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HOW TO PREPARE A CASE FOR TRIAL, by
Elliott L. Biskind.* Prentice- Hall, Inc., New York,
1954. Pp. xii, 206. \$5.65.

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Book Reviews

HOW TO PREPARE A CASE FOR TRIAL, by Elliott L. Biskind.* Prentice-Hall, Inc., New York, 1954. Pp. xii, 206. \$5.65.

Preparing a case for trial is like making love. Few do it well, and no one can effectively tell anyone else just how to do it.

To review this book one might well simply state its title, and then condense the review into two words—"nobody knows." And this review might well end here. But for those who might like some idea of the contents of this work, the following is added.

The author writes with a heavy hand and a great deal of repetition. The various suggestions, outlines, chapter headings, and illustrations deal with subjects known to all experienced attorneys. That is the main trouble.

An experienced attorney will gain little if anything from this book, and few attorneys, if any, experienced or inexperienced, could possibly devote to any one case the time suggested by the author.

The main theme is based on illustrations, presumably taken from an actual case in which the author participated, involving a matrimonial controversy. The first chart of that one case prepared by the author for purposes of illustration, to be supplemented from time to time, requires three pages of fine print for reproduction, and consists of five paragraph headings, each subdivided into from two to fifteen subheadings, with some of the subheadings further divided into as many as four (and, in two instances, five) sub-paragraphs. Subsequent chapters demonstrate the author's idea of how that narrative chart is to be supplemented, cross-indexed, and properly keyed to various other files.

Obviously, the suggestions cannot be followed by an attorney handling more than one or two cases at a time; and in most practices, small or large, anyone who believes that an attorney can devote several weeks or months to only one or two cases is living in a vacuum.

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The author suggests that a "departmentalized file" of each case should be prepared; one is to be "The Factual File," another to be "The Legal File," another to be "The Pleading File," and another to be the "Miscellaneous and Correspondence" File. It is suggested that each file be cross-indexed to a "trial chart"; that some of the files should contain "separate folders." The "Pleading File" should be "cross-indexed to the appropriate witness folder and the trial chart."

Those are some of the minutely detailed suggestions considered by the author to be proper in preparing a case for trial. The very preparation of the files and the cross-indexing suggested would take days if not weeks, and apparently the attorney himself is advised to do it.

There are no unusual tips on strategy and trial tactics; and there are some general rules expressed which, if literally followed in all cases, might not be effective. For instance, the author suggests that when a witness appears for a final interview, "give him a copy of his statement to read." Many good attorneys do not follow this practice. They know that an opponent may properly ask the witness while on the witness stand whether his memory was refreshed from reading a statement and if the affirmative answer is given, in most jurisdictions the cross-examiner may properly demand to see the statement, sometimes with disastrous results to the attorney who advanced the witness.

It is thought by many to be more the rule than the exception that in most so-called witness statements something can be found helpful to both sides. That is fine when one is cross-examining the other fellow's witness; it is not so good when the other fellow is cross-examining your witness on a statement you were compelled to disgorge. A better rule might be to give the witness a copy of his statement to read only if the trial attorney is perfectly willing to produce that statement, and all others the witness may have made, before a jury during the trial.

The author further suggests that each witness be questioned privately before the trial and that "with your charts in front of you and your exhibits arranged in the order in which they will be introduced, [you should] question each witness in precisely the same manner as you would on the trial, with your questions formulated with strict adherence to the rules of evidence." The writer does not mention that if cross-examination at trial de-

veloped that you had staged a rehearsal such as that, with "your charts in front of you and your exhibits arranged," a jury might well wonder how much of the testimony given by the witness was his own and how much was that of the attorney.

Further, many attorneys feel that while it is appropriate to question a witness, in advance of trial, with strict adherence to the rules of evidence, they also want to know what the witness really thinks about the merits of the case; they want to know his honest opinion, even though his opinion might not be admissible. His inadmissible opinion might well point the way to admissible evidence to support it.

Another general rule announced by the author is to "Be careful to avoid trivia in your summation." Many trial lawyers believe that frequently cases are won or lost on trivia; and most attorneys feel that this rule is subject to many exceptions.

There is no humor in this book. In all illustrations, as is practically the invariable rule when a lawyer is writing, the author is always the hero of the story. (Once it was "one of my associates.") The same matrimonial controversy is used in many instances as an illustrative case. One would believe the author must have won it.

This publication is of practically no value to the ordinary trial lawyer with many relatively small cases and possibly a few relatively large ones. It is designed for a case to which unlimited time can be given—months, if necessary. And attorneys who have been so fortunate as to be retained in such cases do not need to be told how to prepare a case for trial. If they do not already know, they will not find out how to do it by reading this or any other book. It is a trite saying among lawyers that the best way to learn how to prepare a case for trial is to lose some.

Cases such as the one which is the pattern for this book may arise in large metropolitan centers, but even there they must be few and far between. That the author may have lost sight of that circumstance is indicated by his very first words.

The book begins with Chapter I, entitled, "How To Conduct The First Interview With Your Client." Apparently the author has never heard the opening sentence of the classic recipe for rabbit stew.

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