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Book Review

Alfred W. Gans

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Book Reviews

Reviewed by Alfred W. Gans*

BETTER SETTLEMENTS THROUGH LEVERAGE, by Philip J. HERMANN. Aqueduct Books, div. of Lawyers Co-op Publ. Co., Rochester, N. Y. 269 pp. 1965.

This practical work by a practical workman is highly recommended to all lawyers engaged in negligence case advocacy and as well to all casualty insurance personnel involved in accident settlement negotiations. Its weight lies in its sensible contents, for not only is it completely non-technical, but happily of a manageable size not found in traditional lawbooks.

Of course, this is not a lawbook. It is a lawyer's book—a negotiator's tool. It carries forward the now popular *transactional* approach of current continuing legal education. We have had much on "how to" counsel a client on estate planning—and on the myriad other phases of "counselling" office practice. There have been numerous worthwhile works on "how to" plead, to prepare for trial, to try, prove, argue and appeal, civil and criminal litigation. Here, for both advocate and for lay insurance negotiators, is supplied an important missing piece in the puzzle—an effective tool on how to settle those endless negligence files piling up in offices of lawyers and insurance carriers, and the masses of negligence lawsuits clogging the dockets.

The forewords by three outstanding lawyers for plaintiff, defense and insurance carriers point up the practical importance, for lawyers and adjusters, of understanding the psychology of settlement. And the author thoroughly achieves his goal—the analysis of the art of negotiation. He accomplishes this by showing what makes negotiators "tick." Vividly he portrays emotional and visceral factors—"levers"—that should be forcefully applied, along with the logic of law, medicine and facts, to accomplish a successful settlement despite an opposing high plaintiff's demand or an opposing low insurance offer.

Everyone can, and should, appreciate the studied impartiality of Hermann's approach. One of the bonuses of this joyously readable book is the deliberate "two-sidedness" in it. He has achieved objectivity to show "how to do what must be done" at the bargaining table, by plaintiff's lawyers, by insurance adjust-

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ers, by defense counsel without favor to either side of negligence civil advocacy.

Mr. Hermann, as a thread running through his dissertation, correctly compares elements involved in the art of settling personal injury claims to the psychological warfare relentlessly used by skilled poker players. Sometimes the negotiations are like stud—just enough of the opponent's cards are revealed to exert tremendous leverage. Other settlements are like draw—you don't know the adversary's cards at all—but you do know his bets! How do you probe for his vulnerability? Then how do you, to your advantage, apply leverage to his discovered weaknesses, doubts, uncertainties and fears?

This probing and applying is what this concise volume is all about. And it was high time that someone wrote it! In addition to thousands of clogged court dockets, millions of dollars, myriad manhours (professional and lay), plus the personal agony and worry of litigants, have been thrown into the sewers through fumbling, ineffectual and over-delayed negotiations. Better settlement negotiators create better satisfied injured claimants, more reassured individual insured defendants, more financially sound liability and casualty insurance companies, much more fully recompensed legal practitioners, and fewer cases choking court calendars. Everyone gains by better understanding and practical use of the levers applicable to settlement negotiation.

Abstractions—too much with us in too much conceptual law writing—are refreshingly lacking here. Mr. Hermann gives concrete and down to earth suggestions, hints, practical tools forged from the crucible of experience of trial counsel on both sides of the table, and to all insurance carrier negotiators from the independent adjuster or company field claimsman on up through local claims managers, regional managers, and home office executives. In clear, simple English he describes “the levers”—uncertainty, technique, litigation, eagerness for trial, competence of trial counsel, and insurance limits. The indispensable salesmanship techniques, especially of closing a favorable settlement at the right time, are there for you—read, study and apply them.

Throughout, the importance of jury verdicts in similar cases is given the great weight which is attributed to it by most skilled and experienced trial lawyers.

The work teems with nuggets of practical advice. Quotable quotes abound, but space precludes their repetition here—along

with this reviewer's disinterest in applying the scissors and glue-pot to repeat what is readily available in the book itself. But for those interested in "direct citation," your attention is specifically directed to valuable pointers on such pages as 4, 5, 12, 13, 17, 18, 24-30, 33-36, 38, 49, 75, 78, 80, 83-85, 110, 111, 117, 119, 122, 124-127, 130-132, 137, 143—just to cover particularly worthwhile points and tips in the first four longer chapters out of the eleven in the book.

In *Better Settlements Through Leverage*, Phil Hermann has "talked sense to the American people's" legal counsel and insurance companies. Buy his book and reap your share of its rewards.

* * *

*Reviewed by Howard L. Oleck**

EQUAL JUSTICE UNDER LAW: THE SUPREME COURT IN AMERICAN LIFE. Published by the Foundation of the Federal Bar Association, Washington, D. C., 1965. 143 pp. Produced as a public service by the National Geographic Society. \$1.25 paper-bound; \$2.75 cloth bound.

Most Americans believe, whether keenly or vaguely, that their nation is today, as it was in its beginnings, a people dedicated to a great quest. President Johnson echoed the old but ever-new ideal when he spoke of the American dream of building "The Great Society" of free men.

In the American dream there is one chief theme, always, that is unique—the dominant motif of the rule of written law, of the Constitution. People of other nations often have wondered at, or scoffed at, the "legalistic nature" of Americans. Yet this legalism is the very essence of the American culture. In it lies the basic concept from which flows everything else—that men should be ruled by law, not by men.

These things are mere truisms, perhaps, to most Americans. Yet, these are the truisms that kept them staunch at Valley Forge, Antietam and Bastogne. Even the soldiers in Pickett's charge at Gettysburg charged to their deaths for the selfsame idea, no matter how mistaken their interpretation of it. The Con-

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