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Gleisser: Juries and Justice

Charles S. Desmond
New York Court of Appeals

JURIES AND JUSTICE. By *Marcus Gleisser*. Cranbury, N.J.: Barnes. 1968. Pp. 354. $6.

While the continued insistence of American lawyers on jury trials in civil suits is probably sincere, according to author Gleisser it is "born of the fear of changes needed by society and founded

upon some vague thought of the miracle expected from a dozen well-meaning but uninformed citizens selected at random from the general community" (preface). Five years ago this reviewer told the bar of New York State that what was needed in the endlessly ongoing dispute about the worth of civil juries was "an objective nonemotional study of the question in all its aspects by competent bodies, and then a thorough airing of the whole matter at the bar of opinion."[1] The key word is "nonemotional"; of eloquence and emotion we have had enough. It is high time for the traditionalists to stop quoting Blackstone, DeTocqueville, and Joseph Choate; and it is also time for the moderns to stop relying on Arthur Vanderbilt, Dean Griswold, and David Peck. This book represents a welcome new approach by presenting observations by a highly competent prize-winning big-city newspaperman with a law degree and years of experience covering jury trials.

Basically, modern criticism of the civil jury system centers on two points: first, a juryman called in from the street is not competent to decide lawsuits; and second, the system wastes the time of everyone concerned. The proponents of the civil jury system see the following merits: tradition, participation by citizens in the administration of justice, and less rigorous application of the strict letter of the law in the interest of social justice. Let it be said for Mr. Gleisser that he has directed his book at these competing positions, although his conclusions are of necessity based upon his own experiences as a journalist in the courts of a great city. These experiences mark out the book's limitations, but fortunately it is not as simplistic as, for instance, *Verdict*, by Maurice J. Bloomstein, which was published earlier this year.

The author begins with a description of the 1959 trial of a personal injury suit brought by a man who had lost both his legs; he won a 625,000 dollar jury verdict—the largest in the history of Ohio courts—from the negligent railroad company. The plaintiff had been a fifty-eight year old, 5,000-dollar-a-year employee whose injuries, so the jury held, resulted from the bite of an insect flying out of a vermin-infested pond which the defendant negligently allowed to exist on its land near its right of way—an "unsafe place to work" under the federal statute. The defense contended that there was no proof of the cause of plaintiff's infection. The jury was the usual mix of men and women, six of each, housewives and workers in sundry occupations. The trial took nine days. Almost certainly, I suggest, it would have taken only half that time without the jury. The condition of the plaintiff was dreadful, hideous. The medical testimony was voluminous, complicated, contradictory.

The enormous verdict for plaintiff was set aside by Ohio's appellate courts, but the United States Supreme Court took jurisdic

1. 36 N.Y. St. B.J. 104, 106 (1964).

tion of an appeal. Before this last appeal could be heard, the plaintiff and his principal lawyer both died. In 1963, four years after the trial and many years after the insect bite, a 450,000 dollar settlement was agreed on and the long dispute finally came to an end. In a subsequent commentary on the case, the Bulletin of the Cleveland Academy of Medicine suggested that the courts had not received competent medical advice, that the verdict was "anachronistic," and that it was a terrifying prospect in this enlightened age that jurors' precedent-making decisions are based on "mysticism and fantasy."

Next, *Juries and Justice* provides a reprise of the frequently repeated history of jury origins, much of which is not really history at all—at least as it deals with the centuries before the fifteenth. There are the usual references to Alexander Hamilton's opposition to civil jury trials and his prediction that future years would " 'render a different mode of determining questions of property preferable in many cases in which [the jury] mode of trial prevails' " (p. 43). Little did that youthful lawyer-philosopher foresee a future year when the courts would be inundated by hundreds of thousands of lawsuits dealing with questions not of "property" but of personal injuries. Author Gleisser reminds us, too, of the decline and, practically speaking, the demise of civil juries in England, the country in which they first came to full development. He comments sadly on the eagerness of Americans "to hold on to the antiquities of British justice and refuse to cast an eye on the modernization being conducted by their former teachers" (p. 48). He fails, however, to give any attention to the apparently strong movement in England for the return of civil juries. And his references to "juries" in other European countries are not very helpful, since civil juries of the Anglo-American sort never really existed in the continental nations.

This is a book for laymen, but most of its readers will, I suspect, be lawyers. In a way it is antijury, but the author tries to be objective, to describe the civil jury as it is. Not nearly as comprehensive as the much reviewed *Crisis in the Courts* by Howard James (another newspaperman turned court analyst), *Juries and Justice* is at least as valuable a contribution to a layman's understanding of his courts as its more famous predecessor, and perhaps it is better balanced. To my eye, however, *Crisis in the Courts* overemphasized the defects of American courts and devoted little attention to the remedies now being attempted, with the result that the lay reader was probably left with a feeling of frustration, if not bitterness.

Juries and Justice is at its best in its description of personal injury practice as "big business." And it is correct in its statement that many trial judges favor the use of juries in civil cases because the judges do not relish the chancy and unsatisfying job of finding the facts, especially the amount of damages. Mr. Gleisser also pays a

deserved tribute to the zeal of those lawyers specializing in personal injury claims who educate themselves not only in medical terminology but in everything pertinent to trauma. A novel idea is presented in a quotation from Dr. Alvarez of the Mayo Clinic, who solemnly asserts that the anxieties consequent to litigation may themselves heighten the plaintiff's original pains and make him "a very sick man" (p. 69). I would have thought that the injured person would suffer more anxiety if he could not have the services of a zealous, energetic attorney to present his claim to insurance adjustors or jurymen.

A more reasoned criticism of personal injury litigation is its utter uncertainty and its delay. The answer to this problem—and it will be accepted some day—lies in a system of scheduled compensation for all highway accident injuries, regardless of fault, in the manner of workmen's compensation. The Gleisser book deals in a telling and disturbing way with the uncertainties of verdicts and decisions on appeal. Particularly effective is its discussion of the difficulties inherent in putting price tags on "pain and suffering." But the illustrations are, as always, carefully chosen and are probably exceptional. Usually, I think, if you accept the jury's findings on the question of fault, you have to conclude that it does about as well with damages as a judge would. To repeat, the better way would be to standardize damages and abolish the vain effort to find where the fault lay for the accident.

At two places in this book Mr. Gleisser puts his finger on real defects in our jury system. He shows up the anachronisms in our formal rules of evidence and in the use of the grand jury. Both of these systems waste time and both are unnecessary for achieving justice. Their continued existence merely proves how slow judges and lawyers are to adapt to modern conditions, and how slow the public is to reform an institution described to them in their high school civics classes as basic and essential. Rules of evidence in civil cases should be drastically overhauled. The grand jury should be abolished, with the possible exception of continuing its traditional function of investigating public officers and bodies.

In this reviewer's opinion the civil jury will add a few more years or decades to the nine centuries of its history before the American public discovers that it can get along very well without it. The arguments against it—delay, expense, waste of everybody's time, uncertainty of result—are persuasive. The British got rid of it for precisely these reasons. They came to the conclusion that justice must be prompt, sure, and uniform, results which, I submit, are not likely to be produced by twelve nonprofessionals picked at random.

Charles S. Desmond,
Retired Chief Judge,
New York Court of Appeals