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Book Reviews

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BOOK REVIEWS

MOTIONS DURING TRIAL—THE ANATOMY OF A TRIAL. By Howard Hilton Spellman*. Englewood Cliffs, New Jersey, Prentice-Hall, Inc., 1960. 362 pages. Price: \$15.00.

The trial lawyer, especially the young one, is often faced with this problem during trial: "It is time to make a motion and I know what I want to say, but I am not sure how to express myself". The author has solved this problem in such a thorough fashion that the trial lawyer would do well to make room for this volume in his briefcase when heading for the courthouse. In all modesty the author proclaims this book as the first work completely devoted to motions during the actual trial of a case. The 317 motions contained within its covers are said to encompass more than 1000 possibilities for making effective motions. The motions are stated verbatim as they should be presented to the court and are stated concisely so that the judge is not forced to wade through a tangle of generalities before he comes to the substance of what the moving party is attempting to say. The author feels this direct quoting from his book is desirable since the actual wording of trial motions has been crystallized by custom and usage in all jurisdictions. The distinct value of the book lies in the aid it gives the lawyer in properly framing his trial motion so that he can get the desired ruling in the trial court, or if this not achieved he can lay the groundwork for an appeal. Frequently cases are lost upon appeal because a motion was inadequate to preserve for review the point contended for. This book provides an adequate remedy for this situation.

Equally as important as the correct wording of a motion is knowing when and how to make it. This is the subject of the initial chapter, which treats the basic content of motions, the tactics behind them, and the part played by an offer of proof when making motions. Then come the motions themselves broken down logically and chronologically into groups which correspond to the various segments of the trial itself. Every facet is covered, from attacks on jurisdiction to proceedings after verdict, and including such topics as picking the jury, opening address, evidence, offer of proof, exhibits, demonstrations, experiments, compelled testimony, direct-

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ed verdicts, and all the other lesser publicized aspects of a trial. At the beginning of each chapter is a concise summation of the law and reasoning behind the motions in the chapter, and interspersed among the motions themselves are the reasoning and tactics behind the individual motions.

The author, whose background and training are grounded in the laws of the State of New York, understandably relies heavily upon and quotes freely from the New York Rules of Civil Practice, but he also slants his book heavily in the direction of the Federal Rules of Civil Procedure. This enhances the value of the work for lawyers in those states which, like North Dakota, have adopted the Federal Rules.

If we accept as true the trial lawyer's unwritten precept: "When in doubt, make a motion", then this work contains the machinery for disguising all doubts. It is equally valuable for the attorney who has no doubts to hide but who would appreciate a handy and concise reference from which to state precisely the basis for his motions during trial.

TIMOTHY Q. DAVIES

TRIAL BY NEWSPAPER. By Harold W. Sullivan. Hyannis, Mass.: The Patriot Press, 1961. 250 pages. Price \$5.00.

As the title implies, this book concerns itself with the amount of newspaper publicity which is in evidence prior to and during the trying of criminal cases.

Mr. Sullivan cites a number of cases in which the newspapers, according to his views, have made it impossible for the accused to receive a fair trial. In discussing these cases Mr. Sullivan has included excerpts of the headlines which have been used to describe the events leading up to the trial and a report of the trial while it is in progress.

By using "sensational" type headlines, slanting the testimony of witnesses, publishing pictures of the defendant in identification cases and generally using a criminal case to build up circulation of papers, Mr. Sullivan believes that it is practically impossible for a defendant to receive a fair trial.

It is Mr. Sullivan's contention that Judges should cite newspapers for contempt of court in all cases in which a newspaper engages in anything but factual reporting of the events leading up to a trial

and the testimony during the trial itself. Any speculation, editorializing or misleading statements made before the case is closed infringes upon the accused's right to a fair trial.

The lack of cases dealing with contempt of court, brought against the newspapers, is in Mr. Sullivan's opinion, due to the fact that even Judges must be fearful of the power of newspapers in forming public opinion. In cases where Judges are elected, rather than appointed, the very livelihood of the Judge is at stake if he opposes the newspapers, in their coverage of a trial or in statements by the press concerning the way in which a trial is progressing.

Mr. Sullivan feels that newspapers should be free to relate all the facts and circumstances of the crime itself, but without adding any editorial conclusions or inferences as to who is guilty. All bias, editorial comment and dramatic effects for the sake of selling more papers should be eliminated. Only after the termination of a case should interviews and comments on the evidence be allowed and then because fair criticism on the action of judges and juries is necessary from the standpoint of sound public policy.

Trial by Newspaper is a thought provoking and interesting book on this subject but one must keep in mind that some of the most flagrant examples were used and these were in connection with cases, some of which were of nationwide interest. It is also necessary to remember that not all newspaper editors and publishers are so anxious to increase circulation that they will knowingly print anything, which will, in anyway jeopardize one's rights to a fair trial.

One gets the impression in reading this book that while Mr. Sullivan is sincerely and keenly interested in this problem, he has an "ax to grind" with editors and publishers in general.

RICHARD RAMAGE