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Book Review

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BOOK REVIEW

BELLI, MODERN TRIALS. The Bobbs-Merrill Company, Inc., 3 volumes, 2736 pages, \$60.

This is a most unusual law book. It breaks with tradition in many ways, most of them stemming from the fact that it is a plaintiff's book; three volumes of advice to plaintiff's counsel, by a plaintiff's counsel *par excellence*, whose one thought is to get the largest possible judgment or settlement for his injured client. Hence the major unconventionality in this work is its lack of objectivity—a frank and open lack, for which no criticism is due to Mr. Belli. In court, as we can see from the many examples given of his own work, he is a fierce and unrelenting advocate for his client, the plaintiff, an advocate who dramatizes the evidence of the defendant's wrong and of the plaintiff's injuries so that the jury will be induced to bring in what he calls "the most adequate award," a verdict for the most dollars that the judge and the appellate court will allow. In this work Mr. Belli transfers that zeal and skill to plaintiffs as a class, and writes for the lawyers who will prosecute the cases of many claimants. Yet this is not a book for plaintiffs exclusively, for lawyers who defend large corporations and insurance counsel will and must read it, for here is a textbook of the strategy and tactics which they must be prepared to meet.

A chapter-by-chapter description of the work would take too much space, but at least the subject matter may be indicated. Some chapters are written in conventional law-book style and deal with tort law, pleading, instructions to the jury and medical malpractice. Some are predominantly advice and instruction on investigating the case, settlement, the selection of a jury, trial by blackboard, witness examination and final argument. Several deal almost entirely with medical questions; the book sets out a number of reports of medical examinations as examples (perhaps too many) and most of the chapters on medical demonstrative evidence and on pain and suffering are medical texts. These are supplemented with a medical glossary and a long descriptive bibliography listing the medical authorities on the various parts of the human body and on almost every type of injury that may occur to it. No less than seven chapters treat demonstrative evidence—that which the jury can inspect directly by seeing, feeling, hearing, tasting or smelling. Its many forms are discussed—experiments, models, pictures, examination of the person in and out of court, medical evidence such as X-rays, skeletons, models and surgical instruments. The application of this evidence to civil cases, criminal cases and its uses on appeal receive very full treatment. In these chapters another variation in style appears; they consist largely of the recital of the experiences of Mr. Belli and the many attorneys (it takes five pages to list them) who suggested other examples.

Similarly, a detailed critical analysis of the work would be much too

lengthy, but some general observations can be made. In some instances the author's lack of objectivity leads him to overstate the law in the plaintiff's favor, but once his natural bias is understood the book furnishes a valuable starting point for the legal research of plaintiff's counsel, who should nevertheless understand that he may have to fight for the acceptance of some of the law stated. The "how to do it" chapters are replete with the author's techniques, rules, theories and prejudices on the selection of jurors, examination of witnesses and arguments to the jury. Some of these theories and tactics may not appeal to the reader, but they seem to work very well for Mr. Belli, and they are here to use, modify or discard as the tastes and personality of the practitioner may dictate. Many examples of demonstrative evidence will stimulate the reader into thinking of applications and modifications for his own case, and they are liberally interlarded with convincing expositions of the law justifying and allowing their use.

The reader sees soon enough that this is a book for the big case, and the procedures described are "big business" requiring a vast outlay—hired investigators, cameramen, artists, specialists, expensive experiments and demonstrations, models of everything from oil derricks to eyeballs, elaborate brochures as "selling documents" to induce settlements. Yet there is much here for the attorney with the small case that will not justify so large an expenditure of time and money. In the chapter on investigations are found many suggestions and short-cuts to information that will save the lawyer with the smaller case much time and trouble. Much demonstrative evidence requires more imagination than cash. Kodaks can take pictures as well as aerial cameras, a model may be a dime-store toy, and the blackboard is an ever-present piece of courtroom furniture that can be used to demonstrate the calculation of damages, the facts of an accident and even rules of substantive law.

The author rarely lets the reader forget his primary object—the largest possible recompense for the plaintiff. The first chapter sets the tone of the book. It contains no less than seven photographs and five pages of description of a case handled by the author in the author's manner—a 685 pound plaintiff, unable to attend the court under his own power, too big for an ambulance or the courthouse elevator, is brought to the trial in a moving van. Let the author finish the story:

"Prior to trial \$1,500 had been offered in settlement. Upon the appearance of the plaintiff in a moving van, the offer went to \$4,500. On the arrival of the crane to lift the client to the second floor, the offer came to \$7,500 and after lunch (plaintiff eating 10 eggs and 5 slices of ham while lying on his bed in the corridor) the case was settled for \$10,000, the full policy limit. The future medical and other care for this boy of 29 will run much higher. Society through government and charity will inevitably pay the rest."

This illustration sets the tone for the book. Mr. Belli is a San Francisco lawyer but he creates what we would call in the vernacular a Hollywood production, a production carefully designed and directed for its one showing before his audience, the jury.

In one of the final chapters the "most adequate award" is described. This is largely the recital of the tremendous sums that have been paid to plaintiffs in reported and unreported cases. Anything under a quarter of a million dollars is hardly worth mentioning, although the author does cite quite a few verdicts for lesser injuries in the \$85,000 class. Much of the chapter on pictures and practically all of those devoted to exhibition of the body and to medical demonstrative evidence are frankly designed to make the flesh of the jury crawl, to arouse an empathy that blots out other considerations so that the injury becomes the "focal point of the trial." Pictures of the victim before surgery, during surgery and at every stage since, color pictures of burns, infra-red pictures that depict bruises better than those taken on ordinary film are used. The mangled body is bared, skeletons and models designed for anatomy classes are used to demonstrate in minute detail the injury, its repair and its after-effects. The elements of the damages are set out on the blackboard at several stages of the suit. The percentage of permanent disability is multiplied by the plaintiff's prospective earnings for the rest of his life. His life expectancy is translated into days and a dollar value placed upon each day of pain and mental suffering. So demonstrated any case of disability goes well into five figures; it is a poor one that will not go six.

Now Mr. Belli's logic is unassailable, his blackboard calculations follow the rules of the measure of damages, his ethics are impeccable. As he says, I would not trade my body for the plaintiff's if he threw in his judgment to boot; I would not willingly undergo the same experience for the money. Yet what of the poor defendant? It is true that in the thinking of many too much emphasis has been placed upon him in the past; the focus has been upon his acts and the question posed has been whether we may characterize them as negligent. Belli shifts the jury's eye to the plaintiff and to his pitiful condition and magnifies that condition so that compensation, not negligence, is the primary thought. But can even railroads and insurance companies afford such magnanimity on the part of courts and juries? Can society bear the cost of so enriching these pitiable people? Remembering that an award serves the dual purposes of compensating the plaintiff and punishing a defendant, is not such a fine too heavy for most of the slips and moments of thoughtlessness that we call negligence? Much of today's accident toll is inevitable, at least in the sense that it is predictable. No matter how careful we try to be, we can expect a certain irreducible minimum of negligence. I fear that as the techniques so well demonstrated by Mr. Belli become more widespread, as verdicts rise and more plaintiffs recover, some adjustment will have to be made. Perhaps we shall move toward an "enterprise liability" where com-

pensation is wider spread, but we cannot do so in terms of Belli's "most adequate award." Perhaps the rules of damages need an overhaul. Maybe there will be a shift toward attempting to determine what actual disablement and loss of earnings will result from, for example, the loss of a lawyer's leg or arm, rather than assuming that any dismemberment causes a fixed percentage drop in earning power. Perhaps rehabilitation will become the goal rather than replacement with dollars. Objective limits or measures of pain and suffering may have to be devised.

One thing is certain. Belli's approach, methods, techniques, tricks if you so choose to call them, are going to make things a lot tougher for defendants and insurance companies. It would be strange if the success of these tactics were to cause insurance companies to shift to advocacy of automobile compensation and other plans that would make the basis of compensation broader, but the amount smaller, than under our traditional negligence-damage formula.

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