habeas corpus, bills of attainder and ex post facto laws), and in the next breath asserted that bills of rights are unnecessary where governments rest on the consent of the governed. In any event, the Federalists had to beat a strategic retreat on this subject, and came forward with the promise that they would correct their oversight through the addition of a bill of rights to the Constitution by means of the amending procedure of Article V. This promise took a great deal of the wind out of many Anti-Federalist sails, especially in the critically important Virginia ratifying convention, which in turn strongly influenced the result in New York. This campaign pledge was fulfilled by the first session of the First Congress. Rutland concludes that "a broad base of public opinion forced the adoption of the Bill of Rights upon those political leaders who knew the value of compromise."[14]

Rutland brings his book to a close with a short 12-page chapter that undertakes to describe the history of the Bill of Rights from 1791 to the present day. This is a tall order, and again inaccuracies result from the oversimplification which such condensation invites.

One of Rutland's last observations is this: "At the middle of the twentieth century it was clear, as it had been in 1791, that the surest sanctuary of freedom for the citizen still was not in the Constitution or the Bill of Rights, but in the minds of the people."[15] I agree, and for this reason I suggest once more that a complete history of the birth of the Bill of Rights will have to do full justice to what was in the minds of the people in this formative period of our national history. Rutland has made a promising start, but much remains to be done before the full story is recorded.

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[14] P. 218. [15] P. 229.

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Modern Trials. By Melvin M. Belli. Indianapolis: The Bobbs-Merrill Company, 1954. 3 Vols. Pp. 2763. $60.00.

Anyone who reads Melvin M. Belli's *Modern Trials* or even reads *in* it, becomes immediately aware of an attempt to span ground which cannot conceivably be treated with adequacy in the confines of three volumes. We are told at the start that the theme of the book is demonstrative evidence—evidence which is imparted to the senses without the intervention of testimony. The author's preface announces a determination to return eclectic knowledge to trial lawyers with whom he proposes to share new and provocative trial procedures. The book is an offering of what the author has discovered about the modern trial. The average trial lawyer's interest, so aroused, is not fully satisfied.

Less than a page of this lengthy text is devoted to the acceptance and admissibility of demonstrative evidence. The trial lawyer reading the book is soon plunged into a broad discussion of contingent fee contracts, respect for law and lawyers followed by traumatic neuroses, hysterical paralysis and related injuries. The subject matter then shifts abruptly from the trial itself to the investigation of the case and to the substantive aspects of liability under doctrines of rescue, last chance, charitable immunities, federal tort liability, warranty and negligence, workmen's compensation, setting aside releases for mistake, statutes of limitation and many other topics. This data is supplied ostensibly to aid his theme of demonstrative evidence, albeit with the caveat that the book is not intended to be encyclopedic but only to examine tort trends. By this time the trial lawyer has been moved far away from a novel method for trial of modern cases and into traditional areas of Hornbook law for the student.

The title "Modern Trials" is not descriptive of a vast portion of this lengthy work. In its attempt to embrace areas far beyond its avowed purpose of illustrating demonstrative evidence as a means to avoid the traditional witness or at any rate to corroborate him, the book loses effectiveness and value. It is too diffuse.

The author really is suggesting that demonstrative evidence is more likely than other evidence to increase jury verdicts. This may result irrespective of merit or social justification. Mr. Belli's illustrations of photographic evidence of the cause, the scope and extent of injuries have the eye appeal of all picture portrayal. There is too much suspicion engendered in the public mind and even in that of experienced observers that the arts and tricks of photography and demonstration achieve ends not necessarily consonant with abstract justice and fairness. The source of such "evidence" is nearly always partial and interested in the result.

A massive effort is building up within and without the courts to find a substitute for jury trials in personal injury cases. The unrest and seeming dissatisfaction with jury determinations in personal injury cases has stemmed in part from the course of modern life significantly observed by Dean Roscoe Pound in his introduction to the book:

> The ninety years since the close of the Civil War have seen more mechanical achievements, more harnessing of physical nature to man's use than all time before. . . . What the dividing of the indivisible atom may yet lead to in the way of destruction to life and limb we have yet to see.
>
> But all this has brought with it an enormous multiplication of types of injury to which the individual of this time is subject in almost every aspect of his everyday life.[1]

[1] Pp. xiv, xv.

Dean Pound states that the trial lawyer of today must know about and be able to consider the possibilities of a myriad of instrumentalities of injury and the many consequences of contact with each. And he adds the sobering fact that one out of eighteen of the population is likely to be injured in the course of the year.

Thus it is clear as a social matter that the measure of responsibility will have to be evaluated on a scale other than the reactions of individual juries called into court by happenstance, confronted with the task of fair measurement without a balanced administrative experience and subjected to the inflammatory art which emerges through demonstrative evidence.

I do not agree with the author that in assessing damages in personal injury cases the spark of conflict sheds the light by which justice may be seen. Yet this proposition is what the author believes of jury and court trial and this principle is the basis of the book. Neither do the principles of workmen's compensation provide all the answers for use in accident litigation. It has recently been suggested that a panel composed of an experienced judge, a layman and a doctor should supplant the jury in personal injury cases. Almost immediately this suggestion has met with strong criticism. The problem must be solved and it behooves the public, the bench and the bar to tackle that problem on an over-all basis seeking the goal of a socially just and an individually fair basis of compensating misfortune. For myself I am not yet ready to give up the notion that liability should be predicated on fault.

Regardless of the ultimate form which the community decides should be the method of assessing the quantum of liability, demonstrative evidence could have an important place in the presentation of the relevant issues. But demonstrative evidence should be absorbed reasonably within an integrated framework and not be allowed to become a major device for raising damage assessments. The huckster methods of high pressure salesmanship have no place in a courtroom. As indicated, it has its faults and flaws not the least of which is a substantial possibility of escape from the crucible of adequate cross-examination.

The "novel" method suggested in these volumes must still be viewed with concern and accepted with caution. A basic problem yet to be surmounted is to devise adequate means to insure the impartiality of what is depicted by "demonstrative evidence."

I was interested to ascertain how these reactions to the book compare with a number of other reviews that have appeared in legal periodicals. Thus I found that Dean Prosser, School of Law, University of California, announces "This book frightens me" and that the book lacks a "decent pretense of seeking abstract and impartial justice in the courtroom."[2] Warren A. Seavey, Professor of Law Emeritus, Harvard Law School, states, "I was somewhat dis-

[2] Prosser, Review of Belli, Modern Trials, 43 Cal. L. Rev. 556, 557 (1955).

appointed that the author did not suggest sound effects, groans as well as facial distortions, or perhaps, where the wounds are fresh, the sound of blood dripping." Professor Seavey poses the significant social question "Are six-figure judgments desirable?"[3] Larry Alan Bear, Esq., a member of the Massachusetts bar, comments that "the author perhaps attempted to do too much." He calls attention to the fact that "one aspect of negligence law that has been shamefully neglected in the law school curriculums is the great area of medico-legal problems."[4] Payne Ratner, Esq., a member of the Kansas bar, properly points out that the book is a compilation of personal experiences of the author and not a compendium of trials in any sense.[5]

The target of a law text book should be to explain, to clarify, and to assist the practicing lawyer. This book misses that target.

MILTON POLLACK*

[3] Seavey, Review of Belli, Modern Trials, 69 Harv. L. Rev. 394, 395 (1955).
[4] Bear, Review of Belli, Modern Trials, 55 Col. L. Rev. 1240, 1242, 1244 (1955).
[5] Ratner, Review of Belli, Modern Trials, 4 Kansas L. Rev. 146 (1955).
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The United States Patent System: Legal and Economic Conflicts in American Patent History. By Floyd L. Vaughan. Norman, Okla.: University of Oklahoma Press, 1956. Pp. 368. $8.50.

This volume, published posthumously, reports Mr. Vaughan's conclusions upon a return to the study of the patent system a generation after his *Economics of Our Patent System,* published in 1925. Following in a general way the organization of the earlier work, Mr. Vaughan discusses patent pools, patent consolidations, license agreements, cartels, patent-tying devices, patent validity problems, suppression and discouragement of inventors. A final chapter is devoted to the discussion of remedies for the faults he finds. At the root of the proposed remedies lies the conclusion that the patent system is now "effective primarily in the case of the independent inventor" and that there should be "a distinction between the independent inventor's patents and those of the hired inventor."[1]

Mr. Vaughan's view is predicated on the fact that the atmosphere of invention has changed since the founding of the American patent system 160 years ago. To a progressively increasing extent inventions are the result of the efforts of engineers and research personnel employed on a salary basis by corporate enterprise. As to such efforts Mr. Vaughan considers that the "expense . . . —salaries, laboratories, etc.—for the going concern is like the expense of time and motion studies, market research, and the like in that it is

[1] P. 317.