

RISK: Health, Safety & Environment (1990-2002)

Volume 1

Number 3 *RISK: Issues in Health & Safety*

Article 8

June 1990

Book Reviews

Thomas G. Field Jr.

Professor Emeritus, University of New Hampshire School of Law

Follow this and additional works at: <https://scholars.unh.edu/risk>



Part of the [Intellectual Property Law Commons](#), and the [Torts Commons](#)

Repository Citation

Thomas G. Field, Jr., *Book Reviews* 1 RISK 273 (1990).

This Book Review is brought to you for free and open access by the University of New Hampshire – School of Law at University of New Hampshire Scholars' Repository. It has been accepted for inclusion in RISK: Health, Safety & Environment (1990-2002) by an authorized editor of University of New Hampshire Scholars' Repository. For more information, please contact ellen.phillips@law.unh.edu.

Book Reviews

Cover Page Footnote

In the print version of this article, the author is only identified by the initials T.G.F.. The repository citation gives the full name of the author, Thomas G. Field.

Erratum

The Table of Contents for the print version lists a different page number for the *Book Reviews*. The number given in the citation matches the citation for this item in most commercial databases.

Book Reviews

STEPHEN D. SUGARMAN, DOING AWAY WITH PERSONAL INJURY LAW (Quorum, 1989). Foreword, Jeffrey O'Connell. 224 pp. Bibliography and index. ISBN 0-89930-395-1; LC 88-38311 [\$49.95 88 Post Road, Westport CT 06881.]

This is a well documented and produced book that can be read by a wide audience. It furnishes a good introduction to the literature advocating insurance to overcome the well-known glacial pace and inefficiencies of tort litigation as a redressive mechanism.

Criticism is easy, but designing superior alternatives is not. Professor Sugarman goes further than many in both regards. Yet as Judge Bownes of the First Circuit recently observed, the jury system is the worst way of resolving complex disputes except for all others. [*See, Should Trial by Jury be Eliminated in Complex Cases?* 1 RISK 75, 80 (1990).]

In the first part of his book, Sugarman addresses the failure of tort law to meet various goals, including safety, compensation, and justice. He begins by attempting to answer defenders of the tort system, who, recognizing that it is not a very efficient mechanism for compensating victims, often emphasize its value in promoting socially desirable behavior. In doing so, he discusses the extent to which tort liability (often covered by insurance policies) deters unsafe behavior and observes, at 13, that insurance may interfere with the deterrent effect of torts because:

In practice... only a very small proportion of insureds pay premiums that are importantly sensitive to changes in the dangerousness of their conduct.

Auto insurance premiums appear to more directly reflect individual claims experience, but, even in that situation, Sugarman says, at 15:

... I remain unable to see how the fear of \$100–200 more in insurance premiums will yield safer driving habits where moral qualms, self-preservation interests, and the fear of fines or losing a license have not.

He thus concludes, at 23, that common microeconomic models advancing tort liability as a deterrent to unsafe behavior fail to account for many important factors. He also suggests that:

[S]ociety might try trading five lawyers for a highway engineer and a dangerous-product public information officer. We would not only save money, but we might get considerably better accident protection to boot.

The second part of the book addresses existing plans and proposals for curtailing victims' rights and supplanting tort liability with no-fault insurance. Here, for example, the comprehensive no-fault scheme in New Zealand and the experience with workers' compensation (a classic no-fault insurance scheme) in the United States are discussed.

In the last part of his book, Sugarman goes on to advance and explain a combination of tort liability, employee insurance, and regulation that he would expect to efficiently compensate victims and deter unsafe behavior. As a first step, he would eliminate approximately 90 percent of tort cases, with only long-term injuries being covered.

However, assuming *arguendo*, that insurance is superior to torts in compensating victims and inferior in preventing injury, where do we look for deterrence? For example, had decades of workers' compensation experience been shown to deter unsafe practices in the workplace, we would never have needed the Occupational Safety and Health Act of 1970. [*See supra, e.g.,* Graham and Holtgrave, at 243.]

As was done there, Professor Sugarman suggests that regulation can fill in the gaps left by shrinking tort liability. A decade ago, I would have agreed. [*See, e.g., The Young Consumer: A Paradigm Analysis of the Roles of Public and Private Law in Preventing and Redressing Injuries*, 29 MERCER L. REV. 523 (1978).] Intervening years of teaching administrative process, consumer product regulation and product liability have convinced me that present regulatory shortcomings

are as serious as those in the tort system and that it would be unwise to undertake radical tort reform without having first addressed the regulatory shortcomings. [*See, e.g., Raymond v. Reigel Textile Corp.*, 484 F.2d 1025, 1027 (1973).]

Notwithstanding skepticism about its ultimate conclusion, I highly recommend this book. Either Sugarman's criticism of microeconomic tort models, for example, or his honest attempt to evaluate insurance as deterrent would, alone, warrant careful consideration.

T. G. F.

CHET FLEMING, IF WE CAN KEEP A SEVERED HEAD ALIVE...
 (Polinym Press, 1988). 461 pp. Appendices and index. ISBN 0-942287-02-9;
 LC 87-90566. [\$12.95. 33 Berry Oaks, St. Louis MO 63122.]

This well produced and very modestly priced hard cover book was written to generate controversy. Anticipating possible disruption to his personal life, its author adopted a pseudonym (or "polinym" — hence the name of the publisher). However, this was in vain. Premeditated efforts to generate controversy are apparently regarded as less than newsworthy. Thus, "Fleming" is now willing to be identified as Pat Kelly, the author of the paper, *supra*, at 217.

The book explains why he spent a good amount of time and money to obtain a patent for an invention that he had no intention to practice. It may be the only one ever to be filed by an inventor using a pseudonym and is entitled "Device for Perfusing an Animal Head." The patent is reprinted in its entirety as Appendix D and, indeed, claims, e.g.:

1. A device for maintaining metabolic activity in a mammalian head which has been severed from its body at its neck, comprising the following components...
4. A method... wherein the component which can remove waste products from the blood is selected from the group consisting of....

Patents sometime generate controversy, e.g., the "live, human-made micro-organism" declared by the Supreme Court to constitute patentable subject matter in *Diamond v. Charkrabarty*, 447 U.S. 303 (1980). However, as noted above, this one was filed for the sole purpose of encouraging early public attention to an incipient technology — or incipient technologies generally.

Notwithstanding his narrow point of departure, Kelly deals broadly with the social control of science and technology and explores ways in which society can keep some measure of control without losing the benefits of modern science and technology — particularly those of

medicine. In fact, there is further discussion, at 278–97, of "chunking", the topic of Kelly's contribution to this issue.

IF WE CAN KEEP A SEVERED HEAD ALIVE... was written for a broad audience and is likely to be of interest to most readers of **RISK**.

T. G. F.

Using RISK as ASCII Text

It now appears that an entire volume of RISK will fit on one double-sided 3.5" disk, although MS-DOS disks may be a bit crowded (720K rather than 800K on a Macintosh disk).

This is not a satisfactory *substitute* for the printed version. For example, footnotes appear as endnotes, table formatting and graphics are lost, and Greek letters [*See, e.g.,* the Cranor article in issue 2.] will appear as Roman. Yet it can be a very useful *complement*. Text files can facilitate copying (e.g., a lengthy quotation you want to use in a manuscript) and finding (e.g., a reference to an article or book you remember seeing cited in an article) information.

Copying information should be easy. Most word processing software will permit you to open a "text" file and then to copy part of its text for "pasting" in another document. Also, most word processing software contains a "find" command, but the search is usually limited to a single word or phrase.

For complex searching, more is needed, and software (of varying cost and sophistication) is available that will enable a user to go through a series of disk files (without the need to open them), looking for the occurrence of words or phrases. One application that we have identified as quick, reasonably priced (listed for approximately \$80.00) and available both for IBM and compatibles and for Macintosh computers is GOfier. It is published by Microlytics, Inc. and is available, e.g., through mail order software retailers. With GOfier, one can set up a search request that includes more than one search term, excludes one or more terms, and indicates the proximity of terms: E.g., "A" and "B", but not "C" within five lines of each other. If readers know of other software of similar utility, we would be pleased to announce it.

We have already made inquiry, asking about, e.g., the need for pagination within files. [It is not now present but could be added.] If

you have not responded or our inquiry has not come to your attention and you see a potential use for a machine-readable version, please let us know your objectives and preferences as soon as possible.