantless wiretapping, yet groaning over his support for the death penalty. But perhaps it is the confidence that he built during five terms as a senator that led him to march to his own drummer and not feel beholden to anyone. As he notes in the book, "Reagan lost Philadelphia by 225,000 votes, while I won Philadelphia by 14,000." And Sen. Specter had no illusions about the meanness of Washington, D.C. He quotes Harry Truman: "If you want a friend in Washington, get a dog."

Nonetheless, it was sad to read about promises broken and friendships severed after he switched parties. The opening chapter, which tells the story of his last election day, from the time the polls opened until his concession speech that evening, reads like a general's last battle. Yet, during that final campaign, Specter kept a physical pace that would rival that of a person one-fourth his age. Merely reading that first chapter made me tired!

Sen. Specter remains active; he practices law and teaches a course on the relationship between Congress and the U.S. Supreme Court at the University of Pennsylvania Law School. I hope that he will also pursue a cause he has long advocated: the televising of Supreme Court proceedings. **TFL**

Elizabeth Kelley is a criminal defense attorney in Ohio. She has a special commitment to representing individuals suffering from mental illness and mental retardation. She frequently provides legal commentary for TruTV, CNN, and MSNBC, and she is host of Celebrity

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Court Radio on BlogTalkRadio. She also serves on the board of the National Association of Criminal Defense Lawyers and is chair of its Mental Health Committee and former chair of its Corrections Committee. She can be contacted at ZealousAdvocacy@aol.com.

Business and Commercial Litigation in Federal Courts: Third Edition

Edited by Robert L. Haig

Thomson/West, Eagan, MN, 2011. 12 volumes, with forms on CD-ROM, $1351.00.

Reviewed by Thomas R. Schuck

In the February 1999 issue of *The Federal Lawyer*, retired district court judge Prentice H. Marshall wrote of the first edition of *Business and Commercial Litigation in Federal Courts* that it "should be at the hand of every lawyer who is faced with litigation in the state or federal courts, every federal trial judge, and every mediator or arbitrator of complex commercial disputes." High praise indeed—and as true of the newly published third edition, ably edited by Robert L. Haig, an experienced commercial litigator with Kelley Drye & Warren LLP.

The first edition (1998) included 80 chapters covering many aspects of commercial litigation and related issues such as employment discrimination, intellectual property, product liability, antitrust, and RICO. The second edition (2005) revisited these areas and included 16 new chapters on case evaluation, electronic discovery, litigation avoidance and prevention, techniques for expediting and streamlining litigation, litigation technology, litigation management by law firms and corporations, civility in the practice, director and officer liability, mergers and acquisitions, broker-dealer arbitration, partnerships, commercial defamation and disparagement, commercial real estate, government entity litigation, and e-commerce. The third edition (2012) updates the previous material and adds 34 more chapters, expanding the treatise by 3,800 pages.

When the treatise was first published, some of the topics were just developing. For example, *The Federal Lawyer* featured an introductory article on e-mail discovery by Timothy Q. Delaney of Brinks Hofer Gilson & Lione the month before Judge Marshall's review appeared. E-discovery is now a major component of commercial litigation. The management of litigation, in-house, intra-firm, and by insurers has become increasingly important as the cost of litigation escalates. We have witnessed the transformation of civility and professionalism from aspirational goals to mandated standards of behavior and subjects of professional discipline.

The second edition expanded the work's scope to include the cultural and ethical issues that commercial litigation presents today. For instance, the recently updated chapter on ethical issues in commercial cases, by Harry M. Reasoner, George M. Kryder, and Edward A. Carr of Vinson & Elkins LLP, covers the issues that should be discussed with the client from the outset of a case through the litigation process, including lawyer disqualification and withdrawal. The authors provide a helpful checklist of professional responsibility considerations that every commercial litigator, no matter how much experience he or she has, would do well to review periodically. The chapter on civility, by Michael B. Keating of Foley Hoag LLP, takes a practical approach to this issue. It focuses on the effects of uncivil behavior on the litigation process, including the economics of litigating and the choices that an attorney has to make in responding to it. It includes a checklist that focuses on the importance of making rational, unemotional decisions in responding to uncivil behavior and on considerations such as whether the forum has tolerated rude behavior in the past and would be receptive to a formal motion, avoiding casting the judge in the role of "babysitter," and considering the impact of responding to uncivil behavior on the balance of the case and the client.

The updated chapter on case evaluation by Louis M. Solomon of Cadwalader, Wickersham & Taft LLP provides a helpful discussion of the different roles that the client, in-house counsel, and litigation counsel play in the evaluation of the strengths and weaknesses of a commercial lawsuit. As all experienced litigators know, unrealistic expectations can disrupt the litigation process and affect the result of a lawsuit. The case evaluation tools that the author presents will not only help litigators evaluate a case but also will assist them in working with their clients, in-house counsel, and risk managers to make important decisions in evaluating settlement opportunities and options.

The revised chapter on electronic discovery by district court judge Shira A. Scheindlin and Jonathan M. Redgrave covers not only the issues that arise during commercial litigation but also the (perhaps more important) issues of prelitigation planning, records and information management policies, the preservation of data, and other practical considerations that if not identified and addressed in a timely manner can have devastating consequences later. The chapter also includes a section on claims for the spoliation of evidence; this section is relevant to traditional record retention and discovery as well as to electronic data storage. The checklist that accompanies the chapter provides a good introduction to the technical issues involved in electronic data storage and retrieval. It will prove useful not only to the commercial litigator but also to the client and its employees who are responsible for responding to electronic discovery requests.

The third edition adds chapters on internal investigations; a comparison of commercial litigation in state and federal courts; coordination of litigation in state and federal courts; international arbitration; crisis management; *pro bono* representation; regulatory litigation with the Securities and Exchange Commission; derivatives; commodities and futures; medi-

cal malpractice; re-insurance; consumer protection; licensing; occupational safety and health claims; immigration; executive compensation; food and drug; privacy and security; prior restraint of speech; federal claims based on land use regulation; white collar crime; the interplay between commercial litigation and criminal proceedings; money laundering; the Foreign Corrupt Practices Act; export controls; the Alien Tort Statute and the Torture Victim Protection Act of 1991; the False Claims Act; administrative agencies; government contracts; tax, project finance and infrastructure; sports; entertainment; and information technology. As this list of new topics suggests, it was impossible for the authors and editor simply to revise the second edition by means of pocket parts—the 2010 pocket parts for some of the chapters ran to more than 50 pages. Accordingly, the third edition represents a substantially new work, not only updating the second edition but significantly expanding the scope of the treatise.

For example, the new chapter on internal investigations by Gregory A. Markel and Jason M. Halper of Cadwalader discusses the purposes, scope, and conduct of investigations by companies and their agents of allegations of corporate misconduct, and includes practice aids for conducting an internal investigation and sample Securities and Exchange Commission and Department of Justice documents. The new chapter on international arbitration by federal district Judge Paul A. Crotty and Robert E. Crotty of Kelley Drye supplements the discussion of arbitration versus litigation updated from the second edition and addresses best practices, ethical rules, and sanctions, as well as the role of professionalism in arbitration. My partners Thomas T. Terp and Kim K. Burke at Taft Stettinius & Hollister LLP have authored a new chapter on occupational safety and health claims that covers all aspects of Occupational Safety and Health Administration rules—including enforcement proceedings and related issues such as whistleblower claims and retaliation claims—as well as the Sarbanes-Oxley Act of 2002, and it includes checklists, sample pleadings and forms, and sample jury instructions. Current American Bar Association President William T. "Bill" Robinson III of Frost Brown Todd LLC has contributed a new chapter on medical malpractice that discusses the action from commencement through discovery, mediation, and trial, with practice materials that include an initial client interview checklist, affirmative defenses, discovery requests, a voir dire outline and checklist, and jury instructions. Theodore V. Wells Jr. and Roberta A. Kaplan of Paul, Weiss, Rifkind, Wharton & Garrison LLP have authored a new chapter on the interplay between commercial litigation and criminal proceedings that deals with such practical issues as the decision to assert a privilege, including the privilege against self-incrimination; discovery in parallel civil and criminal proceedings; the role of collateral estoppel in dual proceedings; the informer and law enforcement privileges; the interplay between civil damages and criminal restitution; and double jeopardy. The authors include a detailed discussion of the WorldCom Inc. litigation in the wake of WorldCom's announcement in June 2002 that it needed to restate its publicly reported financial results and its bankruptcy filing a month later.

These new chapters illustrate the expanded scope and depth of the latest edition of this treatise. Space does not permit a discussion of all the new chapters; suffice it to say that all of them, like the chapters retained and expanded from the second edition, have been authored by distinguished judges and leading practitioners who not only are familiar with the issues discussed but also contribute to the development of the law in their respective areas of interest.

As one would expect of a work of this breadth and depth, the tables and index are comprehensive and helpful. Volume 12 includes tables of proposed jury instructions; forms of pleadings, orders, and other important documents; and extensive information on statutory and case authority. In addition, the treatise includes research references. Equally important is the accompanying disc that provides electronic access to all forms, jury instructions, and checklists in the treatise.

When I reviewed the second edition of this book in the June 2007 issue of *The Federal Lawyer*, I wrote that, if I had to choose one word to describe *Business and Commercial Litigation in Federal Courts,* it would be "practical." This remains true of the third edition. It not only contains the law but the wisdom and advice of its 251 principal authors, among whom are 22 judges and a cross-section of the best commercial litigators in the United States. Every business litigator, no matter how seasoned, will benefit from consulting this work not only for the technical information that it provides but also for its advice on the intangible aspects of litigation such as client relations, professional obligations, and effective relationships with colleagues and judges. *Business and Commercial Litigation in Federal Courts* belongs in the library of every lawyer and law firm that engages in a significant amount of commercial litigation in the United States. **TFL**

Thomas R. Schuck is a past president of the Federal Bar Association. He is a member of Taft Stettinius & Hollister LLP in Cincinnati, where he practices primarily commercial and bankruptcy litigation.