Book review

M M Park
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ABSTRACT: two recent books document failed personal injury or tort litigation US style and the procedure underlying the pursuit of law cases.

A Civil Action
by Jonathan Harr
Random House, New York, 1995

Wrongful Death: a medical tragedy
by Sandra M Gilbert
W W Norton & Coy, New York, 1995

[1] Both of these books relate to the aftermath of wrongful deaths leading to civil litigation that was less than satisfactorily resolved to the plaintiffs. The first is a well-researched tale of “toxic tort” litigation with the protagonist being the plaintiffs’ lawyer and the second is the highly personal account of medical malpractice as seen by the widow of the deceased.

[2] Harr’s prize-winning book has netted him a multi-million dollar contract from Robert Redford for the film rights. This reviewer believes it to be too complex a tale to be the subject of a two-hour screenplay and the recent twenty-hour Steven Bochco “maxi” series Murder One springs to mind as a suitable treatment for its dramatic portrayal as all but 40 of its 500 odd pages is devoted to the litigation.

[3] Jan Schlichtmann is a young and successful personal injuries lawyer with little trial experience. His success has been the result of tenacious investigation and pre-trial diligence. He has been lucky in picking up some “good” cases and his expensive presentations to the defendant’s insurers are powerful trial previews that persuade them in many cases to settle. When they don’t Schlichtmann is ready to proceed to trial with all the hubris of one who has yet to lose a case (and who has yet to try a case). In one case, upon the conclusion of the parties’ cases and prior to it going to trial, he rejects a $1 million settlement offer to the surprise of the judge and his fellow members of the personal injury bar. When the jury returns with a $4.7 million verdict his decision is vindicated but the reader is left in doubt that Schlichtmann is a person
capable of sailing close to the edge. Consequently Schlichtmann is brash and arrogant and some elements of his persona do not engender our sympathies. He goes to trial and both wins and loses after a monumental lawsuit that has the reader changing his opinion and bleeding for Schlichtmann who is the victim of less than honest expert witnesses, perjurious defendants and a (perhaps unethical) opposing lawyer and a legal system that throws up its hands at the prospect of retrying an epic case and side-steps its responsibility on appeal.

[4] The result is that after nine years on the one case we see every participant except Schlichtmann rewarded — at one stage the plaintiffs are concerned that their lawyer will commit suicide — he is left in debt and thoroughly disillusioned with the practice of law.

[5] Harr’s take includes all the politicking and legal manoeuvring before, during after trial and whereas there is a danger of boring the pants off the reader, Harr renders it a gripping yarn by making the legal procedure intelligible and explaining the motivation of the players to the reader — after it was all over the author extensively interviewed all the players including the jury members which is precluded in our jurisdiction.

[6] Two companies have, over many years, solved the problem of disposal of their manufacturing waste by merely dumping it. The waste subsequently leached into the underground water table exploited by the local water supply authority which drew water from two wells in the vicinity of the dumping area. A number of local residents, including the children succumb to baffling cancers (acute lymphocytic leukaemia) leading to premature death and artificially induced multiple sclerosis where one of the dumped chemicals, Trichloroethylene, has the effect of “degreasing” the myelin sheath of the nerves.

[7] Harr’s well-researched and detailed reporting is reminiscent of the New Yorker style and this reviewer was not surprised to see Harr’s account of the investigation into the 1994 crash of a USAir Boeing 737 published in that magazine last year.
Sandra Gilbert, a published poet and professor of English at the University of California at Davis has written a personal memoir of her grief following the “adverse event” whereby her husband, also an academic at UCD, failed to survive routine prostrate surgery at UCD’s Medical Centre. A leading teaching and research hospital. Her litigation was settled for an undisclosed small sum — her purpose in litigating failing — her purpose was to find out exactly what had happened during the surgery because none of the medical staff would explain — possibly had she been told there would have been no litigation. The failure of the medical staff to so explain was no doubt engendered by the hospital’s legal representatives in addition to the inability of the medical staff to accept that their treatment could fall short of their own high standards. The hospital and the surgeon involved were of the highest repute (a family friend had made enquiries at the national Cancer Institute to learn that the surgeon was held in the highest regard) and yet, the patient had succumbed to post haemorrhagic anaemia (i.e. bled to death) despite massive transfusions of blood in the post operation recovery room. Notwithstanding constant testing and monitoring, no one was following up on the tests which gave warning of the bleeding until three hours had passed by when it was too late despite the massive transfusions.

This highly personal account of a layperson’s interaction with the professions (both medical and legal) is an interesting read but this reviewer cannot envisage it being made into an entertaining screenplay. I may be wrong; I often am, but I never suffer doubt.
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Author/s:
Park, M. M.

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