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Biskind: How to Prepare a Case for Trial, and Lake: How to Win Lawsuits Before Juries

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RECENT BOOKS

This department undertakes to note or review briefly current books on law and matters closely related thereto. Periodicals, court reports, and other publications that appear at frequent intervals are not included. The information given in the notes is derived from inspection of the books, publishers' literature, and the ordinary library sources.

BRIEF REVIEWS

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

HOW TO WIN LAWSUITS BEFORE JURIES. By *Lewis W. Lake*. New York: Prentice-Hall. 1954. Pp. xii, 303. \$5.65.

These two books, written by lawyers with extensive trial experience, complement each other—preparation and trial go hand in hand. Though a lawyer writing about one subject must embrace at least a part of the other, the products of Biskind and Lake overlap but little. They should be useful to anyone desiring to study the techniques found valuable by such experienced counsel.

The Biskind volume is the more elementary of the two. A believer in adequate preparation, he attempts to describe in detail the steps of preparation. Beginning with the first contact with the client, Biskind describes for the neophyte each step and each pitfall facing a lawyer up to the jury selection. To an experienced lawyer, or even to a competent investigator, much of what is written is "old hat," but to the uninitiated, an exposure to such suggestions cannot help being good. Dogmatic as many of the statements and suggestions are, the newcomer to the bar will, without a doubt, be better off applying them than in allowing himself to falter through ignorance, doing nothing constructive in preparation.

Biskind discusses such basic subjects as how to conduct the first interview with the client, and how to determine the strong and weak points of his case, how to interview witnesses, how to make a thorough investigation of the facts, how to prepare the law, how to derive the most profit from early and thorough preparation, how to conduct final conferences with witnesses, how to prepare expert testimony, and hypothetical questions, the contents of the trial memorandum, selecting the jury, and how to handle your own emotions.

Lake's book also is an elementary document. I find that Lake is not as dogmatic in his suggestions as is Biskind, and more often intersperses his text with examples. It too is written for the neophyte, though I must say I have seen many trials in which either the new or experienced lawyer could study with profit the simple suggestions made. Written as they are for lawyers, and to help lawyers be more successful in the trial practice, both books contain what may be referred to as many of the "tricks of the trade." This does not paint an agreeable picture of the operation of our adversary system. Twenty years ago,

in a review of another book on trial practice,¹ this statement was made by E. M. Morgan:

"Intended as a lawyer's book, it will in all probability be read only by lawyers and those who would be lawyers. And fervent prayers that the book be read by no others should be raised by those who want to believe, and want others to believe, that a law suit is a proceeding for the discovery of truth by rational processes. If only some lawyer could rise up and honestly denounce Mr. Goldstein as a defamer of his profession! If only Mr. Goldstein himself had written his book as an exposition of the evils inherent in our adversary system of litigation! If only a reviewer could assert that this book is a guide not to the palaces of justice but to the red-light districts of the law! But a decent respect for the truth compels the admission that Mr. Goldstein has told his story truly. He has told it calmly, without pretense of shame, and (God save us!) without the slightest suspicion of its shamefulness. He has shown by his own unperturbed frankness with what complaisance the profession, which would smile the superior smile of derision at the suggestion of a return of trial by battle of bodies, accepts trial by battle of wits. In all innocence, he has produced a document which is a devastating commentary upon an important aspect of our administration of justice."

After reading the Biskind and Lake books, I think that Mr. Morgan's statement is still accurate. However, lawyers must become acquainted with the facts of litigation. I teach trial practice to law students. I firmly believe that they, as students and later as young lawyers, need to study and review the suggestions made in books such as these. It is a shame that so many of the older and more experienced members of our great profession should be so lacking in the elementary skills of trial practice.

The Lake book attempts to describe, by exposition and by example, how to develop the qualities of the successful trial lawyer, how to select jurors and how the lawyer can influence them, how to prepare witnesses prior to trial, how to prepare a lawsuit for trial, how to make opening statements, how to make a direct examination, including an extensive treatment of the cross-examination, how to make a convincing concluding argument, and how selective readings can make a better lawyer.

I conclude with this statement: Accepting our adversary system as it operates today, many of the suggestions made by Biskind and Lake are sound. Competent trial lawyers have grasped them long ago. Newcomers to the profession who desire to become more competent in trials, and many of those who now profess to be experienced trial lawyers would benefit by a careful study of the many suggestions made by these authors. Caution: The books are trade books; they should be read as such.

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¹ Review of GOLDSTEIN, TRIAL TECHNIQUE, 49 HARV. L. REV. 1387 at 1389 (1936).