lization, but only the ideals embodied in a general community method. If we are to make those ideals vital and that method available to others, we must first practice the ideals more fully (for example, by banishing religious and racial discrimination), achieve such understanding as we can of the *social conditions* of the operation of the method, and then translate this understanding into the terms appropriate to widely differing communities. MacIver's insistence that most forms of power be dispersed, and especially that the pyramids of governmental authority, property, and social status be largely independent of one another, is a long step toward the definition of "the essential difference" and so to the needed understanding and translation.

William C. Bradbury†

A CIVIL ACTION—FROM PLEADING TO OPENING OF TRIAL. By Hubert Hickam.* Philadelphia: Committee on Continuing Legal Education of the American Law Institute Collaborating with the American Bar Association, 1953. Pp. xi, 196. $2.50.

This small volume is the second, at least in logical order, of the third series of publications sponsored by the Committee on Continuing Legal Education of the American Law Institute collaborating with the American Bar Association.[1] It is a concise and almost uniformly lucid coverage of pleading tactics and pre-trial strategy. It is not another book of legal anecdotes. In fact, the author's restraint from reminiscences may have been too uncompromising in a few instances where illustrations would have been helpful.

Nevertheless, I am a little puzzled whether the book is intended as a reference book on practice or as a one-reading continuance of legal education. Judging by the foreword and the detailed table of contents, the former is suspected. If this is true, it accounts for and justifies

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1. Actually, series three comprises publications numbered 13 through 18. Mr. Hickam's work is number 14. Number 13, EUSTACE CULLINAN AND HERBERT W. CLARK, A CIVIL ACTION—PREPARATION FOR TRIAL OF CIVIL ACTIONS; REINFORCEMENTS FOR PREPARATION (1951); Number 17, HERBERT F. GOODRICH, RALPH M. CARSON, AND JOHN W. DAVIS, A CIVIL ACTION—A CASE ON APPEAL—A JUDGE'S VIEW AND LAWYER'S VIEW (1952); and Number 18, LOYAL E. KEIR, A CIVIL ACTION—THE PREPARATION AND TRIAL OF CASES IN THE TAX COURT OF THE UNITED STATES (1952) have preceded it. Two others, to round out series three, Number 16, JOHN F. X. FINN, A CIVIL ACTION—THE TRIAL, and Number 17, A CIVIL ACTION—BASIC PROBLEMS OF EVIDENCE, will appear soon.

what otherwise would seem to be unnecessary repetition in the early chapters of the book.[2]

The professed aim of the Committee and that of the author is practicality. "This is a 'how to do it' handbook; also 'when to do it' and 'whether to do it'."[3] The Committee says that all the publications in series two and three ". . . constitute helpful guides to the general practitioner and find a ready place in most law office libraries, although they are also used in connection with lecture courses, institutes and seminars for practicing lawyers throughout the country."[4] And specifically in behalf of Mr. Hickam's volume: "Both inexperienced and experienced trial lawyers will find in these pages an invaluable guide."[5]

That should be sufficient warning—teachers stay out! If this then be a trespass, one plea in justification: Accepting the word of the Committee, that the book would be helpful to inexperienced lawyers, the acid test should be its value to law students. If further justification is needed, it may be added that law schools are not as unconcerned with practical problems as might sometimes appear. Furthermore, once in a while open season is declared by a practitioner upon the literary work of a law teacher.[6] It should work both ways.

From the teacher's desk let it be confessed that one chronic perplexity is how better to nudge the potential lawyer into habits of thorough preparation. Or, stated more positively, how to convince a student that during his years of inexperience he has one asset the experienced lawyer does not have—time. On that score Mr. Hickam's book is helpful for two reasons: It removes a few of the "how to" and "whether to" bogies which are inordinately time consuming for the neophyte; and in every line, consciously or unconsciously, it admonishes exhaustive preparation.

It will be noted that pleading is first essayed. The author, as he suggests at the beginning of chapter II, gave serious consideration to the order in which the various subjects should be discussed. Undoubtedly, from the standpoint of reader interest, he would have preferred to open the book with a subject other than pleading but from the standpoint of logical development felt bound to consider first things first—hence, pleading. All of which, for the lawyer preparing his first few

2. Compare, for example, the discussion on pp. 8, 14 and 15.

3. P. 2.

4. EUSTACE CULLINAN AND HERBERT W. CLARK, A CIVIL ACTION—PREPARATION FOR TRIAL; REINFORCEMENTS FOR PREPARATION iii (1951).

5. P. iii.

6. An example of this is the somewhat devastating review by John Allen Appleman of Professor Ehrenzweig's NEGLIGENCE WITHOUT FAULT, in 47 NORTHWESTERN L. REV. 933 (1953).

cases, raises the question: "What are first things?" After reading a small mountain of practice books, the beginner still fails to find any really adequate discussion concerning how much analysis of law and facts should be completed before even a defendant's pleading is prepared. Obviously, much of the analysis must be done before a complaint can be, as Mr. Hickam advocates, "custom made." How much is done before drafting a pleading by a lawyer of Mr. Hickam's wide experience? How much should be done by an inexperienced lawyer? How will the preliminary research be integrated with the trial brief and case anaylsis to avoid duplication of effort? Perhaps these are questions too elementary to warrant generalization from experience, but they are questions which bother a beginner and (more's the rub) a teacher of beginners.

The completely inexperienced lawyer will probably feel a certain vague disappointment with the chapters encompassing the pleadings. Actually, this discontent only emphasizes the difficulty of propounding the "how to" of pleading by abstract discussion. Perhaps more illustrations would be helpful for the beginner, and I suspect that Mr. Hickam has inadvertently left him on the ropes in two or three instances. In the otherwise excellent discussion of discovery procedure, one finds this statement with respect to the use of the discovery deposition on cross-examination of the deponent:

> (14) the Deposition May be Read as a Whole at the Trial. Obviously, the deposition cannot be read originally as evidence on behalf of the deponent if the deponent is present in court and able to testify. It should be admissible in evidence as a whole, however, when introduced by the opposing party to prove admissions of the deponent, but this rarely proves advisable.[7]

And later:

> But, if on his deposition he should testify to an admission against his interest which he so made, then he can be compelled by his opponent to testify to the admission at the trial. His own counsel cannot read the deposition as a whole at the trial. Therefore, no risk is run by asking such questions (as to conversations) on his discovery deposition.[8]

I do not mean to imply there is any inconsistency or inaccuracy after the two statements have been studied in their context. But the inexpe-

7. P. 98.
8. P. 105.

rienced practitioner wonders: How can the witness *be compelled* to testify to an admission? If he doesn't, won't I have to use the deposition? If I do use part of it, then isn't it all admissible?

Also there is no inaccuracy in the statement on page 66 with respect to photostats of documents:

> Blowing it up to larger than natural size can be done in some circumstances for the purpose of emphasizing the importance of the document.

But the beginner will immediately wonder: What circumstances? What do I do with it? How do I get it before the jury? If these remarks seem hypercritical, let me add that the book is so well suited for "how to" teaching that we plan to use the whole for reference and particular chapters, such as that on Visual Evidence (XI)[9] and those on Discovery (XII *et seq.*), for class discussion in a course on Trial Practice.[10]

Nor is any implication intended in what has been said that the practical hints are too elementary for the experienced lawyer. In a book replete with ideas, even the most experienced lawyer will obtain at least one new idea or a fresh approach to an old one worth his two dollars and a half. Vicariously speaking, even the "old hand" should find considerable value in the Discovery and Pre-Trial Conference chapters.

But the one for whom the book is really "custom made" is the lawyer with some knowledge of "how to" but limited experience. For him, the outstanding merit of the handbook pays off—i.e., the concise treatment of several subjects upon which other materials are sparse or scattered. The chapters on Discovery and Visual Evidence have already been mentioned; those on Summary Judgment (VI), the Chronology Chart (VIII) and Stipulations (XVI) are particularly good (that, in spite of the fact that I feel the latter chapter could have included some short discussion of the effect of, violation of, and relief from stipulations).

One comment seems appropriate from the standpoint of not only the experienced and the inexperienced lawyer, but also of anyone interested in judicial administration. In chapter XXII, entitled "Should a Jury Trial be Requested?", the reader is advised to take several things into consideration in determining whether he will ask for a jury trial. In effect they are:

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9. This chapter is a revision of the author's popular address prepared for the 1948 annual meeting of the Indiana Bar Association and published in 23 IND. L.J. 395 (1948).

10. At Indiana University School of Law, Indianapolis Division.

1. Jury sympathies.
2. Jury prejudices.
3. Likelihood of a better outcome before a particular judge.
4. Your skill and your opponent's skill before a jury.
5. Whether it is a plaintiff's jury or a defendant's jury.
6. The jury's decision is immediate; that of the court may be delayed.

To one who has been outspoken in defense of the jury system, the stark enumeration of those considerations comes as something of a shock. But I am sure Mr. Hickam intended no critical implication. He implies with complete objectivity: "Like it or not, these are things to be considered."

In short, the fate of the novice in law has always been an embarrassing awareness of his shortcomings in the tactical and mechanical techniques of practice—tactical things like whether to attack a pleading; how to approach a prospective witness, and mechanical things like how to prove a will; how to file a complaint. In so far as they can substitute for actual experience, practical guides like Mr. Hickam's fill a definite need. Granted, some of the material is elementary, but there are few things more elementary than a June graduate filing his first complaint.

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