

# Belli: Modern Trials

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## BOOK REVIEWS

*Modern Trials.* By MELVIN M. BELLI. Abridged edition. Indianapolis: Bobbs-Merrill, 1963. Pp. xiv, 953. \$15.00.

The author has condensed his six volume work of the same title into a single volume intended specifically for the use of law students.

The book might be described as a personal injury practice manual. The bulk of it is taken up with examples *ad nauseam* of the use of demonstrative evidence. The camera and blackboard are to Mr. Belli what horses and arrows were to Genghis Khan.

The initial reaction of an academic to Mr. Belli's work is hostility, which is a pity because it is an excellent book. The reasons for this hostility are many—beginning with the cover. The binding is a sort of glossy black pinstripe which, I presume, is supposed to represent the hide of a courtroom tiger. Mr. Belli makes a large point of the fact that his book contains pictures unlike the usual legal tome. This point is well taken in that a work on evidence could contain a few illustrations of demonstrative evidence. This particular reviewer, however, has an aversion to attempting to reduce legal principles to cartoons and diagrams. In any case, the pictures are overdone. One disfigured plaintiff is enough.

The student will find that Mr. Belli is less interested in the subtle nuances of legal doctrine than in the "crass" aspects of illustrating pain and suffering for the jury. Indeed, this is the chief merit of the book. The professor and the student (until he gets past the exam hurdles) are interested in the "law." Whether the broken leg is likely to require amputation and whether defendant's truck was on the wrong side of the highway are "questions of fact." It is just these questions of fact which occupy the time of the practitioner. The case represented by a five page opinion, which the student can skim in a few minutes and decide it contains nothing of interest, represents months and perhaps years of work and the outlay of thousands of dollars by the plaintiff (or his counsel if he works on a contingency basis).

Mr. Belli complains that the law school does not usually teach the student to investigate anything that cannot ultimately be found in the National Reporter System. The student can get through three years without attending a single autopsy or once being in an airport control tower. I presume that some bankruptcy specialists are somewhat bitter that students must spend so much time on Tort, Warranty and Agency. Persons with more prestige than the reviewer can explain why students are not usually encouraged to "major" in law school. But again, the main virtue of the book is that it does let the student peer over the shoulder of a highly successful specialist and lets some of the street noises into the academic halls.

Mr. Belli takes the student from the time the potential plaintiff hobbles into the office (and counsel must be enough of a doctor to decide to which experts to take him) up to the appeal (defendant appealing from excessive judgment) when the appellate brief should be illustrated with choice demonstrative evidence.

He illustrates some of the economics of a personal injury law shop. Mr. Belli operates exclusively on a contingency basis. Costs and expenses of litigation

outlaid by counsel come "off the top" of the recovery but, if the case is lost, the client does not have to repay them. Apparently, in California counsel is permitted to "keep" his clients. In some states, of course, such methods are grounds for disbarment. Since the wins must pay for the losses, Mr. Belli believes that a practice cannot be economically maintained on less than the usual one-third contingency. He also believes that in his own practice a higher percentage is not justified. He argues that under the present economic facts of life most personal injury victims would effectively be barred from the courts were it not for the contingent fee.

He gives much advice on valuing a case for settlement. He has his own one-hundred point formula for putting a value on a case. He uses a "brochure" to negotiate settlement. The "brochure" is a folder (actually a trial brief) which sets out plaintiff's entire case complete with the juicier pieces of demonstrative evidence. Mr. Belli claims credit for originating the "brochure method."

He gives advice on jury selection. Policemen make excellent plaintiff's jurors in civil cases (they should be avoided in criminal cases). He does *not* use the *voir dire* to inject an insurance issue into the case. A sophisticated juror knows that insurance is involved in an automobile case and, in California, if the plaintiff opens the door, defendant is entitled to an instruction that, "No insurance company is a *party* to this case."

There are other gems of practical wisdom scattered along the way. Do not ever let the jury see you pass anything to a witness—especially his fee. Do not consent to defendant's expert examining the client unless you or a representative are present—doctors sometimes play lawyer (turn about is fair play) and try to elicit impeaching statements in the course of a medical examination. If you are really confident of your case make a formal offer, outside the presence of the jury, to settle for the policy limits. If judgment exceeds the policy limits and the insured is forced to pay anything he may have an action against his insurer for unreasonably refusing to settle. This may panic a settlement.

As has been said before, the bulk of the book is made up of examples of demonstrative evidence; photographs; movies; x-rays; scale models; pieces of machinery (and perhaps anatomy), and actual wounds and scars. It is here that Mr. Belli draws fire for playing upon a jury's passion and sympathy to bring in huge awards. Heaven knows the book is full enough of inflammatory pictures, grotesquely disfigured faces and limbs, charred corpses, bloody plaintiffs being carried from the scene (newspaper files often contain unpublished photos of newsworthy accidents), and even a one-legged little boy.

Mr. Belli answers simply that pain, suffering and embarrassment are compensable and, despite occasional "excessive" verdicts, personal injury victims are seldom adequately compensated. He also points out some dirty tricks of the enemy. Recently a number of insurance companies placed advertisements in national magazines to the effect that juries which bring in large verdicts contribute to the high price of consumer goods. This obviously smacks of embezzlement. Defendants take unmeritorious appeals, hoping that the need for ready cash will force the plaintiff to accept a discounted satisfaction of judgment. Some unscrupulous investigators trick the plaintiff into compromising situations. A crippled plaintiff finds dog dung spread on his doorstep. As he painfully sweeps it off a movie is secretly taken. In court the movie is later shown to prove that he cannot be as disabled as he claims.

Query: Do any of the poor wretches whose ailments are illustrated in the book have an invasion of privacy action against Mr. Belli?

One of the most interesting aspects of the book is never expressed, namely,

the basic inadequacy of the adversary method of compensating personal injury victims. Mr. Belli points out and supports with cogent statistics the fact that personal injury judgments have not kept pace with the general increase in both incomes and the cost of living. Aside from a regrettable tendency of appellate judges to be taken aback by large figures in a judgment, the plaintiff finds himself in the unfortunate position of a pensioner. At one time the jury must set a figure to compensate him for the rest of his life—twenty, thirty, fifty years. Pensioners today are in an unpleasant situation because there has been an inflationary trend since the beginning of the century. Today's dollars are bound to be worth less tomorrow. In addition, the personal injury victim faces the possibility of an aggravation of his injury and bankrupting medical bills. (Incidentally, Mr. Belli mentions that a good lawyer should advise his client of the desirability of some sort of trust fund for his recovery.)

Mr. Belli, of course, sees one answer to the victim's problem in more "adequate" verdicts and judgments. However, he points out that a jury trial is the most expensive way of compensating a victim. There are the strict *costs* plus the costs of investigation, preparation of exhibits, witness fees and, of course, counsel's share. There are also countless factors that have nothing to do with the merits of the case. An insurance company will settle with a full grown tiger like Mr. Belli for two or three times what it would consider offering a cub fresh out of law school. Juries tend to award more to children than to adults and less to Negroes than to whites. Insurance companies are reluctant to settle with anyone in multiple-plaintiff cases (*e.g.*, train derailment), because publicity will increase subsequent claims, and in product liability cases because such claims are easily fabricated.

It is obvious that Mr. Belli's usual opponent is an insurance company. Any lawyer who becomes involved in personal injury work soon learns about the tragedy of the uninsured motorist or the one with the bare legal minimum of insurance protection or the insolvent and uninsured corporation.

No mention is made of the Saskatchewan or Columbia or Ehrenzweig Plans. Since no one else has ever "solved" the problem it is probably unfair to expect Mr. Belli to go into it, but it would be interesting for the student to have Mr. Belli's views on it.

Finally, the student must be aware that most of Mr. Belli's work is in California which is "liberal" in the admission of evidence and in discovery procedures. The problems of admissibility and procedure are quite different elsewhere. For instance, no "per diem" pain and suffering arguments are permitted in Illinois and some judges are antagonized by any but the absolute minimum use of the blackboard. Furthermore, some very successful trial lawyers strongly disagree with some of Mr. Belli's methods. On the whole, however, the book is well worth having. I wish I had made some of my students read it.

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*The Right of Establishment in the Common Market.* By DR. ULRICH EVERLING.  
Chicago: Commerce Clearing House, Inc. Pp. xi, 219. Index \$15.00.

American lawyers are advising business clients daily on establishment in the Common Market. A United States manufacturer-exporter decides to establish a network of distributors or sales representatives in Europe as an aid to sales,