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Book Reviews

James W. Johnson

William S. Murray

James P. White

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BOOK REVIEWS

DELAY IN THE COURT. By Hans Zeisel, Harry Kalven Jr. and Benard Buchholz. Boston: Little, Brown and Company, 1959, 313 pages. Price: \$7.00.

As the title implies, this book concerns itself with an urgent problem in the administration of justice, that of court delay and congestion. The authors do not try to affix the blame or cause for this problem, but accept it and set forth ways to rectify it.

The book is logically divided into five parts. The first part is a statement of the problem where it is pointed out that court delay is not recent, but quite old, and much of the delay is inherited. The author's also analyze the courts operation to determine which type of case takes the most time before final disposition, indicating that any remedy to be effective must keep these time consuming cases in mind.

The second, third and fourth divisions of the book cover three means of reducing court delay. The first remedy discussed was reducing the trial time of a case. This could be done by elimination of jury in personal injury cases which would result in a 40 percent saving in trial time. Another remedy discussed is settlement through greater use of pre-trial conferences and impartial medical testimony. The last remedy proposed was more judge time, accomplished by more and longer trial days, and increasing the number of judges. All of these suggested remedies are discussed in detail as to their effect and feasibility.

The last part of the book concerns related problems of court delay such as elimination of claims before they get to court and forecasting future workload of courts to enable them to prevent delay before it occurs.

Delay In The Court is a thought provoking analysis of court congestion with concrete proposals to correct it. The book should be of considerable interest to all people concerned with the administration of justice.

James W. Johnson

FEDERAL SOCIAL SECURITY — A Guide to Law and Procedure. By Charles I. Schottland (former Commissioner of Social Security) and Ewell T. Bartlett (Assistant Director, Bureau of Old-Age and Survivors Insurance). Philadelphia: Joint Committee On Continuing Legal Education of the American Law Institute and the American Bar Association, 1959, 201 pages. Price: \$3.00.

Lawyers and laymen alike will welcome this authoritative summary of the law and procedure relating to Federal social security programs. Increasingly the general practitioner as well as those specializing in corporate and tax matters are confronted with questions related to social security. The answers to these questions are frequently difficult for the lawyer who has had little contact with the problem to obtain. This volume attempts to present some of the answers and it reduces the Government's expansive laws and regulations to a volume readily usable by the practitioner who may be called upon to advise clients on various aspects of social security problems.

This book on the technical details of the program is therefore a must for any lawyers' reference shelf or library. The book is detailed in its explanation of the claims process and especially the remedies of a claimant who is dissatisfied with his decision. The book is so prepared that it will serve both the purpose of a routine referral to the appropriate Social Security office or enable the lawyer to ascertain the particular question that may be involved and offer direct advice and representation.

An indication of increasing participation of practicing lawyers in social security claims work is found in the large number of administrative hearings held in connection with disallowed claims, as well as the increasing appeals to Federal courts. The book contains information on how to secure approval of fees where the normal fee specified in the Regulations is found inadequate.

The authors are attorneys and distinguished authorities in the field of Social Security, one a former Commissioner of Social Security, and the other the Assistant Director of the Bureau of Old-Age and Survivors Insurance.

Joint Committee on Continuing Legal Education
of the American Law Institute and the American
Bar Association

MODERN DAMAGES. By Melvin Belli. Indianapolis: Bobbs-Merrill, Inc., 1959. Price: \$60.00.

In 1955, Melvin M. Belli wrote *Modern Trials*, a three volume work which has since been supplemented by 1958 pocket parts.

Mr. Belli will also be remembered as a participant in a panel, along with Mr. William deParcqu of Minneapolis, at the 1955 State Bar Convention in Williston, North Dakota.

Only Volume I of *Modern Damages* is published to date. Vol-

ume I is basically a survey, state by state, of the size of awards in personal injury cases, with commentary on the standing of that state with regard to size of verdicts.

There is an introductory section, however, containing a scholarly and informative historical sketch of each system of law, past and present, such as Roman, Babylonian, Mohammedan—with a longer portion on the roots of the Common Law. All of this leads down to a tracing of the history of liability and damages.

The index in Volume I indicates that Volumes II and III will continue the tabulation and commentary on damages, particularizing it into such Chapters as "Tabulation of Cases Involving Diseases and Other Conditions Traumatically Caused," "Tabulation of Cases for Wrongs Other Than Negligence," "Damages in Eminent Domain" and "Damages in Contract Actions."

Belli's approach is not to write a text on the law of damages, but to examine in detail the awards that have been given by courts, in each specific locale, for each specific type of damage.

Accordingly, the value for appellate and trial courts, in considering the damages and the measure of damages and the measure of damages, will be that it fills a void never before encompassed.

Melvin Belli wants to raise the level of awards generally, but more particularly to raise the verdicts in low-verdict areas, to be in line with those he considers adequate.

Evidently, the lowest award areas in the United States are in upper New England, North and South Dakota, and other isolated areas, including northern rural parts of the author's own state of California. Canadian awards fall in the same category.

It is characteristic of the areas noted for high awards, such as San Francisco, Miami, and Chicago, that they are polyglot metropolitan areas; that a highly organized but numerically small number of plaintiff-personal-injury specialists reap the most of the harvest, and that the city bar is Balkanized and segregated into highly skilled specialist factions. It is characteristic of the low-verdict areas that they are rural or non-urban; that they are geographically northern; that the population is homogenous, of Old American or Germanic-Scandinavian composition; that the attorneys are less specialized, usually "general practitioners." These are the reviewer's, not Belli's, analysis from the tabulations. Belli tries to tie in low median income for lawyers, in an area with low verdicts. This is not necessarily established by the facts he offers.

It does not consider non-legal or extra-legal financial status, such as many country lawyers attain through their profession. And it appears, despite the statistics, to over-weigh the income figures, based on what the elite minority of personal-injury specialists attain in, for instance, Minneapolis. (Minnesota is an area highly regarded by Belli for fat verdicts. Actually these tend to be concentrated in the metropolitan area, with a few exceptions.)

North Dakota lawyers will want to know what Belli says about this state. In general, he puts it in the "cellar" for verdicts, although not quite the absolute bottom.

This kind of book would be extremely dull and statistical if written by anyone other than Belli. It is liberally interlarded with strong opinions and colorful, dogmatic comments.

Belli criticizes farmer-jurors for being stingy with verdicts. The author ties this in with the generous subsidies he asserts farmers get from the government. Needless to say, these remarks to a North Dakota jury would not achieve the "adequate award."

The school of thought which Marvin Belli represents has many opponents. However, the extremely thorough and meticulous way in which he prepares a lawsuit, and presents his evidence, is something that no trial lawyer can disagree with and from which most of us can learn.

To analyse the reason why juries one place bring in verdicts larger than in another place, it would be well to clinically separate the factors that may be involved. One projection of these factors might be:

- (1) Ability in technique and presentation of the lawyers.
- (2) Attitude and proclivities of the judge.
- (3) Inherent attitude or position of the jury member, based on the environmental and hereditary factors that have formed his personality.

It is most natural that the things stated in (3) apply to (2), because the judge is a product of the same influences that molded the juror, except that he is legally and judicially trained with an "overlay" of professional attitudes which only disguise the inherent, underlying attitudes he has formed in growing up in the environment which he inhabits.

As to (1) above, the metropolitan personal injury lawyer may do a superior job of preparing and submitting his case. As long as he is in his own milieu, that factor is especially important. The "country" lawyer can learn from his on mechanical and technical

procedures. This technical gap will be progressively closed, as modern techniques have spread and been learned. This mechanical or technical factor should not be over-estimated. Specialization, however, means a higher degree of skill with regard to a particular purpose, and is analogous to the principle of "concentration of fire" in the field of military tactics.

There is a reverse side to the coin. Only time will tell whether the city personal-injury specialist will die more solvent than Mr. X, who probated estates and quited titles in some county seat town in North Dakota. As to who dies happier, no one knows. As to solvency the issue is definitely in doubt.

Since, however, any given lawyer has a given amount of time to apply to his profession, it is manifest that the specialist, in intensifying his skill in one field, will lessen his potential in any other field. He can reduce this detriment by applying a greater proportion of his total time to his profession, but this factor is a variable and applies more directly to his overall professional success, since the formula for that seems to be work plus ability; or if ability is lacking, then work itself seems to sometimes make people successful. The fable of the tortoise and the hare is more applicable here than any legal citation.

As to (2), this is minor. Judges in low-verdict areas probably are ahead of the bar, in their receptiveness to new techniques, and are always receptive to good preparation and grounding in the law.

As to (3), this enters the field of the sociologist. There is a wide cultural gap between Market Street or Telegraph Hill, and the county seat in North Dakota. This does not infer a superiority or inferiority, just a difference in cultures. Culture in this sense does not mean symphony orchestras as compared with the municipal band. It means everything that is different between the two groups.

The same social structure that produces huge verdicts also produces the gas chamber, the blackboard jungle, and the racial problem. It does not mean that the one group is more advanced or civilized than the other, nor on the level of "good or bad."

This cultural gap does not only exist in the larger sense, but in the smaller, between communities in the same geographical group. For example, any attorney who tries cases would be very foolish if he did not recognize a difference between a Minot jury and a Bismarck jury. Certain communities within North Dakota

could well be stamped "Conservative on Civil Cases—Convicters on Criminal Cases." There is the factor of the infiltration and influence of out-of-state residents in a community, as in Williston. The group attitude in Grafton, Valley City or Wahpeton is markedly different from that in Dickinson or Mandan. The difference between Fargo and Moorhead is so marked that an outsider might wonder what psychological effect a river has.

It is not possible to be objective about these things, and complete objectivity in the law is a myth rather than a fact. It was a justice of the United States Supreme Court who scorned the breakfast theory of jurisprudence but it does exist.

Because the factors involved are so largely sociological rather than legal, it is believed an intelligent estimate can be made, properly weighing the predominant factor of jury attitudes, and the other mentioned, as to where the first verdict for over \$100,000 will be received, if ever, in North Dakota. It is believed these are the probabilities:

1. Fargo (Cass County)
2. Williston (Williams County)
3. Minot (Ward County)

In omitting Burleigh County, (Bismarck) it is recognized that some large District Court verdicts have been received in that county. This county is our "most urban," meaning that it is the county which has the highest percentage of population within an incorporated city, the ratio being about 75-25. The essential conservatism of a state capital city, however, is verified by comparison with, for instance, Olympia (Washington), Madison (Wisconsin) or Pierre (S. Dak.). Metropolitan areas in these respective states return larger verdicts than do the relatively small capital cities. The other factors present have been weighed, and this estimate is deemed accurate. Grand Forks, the State's second largest city, is not even considered, on the basis of its record.

It is considered extremely unlikely that any really "small" county will ever, in the foreseeable future, be the situs of such a verdict.

Modern Damages will not be the invaluable tool of reference that *Modern Trials* is, on the average lawyer's shelf. It does belong in the comprehensive law library, at the right hand of every trial and appellate judge, and certainly in the law school.

WILLIAM S. MURRAY*

* Member of the Burleigh County and North Dakota Bar.

THE VOICE OF MODERN TRIALS. By Melvin Belli. Album of 3 records. Price: \$15.00.

This album represents a new educational tool in Mr. Belli's efforts to teach and improve trial technique. He has recorded opening statements and arguments, made by him, in three major lawsuits.

The album consists of three records, thirty minutes to a side, or three hours total listening time.

The records are the long-playing type (33 rpm) and the technical quality is excellent.

This album is of interest, in that it gives an opportunity for aural review of Belli's courtroom style. As is well known, the printed word is often lacking in putting over the effect of the actual speaking voice.

When this reviewer first began to listen to the records, he was struck by what, to his ears, seemed an effete, pedantic and self-consciously "cultured" or "talking-down-to-audience" effect. This impression wore off after a few minutes, as the excellent organization, superb clarity and effective presentation began to take hold.

Belli's courtroom utterances, based on these records, have the following noteworthy features:

1. Complete lack of oratorical or declamatory tone.
2. Excellent organization and preparation, in evidence.
3. Far less reference to tools of demonstrative evidence and visual exhibits, than was expected.
4. A scheme of organization emphasizing the total version of plaintiff's case, rather than particularizing the testimony of the individual witness.
5. Some factual emphasis and argumentative material that would not be good before a North Dakota jury.
6. A surprising lack of contentious or adversarial color to the presentation.

The three actions from which these arguments and opening statements were taken are:

1. A Kentucky railroad crossing case, (wrongful death verdict exceeding \$160,000.00).¹
2. Personal injury action involving Maureen Connolly, tennis champion.²

1. *Fisher v. Louisville and N. R. Co. (Kentucky)* (Case pending on Motion for New Trial).

2. *Connolly v. Pre-mixed Concrete Co.*, 49 Cal. 2d 483, 319 P.2d 343 (1958).

3. An interesting wrongful death case in which liability was admitted, wherein a young naval pilot crashed his helicopter due to a manufacturing defect.³

In all of these actions, Belli got lucrative verdicts.

This album was turned over to the president of the Burleigh County Bar Association, was audited individually by a number of members, and excerpts were played at the November meeting of that Association. Reaction was uniformly favorable from this sampling of one group of North Dakota lawyers.

WILLIAM S. MURRAY*

THE WASTED YEARS. By Jess Stearn. New York: Doubleday and Company Inc., 1959, 231 pages. Price: \$3.95.

In the United States, since approximately 1950 there has been a plethora of books and articles discussing juvenile delinquency. These have ranged from learned legal and sociological treatises to the pulp magazine Sunday-supplement articles which glamorize and glorify the juvenile delinquent. The problem of the juvenile delinquent has been discussed by means of the written word and has additionally received rather extensive treatment via the television and motion picture mediums. Finally within the social organs of the community itself, juvenile delinquency, its cause and cure, has been deeply explored. The net result of these developments has not been a decisive decrease in juvenile delinquency. Rather there has been a tangible increase in both juvenile delinquency and the violence of its participant's acts.

The Wasted Years is best described by the book's cover-jacket which captions the work as "A Study of Juvenile Delinquency." This book is a sociological rather than a legal or a psychological study of the problems of juvenile delinquency. The author, like the other writers in this field, is searching for the cause and effect of juvenile delinquency. Mr. Stearn uses the method of case study to conduct his search for the cause and effect of juvenile delinquency. Mr. Stearn does not purport to reach an incontrovertible conclusion as to the cause and proper treatment of juvenile delinquency but rather to suggest that juvenile delinquency is a symptom and not a disease. The author appears to conclude that the breakdown of the family relationship is perhaps the greatest symp-

3. *Allen v. Sikorski Helicopter Division, United Aircraft Co.* (DC, San Diego, Cal., Dec. 28, 1956) (\$210,000 paid and appeal dismissed).

* Member of the Burleigh County and North Dakota Bar.

tom of juvenile delinquency. The author stresses the necessity that the public must recognize and treat the symptom if the resulting disease is to be finally eradicated.

The particular value of *The Wasted Years* to the lawyer is that the book will acquaint him with the problem of juvenile delinquency. Lawyers as participants in the community process have not assumed the desired leadership in dealing with the problem of juvenile delinquency. Lawyers must assume proper leadership if the problem of juvenile delinquency is to be successfully treated within the community itself prior to the community's application of its legal sanctions to the juvenile delinquent and his acts.

James P. White*

* Assistant Professor of Law, University of North Dakota.