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Gair & Cutler: Negligence Cases: Winning Strategy

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NEGLIGENCE CASES: WINNING STRATEGY. *By Harry A. Gair and A. S. Cutler.* Englewood Cliffs, N. J.: Prentice-Hall, Inc. 1957. Pp xii, 355. $7.50.

A reader's initial reaction to this book might well be that it is merely one or more of the long parade of legal volumes on "how to do it." There are a great many such books and the value of most of them is questionable. They tend to degenerate into a series of anecdotes and reminiscences which, though highly entertaining, are something less than educational. Hence, one might understandably approach such a book in a skeptical frame of mind.

As this reviewer progressed through the book, however, he became convinced that it does not belong in the category described above. By the

time he had finished it he held the conviction that any young lawyer who expects, or entertains the ambition, to become engaged in trial practice would be spending his time beneficially in reading the book. Such a reader will not find that he is pursuing a product of scholarly importance in the conventional sense. The authors do not purport to analyze or state procedural law as such. The book does not contain many citations to cases or other authorities except for a few illustrations largely taken from trial records. What it does embody is a great deal of homely, down-to-earth, practical advice offered by two trial lawyers who have apparently accumulated a good deal of experience on the firing line of litigation. To the cloistered scholar, and perhaps to the learned graduate just emerging from law school and the Jovian heights of law review editorship, much of the book's content may seem superficial; the simplicity of many of its ideas may be taken as a slur on the intelligence of the reader. The novice ought to read it, nevertheless, and absorb some of the essentials, simple though they may be. The chapter on "Getting Ready For The Trial" is good, containing some valuable suggestions on the order of proof, "rehearsing the witness," the nervous witness, and examination before trial. There are some solid practical hints in the sections on selecting the jury. The chapter on cross-examination has many basic ideas which ought to be brought to the attention of new practitioners, such as the suggestion that in many cases it may be the better part of wisdom not to do any cross-examining at all. The final chapter on "How To Settle Negligence Cases" treats an area of practice with which most law students have not had any contact in law school.

The chapter which impressed this reviewer most favorably was entitled "The Proof of Medical Facts." Naturally this subject plays an important part in most personal injury litigation and deserves prominent treatment in a book of this character. It is apparent that the writers have given a good deal of thoughtful consideration to it and have had considerable experience with physicians on the witness stand. They know the pitfalls and difficulties which are simple to avoid if the lawyer is aware of them but which can be disastrous if he is not. It is especially notable that in this part of the book the authors take a forward-looking attitude toward the method of proving medical facts in American courts and "the battle of the experts." They apparently endorse the idea of impartial medical witnesses as a part of the American judicial procedure. On pages 144-146 they say:

> "Perhaps in some enlightened future day, medical evidence will no longer be an excursion into uncertain fields. No longer will an expert on one side testify directly opposite to what an expert on another side says under oath. No wonder a confused jury of laymen know not what to believe. No wonder a jury will let the verdict fall somewhere between the two stools of hired expert testimony. . . . Perhaps the day is not far distant when medical facts will no longer be an issue to be proved on the one side and denied on the other. The medical facts will be proven facts without dispute."

Not the least interesting aspect of this statement is that while the authors seem to be plaintiffs' lawyers and have written the book from the plaintiff's point of view, their position on this issue appears to differ from the viewpoint of the National Association of Claimants' Compensation Attorneys as expressed by the editor of the *Journal* of that organization. In a recent issue of the *Journal*,[1] opposition was expressed to "The Medical Expert Testimony Project" of New York which provides for a panel of court-appointed medical expert witnesses.[2] It is significant that two experienced trial attorneys, who have apparently lived and worked under the New York impartial medical testimony plan, should have the outlook of the men who wrote this book. It would suggest that the general idea involved in the New York plan is not as dangerous to the plaintiff's side of the table as imagined by some plaintiffs' counsel or those who purport to be their spokesmen.

This is not a book for law professors or academic specialists in trial procedure. It should have some value to experienced trial lawyers. But it will make its greatest contribution to those who are new in the field of trial practice. They ought to read it and thereby gain the benefit of many years' practical experience in the law.

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1 Lambert, "Impartial Medical Testimony: A New Audit," 20 NACCA L. J. 25 (1957).

2 See IMPARTIAL MEDICAL TESTIMONY; A REPORT BY A SPECIAL COMMITTEE OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK ON THE MEDICAL EXPERT TESTIMONY PROJECT (1956).