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Book Review

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**Book Review: Modern Trials (Abridged Edition), by Melvin M. Belli**

*Modern Trials* (Abridged Edition). By MELVIN M. BELLI. Bobbs-Merrill Company, Inc., Indianapolis, New York. 1963. pp. 905.

*Modern Trials* is a book to be read with caution if not with deliberate scepticism. In the hands of the uninitiated many of its suggestions, if taken seriously, could constitute an invitation to disbarment. For experienced counsel the book offers a perhaps overly poignant plea for the use of demonstrative evidence at trial. Mr. Belli's suggestions may seem rather fanciful to readers accustomed to the procedures of Canadian courts but that is because his thoughts are the product of a legal environment with which many Canadians are unfamiliar. Mr. Belli writes in California and his book is consequently coloured by the practices allowed in that "enlightened and progressive jurisdiction." Perhaps in deference to his undoubted success as a litigation counsel, Mr. Belli may be credited to some extent with creating those practices himself. It seems more than coincidence that, according to his calculations, the highest average verdict size in the United States is to be found in his home town of San Francisco. It is the purpose of his present volume to explain and defend the methods by which his enormous verdicts are won.

Two facts about the author emerge from reading this book and should be kept in mind if his opinions are to be kept in perspective. First, Mr. Belli is hopelessly and unabashedly plaintiff prone. He attempts to preserve his objectivity but he is not a sufficient master of his emotions to keep them from intruding. They creep into the text not as a rending sob but as a snuffle at the end of a paragraph. The second point is that Mr. Belli is scrupulously honest and forthright. Indeed, he rightly insists that only an attitude of strictest integrity can be applied in using the type of evidence which he advocates. No other approach can win respect for his cause. In his words,

Once the members of the judiciary and practicing attorneys become convinced that the end to be gained is open disclosure of all the facts, with the emphasis upon sincerity and discovery rather than concealment and deception, opposition will disappear.

Having given him the highest marks for laudable motives, it remains open to question his conclusion that opposition to his methods will vanish. There is certainly little to herald a rapid acceptance of his views in Canada and such conservatism does not appear to be confined to defendants' counsel.

The techniques of demonstrative evidence which Mr. Belli espouses are the product of his view of a trial as "a race of disclosures." There is apparently no limit to the kind of facts which he will seek to show to the jury. He has even persuaded a reluctant judge in a plastic surgery malpractice case to allow the jury to view the female plaintiff completely disrobed. He offers no particular justification for this device except the comment that the resulting verdict was \$115,000. One might reasonably wonder if such a practice is not so inflammatory and prejudicial as to render any jury verdict hopelessly distorted. Mr. Belli would reply that the jury is entitled to be

aroused. Its members cannot appreciate the significance of abstract phenomena such as pain, suffering and humiliation unless they see them. No regard is apparently to be had for the traditional balance to be struck between prejudice and probative value when the issue is the admissibility of demonstrative evidence.

However, *Modern Trials* does not confine itself to one subject but rather ranges over the entire field of personal injury suits, often in a rambling and disjointed manner. For example, it is not untypical that a discussion of liability for injuries caused by animals is to be found sandwiched between comments on the choice of venue and the general use of expert testimony. Nevertheless, once the reader has become accustomed to swift and inexplicable changes of subject matter, he will discover insights and suggestions which more than compensate for the confused array in which they are presented.

Amongst the variety of topics canvassed the more outstanding ones include a paean of praise for the jury system with comments on elements to be considered in selecting a jury, a frank and open approach to the touchy business of trying to settle out of court, the use of blackboards in the conduct of trials and the demonstrative presentation of medical evidence. Mr. Belli takes special pride in recounting the use of his "brochure" method of settlement since it is one of his own major innovations. Its essence could be neither more simple nor forthright. Mr. Belli merely collects all the available information about his case, including depositions from all his witnesses and legal arguments, into a "brochure" volume which he presents to the opposing insurance company. Of course, such an approach can only be used where the client has a valid case on the merits, but in such situations this open disclosure, coupled with Mr. Belli's court room reputation, is usually enough to terrorize the insurance company into submission. Such frankness offers much food for thought, but it is probable that the amount of terror that can be instilled varies directly with the liberality of the rules of admissibility of evidence.

Mr. Belli also lavishes equal affection on his other favourite device, trial by blackboard. He denies that this practice is in any way inflammatory. Like all demonstrative evidence, it merely focuses another of the jury's senses, sight, on the principle facts of the case. The testimony of the blackboard can be preserved for appeals by photographing it. This method is available from opening to closing statements in California and to a lesser extent in many other American jurisdictions and might well become a common practice in Canada. In any case, the author's discussion of its application merits attention. He is convinced that the blackboard, as well as other demonstrative evidence, produces "verdicts of fact and not confusion", which are therefore more easily sustained before appellate courts. He also does not attempt to conceal the fact that such verdicts are generally higher.

Many other subjects receive enthusiastic discussion as the text unrolls, but through them all runs a consistent thread of special interest to the author. Mr. Belli frequently returns to the problem of presenting medical evidence. As each device of demonstration is discussed, its application to the medical field is considered. In addition whole chapters are devoted exclusively to this and related topics. Well over one hundred pages contain a medical glossary and bibliography and a variety of anatomical drawings. Counsel newly confronted with a case of physical injury may find much that is instructive in these pages.

It has been possible to mention only part of the materials that Mr. Belli has sought to compress into *Modern Trials*. The effort to abridge what was originally a six volume work has unfortunately resulted in a loss of needed analysis in depth of the important subjects raised. There are times when condensation so simplifies the subject matter that it might be better to omit the topic entirely rather than frustrate the reader with an inadequate treatment. This is particularly true of the author's attempt to incorporate all the grounds of liability for personal injuries into a single chapter. One might wonder if any single practitioner is capable of discussing every aspect of personal injury litigation thoroughly, no matter how many volumes he produces. It is certainly true that the present attempt to contain this feat within a single volume has not led to a consistently pleasing result.

Lest any intrepid soul still feel compelled to peruse Mr. Belli's offering, it is essential that he keep in mind the author's fundamental biases. Whether these prejudices are so intense as to obliterate any sense of perspective is a question to be left for decision by the undaunted reader.

B. B. C. TAIT