

BOOK REVIEWS

MODERN TRIALS. By Melvin Belli. Indianapolis: The Bobbs-Merrill Co. Inc., 1954. 3 Vols. Pp. xvi, 2763. \$50.00.

Note: Due to the nature of this book, we have chosen as reviewers two active practitioners who deal with personal injury cases. One reviewer represents only plaintiffs; the other, usually defendants.

FOR THE PLAINTIFF

One of the most striking changes in the legal profession over the past years has been the increased trend towards specialization. Yearly, the ranks of the general practitioner become proportionately smaller and the roster of attorneys limiting themselves to one field more numerous. The explanation lies with the ever increasing complexity and scope of modern practice. The field of personal injury litigation is one wherein such a range of knowledge and skills is required on the part of the practitioner that mastery would seem to be obtainable only by full time devotion, study and practice.

The author of this book, a highly successful trial attorney whose reputation stems from representation of plaintiffs in damage suits, has produced a three volume opus of more than 2700 pages limited almost completely to subject matter and tactics involved in the trial of a personal injury action. Dean Roscoe Pound points out in the Introduction that the present day trial attorney has to deal with a vastly increased number of causes and types of injury resulting from the highly mechanized system in which we live, together with accumulating an even larger storehouse of knowledge brought about by continuing advances in medical science. Concurrent with the growing variety of possible types of accidents and resultant disabilities, many important changes in procedure have been introduced by the Federal Rules, new State Codes and liberalized rules of evidence—all of which taken together have required the adoption of new methods and techniques in trial practice. These are the problems to which Mr. Belli has addressed himself in a work which is clearly written, well illustrated and copiously footnoted.

The material may be roughly classified into three categories, although there is no clear-cut line of demarcation. The first would include a large portion of the book devoted to a discussion of data which is of a reference nature. Particular mention may be made of a long chapter entitled "Have I a Case?" which, in brief form, summarizes a great many legal propositions. Certain sections present concise summaries of large areas of law,

such as the Federal Tort Claims Act, Federal Employers Liability Act, and Maritime and Airplane Law. It should be noted that these parts of the book serve as a starting point for further research, for one must still consult his local reports in order to ascertain the status of the law in his own jurisdiction. In other parts of the book there is extended explanation of fundamental medical terminology, anatomy, physiology and pathology. Reference thereto will provide the practitioner with enough basic knowledge to enable him to read more involved medical texts and to discuss the case intelligently with the physicians whom he may later call as his witnesses.

In the second category may be placed material containing argument by the author against rules or procedures which he feels are unjust. In point of space consumed this is a very small part of the book, not confined to any one section, but interspersed throughout. Mr. Belli's approach is not intended to be impartial. He speaks out strongly against rules and procedures which in the ordinary course prove damaging to a plaintiff's case. He criticizes, among other things, the Guest Statutes, the rule denying recovery for emotional disturbance unaccompanied by physical impact, charitable and intra-family immunity, and limitations on amounts of recovery. There will be some to question the wisdom of introducing controversy into a work of this nature, but the subjects treated are of vital interest in the field of torts and it cannot be denied that the arguments presented are forceful and of great merit.

The discussion of modern trial technique is the third phase of the book. It is in this area that Mr. Belli makes his greatest contribution. He is a strong advocate of the extensive employment of demonstrative evidence and he discusses at length its utilization in both civil and criminal cases. He carefully explains and illustrates the use of photographs with particular emphasis on new developments in the field; new medical demonstrative aids such as positive x-rays, three dimensional drawings and anatomic charts are discussed; the employment of models, plans and experiments in the courtroom is described. The author presents numerous examples of techniques which have proved to be successful in some of his cases as well as those of other counsel. He strongly advises the use of the blackboard for the purpose of demonstration and explanation. His thesis, briefly, is as follows:

"The employment of all devices of photography, aerial pictures, colored pictures, positive X-rays, enlarged X-rays, the use of skeletons and models in court, physical exhibits, the employment of the blackboard during the trial, and in final argument, the breakdown of pain and suffering into dollars and cents, day by day, when each or all of these procedures are warranted, are all methods of the new trial procedure to achieve the most adequate award." (pp. 2286-87).

One must recognize the fact that some states place more severe restrictions on the use of these techniques than others. The author contends that

such states have inevitably become "low verdict centers." He places the blame squarely upon the plaintiffs' bar because it has failed to educate judges to realize that demonstrative evidence is calculated to give a clearer comprehension of the matters in issue. It is often contended by attorneys representing defendants that the liberal use of demonstrative evidence is for the purpose of inflaming the jury and consequently results in an unwarranted verdict for the plaintiff or in an excessive award. It cannot be seriously argued that such evidence should be withheld from the jury where it might be of aid in determining liability, for to contend so would be to say that the jury is not entitled to a full insight into the factual situation. In addition, the defense may use such evidence to defeat a claim as well as a plaintiff may to gain a recovery. In regard to damages, the strongest objection is made to the exhibition before the jury of an injured portion of the plaintiff's body. It is clear, however, that the condition which may give rise to a strong reaction because of its gruesomeness and thus be decried as inflammatory, is part of the basis for the demanded compensation. Unless a convincing reason exists for disallowance, the jury should be permitted to see for itself so that the award will not be based on speculation but rather on complete disclosure, observation and consequent understanding.

It is obvious that the length of the book and the nature of the contents preclude the possibility of remembering very much of it. Great value, however, lies in providing an approach to the most up-to-date method of analyzing and handling a personal injury law suit. It presents a complete view of the modern jury trial. The difference between Belli's book and most other works of a similar nature is that here emphasis is not placed solely on picking a jury, opening statement, direct examination, cross-examination and closing speech. Older procedures and techniques are combined with new devices of presentation—all calculated to enable the jury to gain a full understanding of the issues.

Mr. Belli's approach is succinctly stated as follows:

"The principal motif of argument presented in this book has been that a jury in order to make correct findings, draw inferences, and reach a verdict, must have the factual situation presented in such a manner as to be understandable. As we have seen, to accomplish this necessary disclosure, it is the obligation of counsel to use any and all methods best calculated to the jury to feel, see, hear, apprehend, and understand just what the law suit is about. This is not only accomplished by the calling of witnesses, or the showing of exhibits, but by the explanations of the attorney, whether in opening statement, or final argument. Nor is the attorney limited to his voice alone. He may, and should, use whatever illustrative material is at hand." (p. 1718).

Obviously, the ultimate goal of the plaintiff in a personal injury suit is the recovery of damages, and all that precedes—investigation, analysis,

preparation, trial and appeal—is intended to lead to that conclusion. The author points out, however, that the jury award is only just when it compensates adequately for the injuries sustained. The book includes a chapter titled "The Most Adequate Award," a subject upon which Mr. Belli has extensively written and lectured. Great controversy exists over the amounts of verdicts in many of our courts. Representatives of insurance companies and those whose practice consists largely of defending personal injury actions argue that awards are already too high and that methods which produce still greater recoveries are not justified. Without considering the apparent argument relative to the lessened value of the dollar, the contention loses sight of an inevitable trend which has been apparent for a long time. Over the years there has been a gradual awakening of the social conscience to the rights of, and obligations to, one injured by the carelessness of another. There has arisen greater realization of the necessity of compensating fully a person who has been deprived of life's most precious assets—the right to live with complete control of one's physical and mental faculties, the privilege of enjoying life free from pain, and the right to work and play unencumbered by suffering and disability. The "adequate award" is not synonymous with "excessive verdict" unless one consciously or subconsciously reverts to a discarded philosophy of inadequate regard for the sanctity of man's mind and body. The author's position, subscribed to by increasing numbers, is that all verdicts will become the "most adequate awards" as ever greater value is placed upon the worth of individual life.

In a review of a book of this length it is difficult to single out particular sections for commendation or criticism. The work as a whole constitutes a great contribution to legal literature. It is felt, however, that the author could have enhanced its value by a more extended discussion of the tactics of direct and cross-examination. It is true that the standard texts in the field cover these topics at great length. Nevertheless the author planned to turn out an all-inclusive product and the reviewer is of the opinion that a fuller treatment of the subject of examination, ever the keystone of a trial, would have been warranted.

An opus of this magnitude must finally be considered from a standpoint of its utility to the practicing bar. To one whose practice brings him into the courtroom, be it occasionally or frequently, its use as a reference source and its discussion of approach and technique cannot but help to improve his ability as a trial lawyer. To all attorneys it serves as a valuable aid to the goal we seek—better representation of the client through better presentation of his case.

Marshall A. Bernstein †

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FOR THE DEFENDANT

Although this ponderous tome (3 vols., 2763 pages) bears the imposing title *Modern Trials*, it is less concerned with the art of advocacy than with the technique of merchandising personal injury lawsuits, which the author quite honestly describes as the "commodity" he is selling.¹ Emerson once said that a book breathes the spirit of the man who wrote it. This book breathes commercialism, California-style. From the advertising man's approach to settlement negotiations in Chapter VI, "Settling From Different Viewpoint: The Brochure," to the compilation of five and six-figure verdicts in Chapter XXII, "The Most Adequate Award," the emphasis is all on huckstering the plaintiff's misfortune for the highest dollar.

It is too much perhaps to expect scholarly objectivity of a practicing advocate, especially one who has practiced only on the plaintiffs' side of the courtroom. This is not to say that objectivity is a special faculty of defendants' lawyers, but only to recognize that years of leaning in one direction will produce a natural bent in a man as in a tree. Only those advocates who give up arguing for judging have the chance to control this bent, and even they sometimes succeed imperfectly.

Mr. Belli makes no pretense of objectivity. His book, he says, is "primarily about compensation for those to whom the accident has happened." (p. 9). Except for a grudging concession of virtue here and there (*e.g.* "The Most Adequate Award . . . can also be a defendant's verdict in a proper case."²) the only role of the defendant seems to be to force the plaintiff on to trial—after, of course, refusing a reasonable settlement demand—and to pay the verdict.

The broad outline of the book is simplicity itself,³ although within that outline there is a lack of organization which leads one to suspect that the author has pieced together in book form much of the material he delivered from NACCA lecture platforms around the country. Mr. Belli begins appropriately with a chapter on "Investigating the Case." Then follows a long review of negligence law, the object of which is to carry the lawyer beyond the common law for theories of recovery. State statutes, local ordinances and administrative regulations are possibly sources of controlling standards for measuring the defendant's conduct. From this he passes to a discussion of the novel technique borrowed from the advertising trade, settlement by brochure. Here he advocates the use of an illustrated pamphlet, laying out all of plaintiff's proof for the insurance adjuster, who is the first "buyer" of "the commodity," to persuade him that the price should be high. The book then follows the regular course of a trial, with sections on selection of the jury, examination and cross-examination of

1. "A personal injury lawsuit, in an unsocialized society, is a commodity 'to sell.'" (p. 695).

2. P. 82 n.47. But one searches in vain for a defendant's verdict through the 248-page compilation of "Most Adequate Awards." (pp. 2269-2517).

3. In his preface Mr. Belli explains that he outlined the organization of all three volumes in four days. (p. iii).

witnesses, jury instructions,⁴ final argument, demonstrative evidence in the trial and on appeal, and his peroration at the end of the third volume, "The Most Adequate Award" (the term usually appears in respectful capital letters.) He has included chapters on malpractice, criminal demonstrative evidence, a medical glossary and a bibliography of medical and legal texts.

Mr. Belli has one basic idea: "The Most Adequate Award" is the prize in the "race of disclosure,"⁵ and the race is won by demonstrative evidence. He modestly disclaims being the inventor of demonstrative evidence. (p. 3). He is content with being recognized as its perfecter and chief publicist,⁶ acknowledging the efforts of his NACCA associates who are putting it to use throughout the country.

So long as his techniques are confined to the use of graphic devices to demonstrate the facts on liability one cannot be too critical of Mr. Belli's methods. There is much for defendants to learn from his review of a large number of cases on the use of working models to illustrate complicated machinery, aerial photography in cases where the locale is important, and diagrams of manufacturing procedures. To this extent demonstrative evidence makes a real contribution to the jury's grasp of the facts on liability which, after all, is usually the most important issue of the case.

The danger of demonstrative evidence is in the way it is used to build up damages. Forensic medicine in the hands of Mr. Belli and his followers has become histrionic medicine. He believes in staging for the jury a carnival of medical atrocities, ostensibly to help it to "understand" the medical issues, but actually to shock and horrify the jurors into a condition in which no amount of money will seem too large to give the plaintiff, if only it lets them go home to escape from more of the same.

It is here that colored pictures of third-degree burn cases, *infra red* photographs of bruises, posed photographs of the plaintiff's traction apparatus, and demonstrations of physical handicaps in the courtroom do their real service. Mr. Belli claims that all of these things are essential to the jury's true understanding of the plaintiff's pain and suffering. The fallacy in this is obvious. Jurors are not advanced medical students who must be concerned with every detail of etiology and therapy of a patient's condition and can pursue their study over a long period of time. The modern jury trial does not admit the luxury of this scholarly approach. At best the jury can be given only parts and highlights of the treatment and convalescence of an injured plaintiff over the months and sometimes years that pass between accident and trial. When these highlights are magnified and ex-

4. See photograph of colleague posed in front of "cabinet file of author which contains classified instructions (mimeographed), together with authorities for the correctness of each particular instruction." (p. 1774).

5. The book is replete with such lecture-platform tag-lines: "a verdict of fact, not of confusion" (p. 2), "one lump sum for all time" (p. 2544), "all man does is live." (p. 2543).

6. He notes in passing that Oklahoma, which had been a "notoriously 'low verdict center'" showed a "remarkable trend toward adequacy" after 1951 when "the author's articles were widely distributed" to the bench and bar by Oklahoma's plaintiffs' lawyers. (p. 2268 n.32).

aggerated by the kind of presentation Mr. Belli advocates, they can only produce a distorted result.

As Mr. Belli notes at the outset of the book, the success of his techniques is vouchsafed to the broad discretion of the trial judge. (pp. 5, 36-37). The appellate courts have marked out a wide area for the free exercise of the trial judge's good sense of propriety and decorum in the courtroom with which they are slow to interfere.⁷ On him rests the main responsibility for preserving a calm, judicial atmosphere in which the jury can deliberate free from the emotional distraction of a medical side-show. Defense counsel has his important role in making objections when counsel for plaintiff oversteps proper bounds, but he is at a serious tactical disadvantage. He cannot be leaping to his feet at every breach to risk disfavor of the jury and irritation of the judge. Much must be left to the court's own initiative in restraining these circus techniques.⁸

Mr. Belli reaches the apogee of advocacy in his chapter on "The Most Adequate Award," a euphemism for six-figure verdicts. "The Adequate Award," he says, is "just and fair, equal compensation." (p. 2253). "More adequate" is more of the same. And "most adequate," presumably, is as much as you can get without being reversed.⁹ According to Mr. Belli, when a new trial is granted because of excessiveness, the plaintiff "gets no justice because he got too much justice below." (p. 2259). Judging by his compilation of "adequate awards," his only standard for measuring a verdict's adequacy is dollars; if it is big enough, it is adequate. Oddly he has found no verdict so big as to be excessive, although there are seven jurisdictions (as Maine goes, so goes Vermont, New Hampshire, Delaware, Nebraska and the Dakotas) where he found "no settlements or awards tending toward adequacy." (p. 2468).

Mr. Belli recommends two techniques for achieving adequacy: the final chalk talk, in which plaintiff's counsel totes up damages on a blackboard in front of the jury; and the unit method of measuring pain and suffering, in which counsel puts a price tag on a day's, an hour's, or even a

7. When this fails, the appellate court must step in. See, *e.g.*, *Birmingham Baptist Hospital v. Blackwell*, 221 Ala. 225, 128 So. 389 (1930), where the Alabama Supreme Court ordered a new trial because, among other things, of the admission in evidence of a posed photograph of an attractive plaintiff in her hospital bed. The court observed: "So far as elucidating any material fact in issue, this photograph was 'at least useless.' Plaintiff is a young woman, and, judging from the photograph before us, possesses an attractive face. . . . The scene is better imagined than described. Suffice it to say, the photograph bears some evidence that the matter of feminine charm was not overlooked, and an appeal to sympathy was not to be ignored. The stage effect was not wanting . . . this irrelevant evidence 'may be mischievous,' and that it has a tendency to 'distract the attention of the jury' we think is quite clear." *Id.* at 227, 128 So. at 391.

8. In a recent Philadelphia case a trial judge sat by calmly while the feminine jurors flinched as counsel for plaintiff urged his medical witness to manipulate an ivory pin in the exposed tendon of a small boy's arm stub to demonstrate how a prosthetic device could be removed and replaced.

9. He professes that the "most adequate award" is that which is "most 'equal,' 'fair,' and 'sufficient'—to defendant as well as plaintiff." (p. 2253). But since his compilation never reveals the facts on liability, the reader is not permitted to make an independent test of Mr. Belli's standards.

minute's worth of pain, then multiplies it by the number of such units in the plaintiff's life expectancy. A sidelong glance at jurisdictions like New York and California where such tactics are condoned attests their potency.

Here again the best hope for restoring some semblance of reason to the trial of personal injury lawsuits is the conscience and good sense of the trial judge. He must face up to the reality which Mr. Belli candidly states, that plaintiff's counsel should "never pray for too little . . . [H]e would be derelict if he did not maximize the claim." (pp. 2284-85). Recognizing this premise, the trial judge cannot accept the *ad damnum* clause as a fair measure of plaintiff's claim, as he ingenuously does, or reluctantly must, in some jurisdictions. And when plaintiff's counsel attempts to support the claim with the unit-measure-of-pain argument, the trial judge must be responsible for bringing the jury back from this venture into astronomy.

Since the unit argument is a relatively new technique for "maximizing the claim," its superficial plausibility has not yet been generally scrutinized by the courts. One which did, the Supreme Court of Minnesota, struck it down as "absurdity" which "leads only to monstrous verdicts."¹⁰ It did so for three cogent reasons: by judicial definition there is no standard for measuring pain and suffering;¹¹ each so-called unit is variable and inconstant; and, finally, the human system's adjustment generally causes pain to decrease with time. Here are judges who look behind the arras of "adequacy" to see if there is a charlatan lurking there.

Mr. Belli's one-track-minded devotion to his thesis that demonstrative evidence is the panacea for any of the ills of American justice inspires him to some curious research techniques. In his chapter on "Demonstrative Evidence on Appeal" he assays the use of demonstrative evidence in the federal and state courts by paging through every one of the sectional Reporters and counting the photographs and diagrams. (p. 1863 n.3). It is then a simple matter of addition: the jurisdiction whose reports contain the most illustrations gets the highest score on demonstrative evidence.

It is perhaps not surprising that this sort of quantitative analysis leads to some incredibly superficial and inconsistent judgments. Pennsylvania and the other states in the Atlantic Reporter system get the lowest Belli rating. As to them he concludes that demonstrative evidence has been "scantily employed and generally unapproved" until most recently in the appellate and trial courts, "an obvious invitation to inadequate awards." (p. 1871). "And as an expected corollary," he states, "it is found that verdicts have not been reversed or reduced because of excessiveness."¹²

10. *Ahlstrom v. Minneapolis, St. P. & S. Ste. M. R.R.*, 68 N.W.2d 873, 891 (Minn. 1955).

11. *Bostwick v. Pittsburgh Ry.*, 255 Pa. 387, 100 Atl. 123 (1917), and authorities there cited.

12. P. 1871. *But cf.* his more cautious analysis of the Pacific Reporter. He finds that when there was relatively little demonstrative evidence up to 1940, "appellate courts were wont to reverse and reduce," but with the use of more pictures "claims for excessiveness tended to be disallowed." He concludes that it is still too early to decide whether this is a trend or just coincidence. (pp. 1877-1878).

Any junior clerk can take the books from 200 Pa. to 350 Pa. and demonstrate by the same kind of quantitative analysis that the Pennsylvania appellate courts certainly have not been slow to reverse and reduce verdicts because of excessiveness.

Mr. Belli himself unwittingly exposes the fallacy of his criticism of the Pennsylvania courts for hesitancy in approving demonstrative evidence. He cites a Pennsylvania case as one of the first offers of a photograph in evidence,¹³ and another as an early example of using a model in appellate argument.¹⁴ He footnotes an even more impressive illustration of Pennsylvania's liberal attitude toward demonstrative evidence in which the Superior Court as early as 1930 approved the exhibition to a jury of a sound motion picture of a criminal defendant's confession.¹⁵

One of the striking features of this book is its illustrations. Mr. Belli seems to believe that if one picture is worth a thousand words, a thousand pictures ought to be worth a million words. Whether the publication of numerous photographs of lawyers posed with exhibits they have used in trials, captioned with name, address, firm affiliation and amount of verdict, transgresses the canons of ethics is not within the jurisdiction of this tribunal.¹⁶ But one might at least raise a question of taste as to a photograph of a double amputee, his wife and, of course, his lawyer, grinning at a paper which the text says is the jury's six-figure verdict. (p. 2273). The difficulty is that many of Mr. Belli's illustrations just don't illustrate. For the three-paragraph section on three dimensional photography he uses five photographs: the first, an outside view of the Texas courthouse where the pictures were exhibited, another of the lawyers wearing 3-D spectacles, another of the judge, the projectionist and a lawyer wearing the spectacles, still another of the jury wearing the spectacles, and finally a picture of the camera. (pp. 1223-26).

Mr. Belli is not a scholar and does not pretend to be.¹⁷ His talents are histrionic, not didactic. As a legal treatise his book is of questionable reliability.¹⁸ As a how-to-do-it for plaintiffs' lawyers it is unexcelled. While it may not be the "contribution to the administration of justice"

13. *Udderzook v. Commonwealth*, 76 Pa. 340 (1874), cited at p. 1139.

14. *Geist v. Rapp*, 206 Pa. 411, 55 Atl. 1063 (1903), cited at p. 1719.

15. *Commonwealth v. Roller*, 100 Pa. Super. 125 (1930), cited at p. 24. The trial judge in that case was the late James Jay Gordon, Jr., of the Philadelphia Common Pleas Court.

16. Canon 27. See *Indirect Advertising*, in *DRINKER, LEGAL ETHICS* 247-48 (1953).

17. His survey of the law of negligence in "Have I A Case?" is "not intended to be encyclopaedic either in evidentiary, procedural, or substantive law." (p. 117).

18. Mr. Belli sees no difference between the doctrine of "attractive nuisance" and the principle of section 339 of the Restatement of Torts. (p. 317). His reporting of cases is particularly suspect: *Menarde v. Philadelphia Transportation Co.*, 376 Pa. 497, 103 A.2d 681 (1954), is four times reported as an "adequate award" of \$50,000 (pp. 2389, 2446, 2464, 2516), although it was reduced by the trial court to \$25,000.

which Dean Pound suggests it is in his Introduction,¹⁹ Mr. Belli's book is at least one which few trial lawyers, either on the plaintiffs' or on the defendants' side of the courtroom, can afford to ignore.

Robert M. Landis ††

WORKMEN'S COMPENSATION. By Herman Miles Somers and Anne Ramsey Somers. New York: John Wiley & Sons, Inc., 1954. Pp. xv, 341. \$6.50.

A task of staggering proportions for our modern industrialized society is the medical, social and economic restoration, or, at least, readjustment of the worker who has suffered an occupational injury. It poses a problem with numerous facets and ramifications which extend into medicine, psychology and engineering as well as every branch of the social sciences. Workmen's compensation is the central program which developed in response to the need for public action aimed at returning the victim of an industrial disability to as tolerable a status as is possible and feasible. While the original center of gravity of the program dealt with partial indemnification for wage-loss and medical costs, it is gradually shifting toward injury prevention and occupational rehabilitation. The information and literature dealing with the different phases of the subject has been widely dispersed and is familiar only to the special student or expert due to the multitudinous aspects of the vast subject including not only eligibility for, and extent of, benefits and their administration, but also availability, structure and public control of compensation insurance.

The authors set themselves the task of distilling the essence of the varied, particularized and not always easily accessible surveys and studies, and of giving a comprehensive and integrated description of the present status of the whole field. There is no question that this was a legitimate, commendable and timely undertaking. It is, however, a matter of "overclaiming" (to borrow a phrase from patent law parlance), when the authors assert to have done much beyond that. Their statement that heretofore the workmen's compensation program was "shrouded in mystery" and that there was a distinct "lack of information available about it" is simply not borne out by the facts, and has been duly challenged by Mr. McElroy of the Bureau of Labor Statistics.¹ Moreover, the authors were constrained to concede that my own presentation of the subject (if I identify correctly their reference to a modern "scholarly work") was not less comprehensive than theirs, although they felt, for reasons of their own, that

19. P. xix. Dean Pound is now editor-in-chief of the *NACCA Law Journal*, the official publication of the National Association of Claimants' Compensation Attorneys of which Mr. Belli was the first president.

†† Member of the Philadelphia Bar; former First Deputy City Solicitor of Philadelphia.

1. McElroy, Book Review, 78 MONTHLY LABOR REV. 224 (1955).

it was directed only "to the specialist or advanced student." (p. ix). But disregarding these exaggerated and annoying self-serving declarations, it should be stated succinctly and with pleasure that the authors have succeeded in composing a simple, clear and up-to-date, though somewhat untechnical, picture of the whole area.

The book, which is a commendably slender volume, is divided into eight chapters. The first two introduce the scope of the problems to be faced and depict the historical development of the programs involved. The next five chapters are devoted to various central topics: coverage and benefits, compensation insurance, administration and litigation, injury prevention and rehabilitation. The final chapter, entitled "Workmen's Compensation at the Crossroads," tries to assess the accomplishments and shortcomings of the system. Four appendices show the results of parallel though different arrangements; the Federal Employees' Compensation Act, the British Industrial Injuries Insurance System, the Ontario Workmen's Compensation Act, and the Federal Employers' Liability and Jones Acts. Since the authors are labor economists and political scientists rather than lawyers, the book sidesteps specifically legal issues and deals with matters of law only in the context of the broad problems of adequacy, equitableness and efficiency. Compensation insurance, one of the most important and socially problematic elements in the whole picture, is given its proper place: the chapter devoted to this topic is of equal length as that discussing coverage and benefits which usually form the chief object of strictly legal books on workmen's compensation.

It is manifest that compensation insurance has attracted the particular attention of the authors and prompted the greatest amount of their original research. The resulting chapter therefore is the most interesting, but unfortunately at the same time it is also the least satisfactory in the book. The rate-making process is so complex that an accurate presentation of its techniques, effects and flaws is an extremely difficult task. It is regrettable that the authors have completely overlooked a recent, important report² which disclosed the results of an official investigation into the standard rate-making procedures and the size and distribution of underwriting profits. It would have furnished the authors with the authoritative data for the answer which they believed was called for by a quoted statement of mine (p. 104) regarding the actual size of the statistical error resulting from the rating techniques.³ Even more deplorable is the complete disregard of the problem of classification relativity and of the techniques employed for its revision,⁴ although reference thereto would have shed additional light on the authors' comments on local divergences in the manual rates for the same code number. The puzzling mystery of whether income from sub-

2. INTERIM COMMISSION ON WORKMEN'S COMPENSATION, REPORT TO THE MINNESOTA LEGISLATURE (1953).

3. Incidentally, I modified my statement in a subsequent version of the paper which unfortunately escaped the authors. Riesenfeld, *Basic Problems in Administration of Workmen's Compensation*, 36 MINN. L. REV. 119, 139 n.99 (1952).

4. See RIESENFELD & MAXWELL, MODERN SOCIAL LEGISLATION 379 (1950).

rogation claims and other sources built up with premium income does or should exert an influence on the rate structure has likewise not found the deserved attention. Information on that point is sorely needed, but hard to get. Finally the unfortunate impact of the exigencies of private insurance on the flexibility and structure of the benefit formulae should have been subjected to less gingerly treatment.

The authors are keenly aware of the fact that the performance of the whole system has steadily lost ground and has become a major source of dissatisfaction to labor and labor sympathizers. But their suggestion that restoration of the common-law rights as additional remedies would radically improve the situation, while pleasing to NACCA,⁵ seems to be highly questionable. The legislation of foreign countries shows a divergence of policy on that point.⁶ There is an acute danger that such action would merely further depress compensation benefits, introduce inequitable disparity in recoveries, and increase insurance costs intolerably. A radical change—if needed—should be a shift in legislative responsibility.

Naturally the authors have not accomplished the impossible task of encompassing within the 290 pages devoted to the main topic a detailed discussion of the innumerable technical questions pertaining to their subject, and even less have they succeeded in writing the "definitive study of workmen's compensation," as claimed in the publisher's blurb; however, they can be proud of having performed a real service by furnishing the large number of persons concerned with the field a comprehensive and reliable *vade mecum*.

Stefan A. Riesenfeld †

THE STRUCTURE AND GOVERNMENT OF LABOR UNIONS.

By Philip Taft. Cambridge: Harvard University Press, 1954. Pp. 312. \$6.00.

THE MANAGEMENT TEAM. Edward C. Bursk, Editor. Cambridge: Harvard University Press, 1955. Pp. 221. \$4.00.

Professor Taft's new book embodies the results of extensive study of internal affairs of selected unions by an established expert. His initial chapter surveys various attempts of radical groups, over the years, to take over the American trade union movement in furtherance of their political goals. The treatment of Communist efforts to this end since 1920 is at once concise and excellent. Professor Taft then probes such matters as the extent of opposition in union elections, and the nature and amount of union dues, initiation fees, salaries and expense allowances of union

5. Book Review, 14 NACCA L.J. 425, 426 (1954).

6. See Riesenfeld, *Contemporary Trends in Compensation for Industrial Accidents Here and Abroad*, 42 CALIF. L. REV. 531, 559-60 (1954).

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officers, as well as techniques to protect union funds. Interesting chapters on the unlicensed seafaring unions, the United Auto Workers, the Steelworkers, and the Teamsters also are included.

Most significant, however, is a study of the relationship between unions and their individual members, in terms of disciplinary actions and appeals therefrom. Over a third of the text treats this subject, largely on the basis of examination of confidential records of eight unions (Carpenters, Hod Carriers, Machinists, Ladies Garment Workers, Plumbers, Railway Clerks, National Maritime Union and the U.A.W., CIO) for selected years.

Professor Taft's analysis leads him to disagree with other scholars who have studied union discipline and appeals procedures. He challenges Professor Summers' conclusion that such procedures constitute a continuing threat to union democracy.¹ Nor does he agree with Professors Aaron and Komaroff that enactment of minimal federal legislation regulating internal union affairs is desirable to afford relief against abuses of union power.² The author tends to discount the significance of actual provisions of union constitutions and by-laws with respect to disciplinary procedure, and holds that rights and freedoms of union members are more influenced by custom, tradition and practice than by written safeguards. He contends that dispensation of justice within unions depends ultimately, as it does in our law courts, upon the fairness and intelligence of the trial body.

Professor Taft believes that all available evidence points to the conclusion that unions presently handle problems of internal discipline with more than reasonable satisfaction. Intervention by outside groups or by the government, except court action as at present, would impose needless burdens upon unions and facilitate Communist infiltration. His judgment is that union handling of discipline and appeals does not suffer by comparison with the performance of our law courts.

Some will argue that Professor Taft's approach—as a sociologist—unduly minimizes the ultimate importance of clearly defined procedures and legal safeguards against abuse. It will not be denied, however, that he has marshalled considerable evidence to support his analysis. His study throws a new light upon consideration of what, if any, further governmental intervention may be helpful, in balance, to safeguard rights of individual union members.

The Management Team is based on proceedings of the Twenty-Fourth National Business Conference, sponsored by the Harvard Business School Association, with a conference theme of "Releasing the Full Potential of the Management Team." Four principal speeches were aimed at the development of major company policies needed to maximize management potential. These were followed by seven panel discussions addressed to specific areas of management.

1. Summers, *Union Democracy and Union Discipline*, N.Y.U. 5TH ANN. CONF. ON LABOR 443, 457 (1952).

2. Aaron & Komaroff, *Statutory Regulation of Internal Union Affairs*, 44 ILL. L. REV. 631, 672 (1949).

As the Conference material has been reorganized and fitted into chapter sections by Professor Bursk, it stresses three fundamental aspects of successful management: delegation, communication and control. These are not in themselves new, yet the broad background and insight of the contributors result in a valuable overall analysis for students of management, with many fresh ideas and useful illustrations from practical experience. There are separate chapters on effective delegation and control by the General Manager, the Manufacturing Executive, the Controller and the Sales Executive. Other chapters deal with special problems of delegation and control in financial institutions and smaller businesses.

Since the Conference aimed only to consider functioning of the management group as a team, it did not tackle such complicated matters as management relations with stockholders, or with employees and unions. Hence, there is no common ground between this and Professor Taft's book. Read together, however, the two books demonstrate vividly the vast difference between internal management and union functioning. Separately, or together, both books represent valuable additions in their respective fields.

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BOOKS RECEIVED

- THE ADMINISTRATION OF CRIMINAL JUSTICE IN THE UNITED STATES. Prepared by Arthur H. Sherry. Illinois: American Bar Foundation, 1955. Pp. 197. \$2.00.
- THE CHALLENGE OF LAW REFORM. By Arthur T. Vanderbilt. Princeton: Princeton University Press, 1955. Pp. 194. \$3.50.
- CASE STUDIES IN PERSONNEL SECURITY. Adam Yarmolinsky, Director. Washington, D.C.: Bureau of National Affairs, Inc., 1955. Pp. 310.
- A CONSTITUTIONAL AND LEGAL HISTORY OF ENGLAND. By Goldwin Smith. New York: Scribner's Sons, 1955. Pp. 565. \$5.50.
- COPYRIGHT LAW SYMPOSIUM. American Society of Composers, Authors and Publishers. New York: Columbia University Press, 1955. Pp. 186. \$3.50.
- CASES AND MATERIALS ON DECEDENTS' ESTATES AND TRUSTS. By Ritchie, Alford and Effland. Brooklyn: The Foundation Press, Inc., 1955. Pp. 1113. \$10.00.
- CASES AND MATERIALS ON FEDERAL TAXATION (1955 ed.). By Paul W. Bruton and Raymond J. Bradley. St. Paul: West Publishing Co., 1955. Pp. 797. \$10.00.
- CASES AND MATERIALS ON FEDERAL TAXATION (4th ed.). By Erwin N. Griswold. Brooklyn: The Foundation Press, Inc., 1955. Pp. 1013. \$9.00.
- FOUNTAIN OF JUSTICE: A STUDY IN THE NATURAL LAW. By John C. H. Wu. New York: Sheed & Ward, 1955. Pp. 287.
- FRAMEWORK FOR ATOMIC INDUSTRY. By Herbert S. Marks and George F. Trowbridge. Washington, D.C.: Bureau of National Affairs, Inc., 1955. Pp. 119. \$12.50.
- THE JUDGMENT OF JULIUS AND ETHEL ROSENBERG. By John Wexley. New York: Cameron & Kahn, 1955. Pp. 665. \$6.00.
- THE JUDICIAL PROCESS AMONG THE BAROTSE OF NORTHERN RHODESIA. By Max Gluckman. Glencoe, Ill.: The Free Press, 1955. Pp. 386. \$6.75.
- JUSTICE ENSLAVED: A COLLECTION OF DOCUMENTS ON THE ABUSE OF JUSTICE FOR POLITICAL ENDS. The Hague: International Commission of Jurists, 1955. Pp. 539.
- THE LAW OF INSURANCE. By Irwin N. Taylor. New York: Oceana Publications, 1955. Pp. 95. \$1.00.
- CASES AND MATERIALS ON THE LEGAL PROFESSION. By Elliott E. Cheatham. Brooklyn: The Foundation Press, Inc., 1955. Pp. 585. \$7.50.
- NINE MEN. By Fred Rodell. New York: Random House, Inc., 1955. Pp. 333. \$5.00.

- POLITICS, PLANNING, AND THE PUBLIC INTEREST: THE CASE OF PUBLIC HOUSING IN CHICAGO. By Martin Meyerson, and Edward C. Banfield. Glencoe, Ill.: The Free Press, 1955. Pp. 353. \$5.00.
- PSYCHIATRY AND THE LAW. Paul H. Hoch and Joseph Zubin, Editors. New York: Greene & Stratton, Inc., 1955. Pp. 213. \$5.50.
- REGULATING BUSINESS BY INDEPENDENT COMMISSION. By Marver H. Bernstein. Princeton: Princeton University Press, 1955. Pp. 318. \$5.00.
- RESEARCH FRONTIERS IN POLITICS AND GOVERNMENTS. By Stephen K. Bailey *et al.* Washington, D.C.: Brookings Institute, 1955. Pp. 240. \$2.75.
- SECURED TRANSACTIONS. By Lester E. Denonn. New York: Practicing Law Institute, 1955. Pp. 166.
- SECURITY THROUGH FREEDOM: AMERICAN POLITICAL THOUGHT AND PRACTICE. By Alpheus Thomas Mason. Ithaca: Cornell University Press, 1955. Pp. 232. \$2.90.
- SHAREHOLDER DEMOCRACY. By Frank D. Emerson and Franklin C. Latham. Cleveland: Western Reserve University Press, 1954. Pp. 130. \$4.00.
- SIMEON EBEN BALDWIN. By Frederick H. Jackson. New York: Columbia University Press, 1955. Pp. 291.
- THE SUPREME COURT IN THE AMERICAN SYSTEM OF GOVERNMENT. By Robert H. Jackson. Cambridge: Harvard University Press, 1955. Pp. 87. \$2.00.
- TAXES, TARIFFS, & SUBSIDIES. By J. Harvey Perry. Toronto: University of Toronto Press, 1955. 2 Vols. Pp. 755. \$25.00.
- TRIAL AND TORT TRENDS THROUGH 1954. Melvin M. Belli, Editor. San Francisco: Author. Pp. 459.
- TRIAL BY ORDEAL. By Caryl Chessman. New York: Prentice-Hall, Inc., 1955. Pp. 309. \$3.95.
- THE TRUTH ABOUT DIVORCE. By Morris Ploscowe. New York: Hawthorne Books, Inc., 1955. Pp. 315. \$4.95.
- UNDERSTANDING THE ANTI-TRUST LAWS. By Jerrold G. Van Cise. New York: Practicing Law Institute, 1955. Pp. 173.
- YOUTH AND THE LAW. By Frederick J. Ludwig. Brooklyn: The Foundation Press, Inc., 1955. Pp. 386. \$5.50.
- COMPARATIVE NEGLIGENCE. COURT COMMISSION SYSTEMS AND REFERENCES. CRIMINAL RECORDS IN NEW JERSEY. LAWYER INDEMNITY PLANS. THE NEW YORK COURTS, by Harold Medina. SMALL CLAIMS COURTS IN THE UNITED STATES. STATE TRIAL COURTS OF GENERAL JURISDICTION—CALENDAR STATUS. New York: Institute of Judicial Administration, 1955.