Manual for Administrative Law Judges. By Merritt Ruhlen. Washington, D. C.: U. S. Government Printing Office. 1974. Pp. 125. Reviewed by John T. Miller, Jr.*

A judge appointed from the ranks of those long engaged in the active trial of cases before the particular tribunal brings to his new office an intimate knowledge of procedures, the statutory law and precedents. Nonetheless, the transition from bar to bench often proves difficult. Additional self-disciplines must be acquired, new responsibilities learned.

How much more difficult it is for the judicial appointee drawn from the broader universe of lawyers, lacking that profound experience, to attain the necessary proficiency. An influential minority[1] would spare lawyers that anguish. Under the banner of efficiency and economy, arguing plausibly of the need to put the new judge immediately to work cutting down case backlogs, they would give existing expertise primary place in appointments. Character, judgment, energy, intelligence, the ability to learn and adapt, play an important but surbordinate role in that thinking.

But the so-called "expertise" often proves illusory. Many appointees under the present system are not veteran administrative trial lawyers.

The absent expertise can be "self-taught" through energetic study, asking the right questions, wise listening and experience. It can also be cultivated through appropriate texts and seminars.

The latter tools for administrative law judges remain in the developmental stages. The ABA Conference of Administrative Law Judges has been evolving a week-long session, given at the National College of the State Judiciary, University of Nevada, for federal, state and local administrative law judges. Problems in evidence, pre-trial, opinion writing, judicial discretion and judicial review are taken up. Recent developments in administrative law analyzed.

There is a need for useful texts. This makes the book here under review opportune. Prepared for the Administrative Conference of the United States by retired administrative law judge Merritt Ruhlen, this slim text should prove helpful not only to the newly-appointed administrative law judge but to the veteran seeking another viewpoint. Sensible advice is provided in logical sequence on prehearing, discovery, procedural devices to shorten hearings, the handling of intervenors, hearing mechanics, tech-

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1. This emphasis on expertise has come to play an undue role in the appointment of administrative law judges at certain federal agencies, a practice currently being reassessed by the Civil Service Commission.

niques of presiding, conduct in dealing with counsel and parties, and decision drafting. Thirty pages of appendices contain an assortment of suggested notices and orders.

Avoiding the narrow view one might expect to follow from a long experience in hearing and deciding cases before the Civil Aeronautics Board, Judge Ruhlen has written a manual of general usage in federal service.

A few comments indicate the breadth of the text. Long hearings, like those with many parties, often call for different approaches than those suitable in simple cases. Judge Ruhlen recognizes this in general. His suggested coding of exhibits in a manner to identify the submitting party and the subject matter[2] might work well in some cases but it could prove quite confusing in a long proceeding. A simple seriatim identification of exhibits can give counsel a better control over whether he has all of the exhibits in the case accounted for.

Judge Ruhlen's suggestion that certain issues not be pursued on certain days makes good sense.[3] Agreements to examine particular witnesses at a specified time can also be meritorious in long cases where numerous parties may be interested only in particular issues and witnesses.

It is wise for counsel to rely on refutation of expert witnesses by other experts rather than through cross-examination, as Judge Ruhlen indicates.[4] But the presiding judge must keep in mind that the intervenor of limited means may have no alternative — if participation is to be meaningful — than to undertake the treacherous task of building a rebuttal case through cross-examination of an expert witness.

Judge Ruhlen criticizes "trial by interlude,"[5] the practice of recessing after the presentation of each phase of evidence for the purpose of preparing cross-examination or rebuttal. His comments are well taken. But the demand for this criticized procedure may evidence a profound loss of public confidence in the agency whose attorneys participate in the proceedings and whose staff is normally looked to as protector of the public interest. Where this crisis in confidence occurs, the intervenors may have great difficulties in adjusting to their assumed burden of the role normally played by agency staff, and need more time than usual to prepare.

Judge Ruhlen notes the use of oral decisions in cases with few parties, limited issues and short hearings.[6] This is sound practice, but rarely uti-

2. Page 19.
3. Page 23.
4. Page 34.
5. Page 20.
6. Page 62.

lized. When one considers the frequent complaint that the issuance of decisions is delayed solely because of limitations inherent in the use of typing pools, it is surprising that more emphasis is not being given to developing the skill of dictating decisions on the public record, with subsequent correction of the stenographic text as soon as it becomes available.

Judge Ruhlen has made an excellent beginning. Hopefully, experienced administrative law judges will submit to the Chairman of the Administrative Conference their ideas as to how the *Manual* might be improved.

Hearing officers on the state and local levels might look at this *Manual* to see how, with modifications, a revised text might serve their particular needs. Perhaps the Administrative Conference would assist in evolving an edition of the *Mannual* in this direction.