

American muse, whose strong and diverse heart,
So many men have tried to understand
But only made it smaller with their art
Because you are as various as your land. . . .
Receive the dream too haughty for the breast
Receive the words that should have walked as bold
As the storm walks along the mountain-crest
And are like beggars whining in the cold.
The maimed presumption, the unskillful skill
The patchwork colors fading from the first,
And all the fire that fretted at the will
With such a barren ecstasy of thirst.
Receive them all—and should you choose to touch them
With one slant ray of quick American light,
Even the dust will have no power to smutch them,
Even the worst will glitter in the night.
If not—the dry bones littered by the way
May still point giants toward their golden prey.
Stephen Vincent Benet
Invocation to John Brown's Body

THE UNCOMMON MAN
IN
AMERICAN BUSINESS

By WALLACE JOHNSON

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THE DEVIN-ADAIR COMPANY
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Machines replace men. Or, at best, men are poor substitutes. In business, the George F. Babbitts entrench themselves, men so preoccupied with getting and spending that they can ignore the social consequences of their economic activity.

Part of the answer rests in the arts. With religion, the arts share a unique power to humanize, to bring man and his environment into harmony. But in contemporary civilization a cultural vacuum results in double inequity. As the businessman stubs his toe on the contemporary arts, he withdraws his patronage. The artist, rejected by his public, takes refuge in deliberate obscurity. The unhappy process is circular. And the field is wide open to the purveyors of the cheap and the shoddy—at least articulate, however ignoble.

It is not the fine arts alone which possess the power to humanize. Businessmen can contribute to the support of orchestras and museums, cultivate a taste for poetry, painting and ballet. But business can approach the problem directly and with widespread effectiveness by its participation in the popular culture. Architecture, environmental design, city planning, television programming, little theatre or children's symphony, the extension of cultural opportunity to the less privileged, sponsorship of adult education, publicity for worthwhile programs, lecture series—so many ways to express concern and responsibility for a three-dimensional life for all.

Uncommon individuals can bring about a dramatic marriage of the technical inventiveness of modern man and the artistic creativity of the individual. Their exercise of initiative can thrust humanity into a modern renaissance. Research can blast new channels for expres-

sion and achievement, and clear the rubble from the old ones.

There is no meaningful reason for business to seal itself away from the arts. Popular culture calls business men to adventure and responsibility in the third dimension.

2. THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH

"Confidence thrives only on honesty, on honor, on the sacredness of obligations, on faithful protection, and on unselfish performance. Without them, it cannot live."

Franklin D. Roosevelt

One of the major responsibilities of the modern manufacturer or seller is product safety. It is no longer the buyer who must beware, but the seller. *Caveat emptor* has become *caveat venditor*.

PLAINTIFF'S ATTORNEY: EXAMINATION OF PLAINTIFF

"And what were you doing, Mr. Wilson, at the exact time of the accident?"

"Painting the ceiling of that there room."

"And what happened?"

"The scaffold just tipped over."

"And what happened to you?"

"I fell to the floor on my side, I guess. But I don't remember nothing on account of I was knocked unconscious."

"And did you know at that time that you had been injured?"

"Yeah."

"How did you know?"

"Well, my wrist felt like it was broken, and my hip felt like it might be broken."

"And where was the scaffold?"

"It was just lying on the floor."

"Did you notice anything different or unusual about the scaffold?"

"Yeah."

"What was that?"

"One of the caster wheels was broken. Broke off at the stem. It was just lying there by itself."

"And now, Mr. Wilson, if the metal in the stem of that caster were weak, as it might be if it were improperly manufactured, and if you were to be working on a scaffold with such a defective caster, what, in your opinion would happen?"

"Your Honor, I object, on the grounds that this is a speculative question, seeking an opinion of the witness. The witness has not been qualified as an expert on scaffold design."

"Objection sustained."

"No further questions. This concludes the case for the plaintiff, Your Honor, except, of course, any re-direct examination of this witness."

DEFENDANT'S ATTORNEY: CROSS-EXAMINATION OF THE PLAINTIFF

"Mr. Wilson, you have testified that the ceiling of the room which you were painting at the time of the accident was 'about 20 feet high.' Is that your testimony?"

"Yeah."

"Did you measure the height?"

"No."

"And you have also testified that the platform height of the scaffold was 'about 12 feet.' Is that what you testified?"

"Yeah."

"Have you examined the scaffold set up here in the courtroom, right there in front of the jury?"

"Yeah, I looked it over."

"Is it the same type of scaffold on which you were standing at the time of the accident?"

"Yeah."

"Joe Dennis, whom you have referred to as your 'buddy' has testified that the scaffold legs were extended 'about a foot, not more than that.' Is that correct?"

"I guess so."

"Then the scaffold here in the courtroom is set up exactly as the one was at the time of the accident?"

"Looks about like it to me."

"Mr. Dennis has testified that when the scaffold fell over he grabbed an overhead pipe. He testified that he hung there for a moment, and then dropped to the floor with only a slight sprain of his ankle. Did you hear this testimony?"

"Yeah. But he's a lot lighter than I am!"

"And what was your weight at the time of the accident?"

"I might of weighed a little more, then, but say 280 pounds."

"Painting is not your usual occupation, is it, Mr. Wilson?"

"No. Like I told the other lawyer, I'm a brewer. We got to keep busy during the shut-down every year."

"Are you familiar with the caster brakes on this type of scaffold?"

"Yeah, they told me about 'em."

"When the brake lever is up the caster is unlocked, the wheel is offset and free to roll and swivel?"

"Yeah."

"When the brake lever is pushed down the caster is locked so that the wheel can't roll or swivel?"

"Right."

"At the time of the accident were the casters locked or unlocked?"

"Locked."

"How do you know that the casters were locked?"

"Joe and me locked 'em. He locked his at his end. I locked mine at my end."

"Then you climbed up one end of the scaffold as Joe climbed up the other end, and you both started painting?"

"Yeah, that's what we did."

"Had you and Joe moved the scaffold several times that morning—from position to position as you painted the ceiling?"

"Yeah, sure. Maybe three or four times."

"Will you please tell us exactly what you and Joe would do with the scaffold when you were finished with one portion of the ceiling and wanted to move over to paint another position?"

"Well, first we both climb down, him at his end, me at my end."

"Excuse me, Mr. Wilson. Did you both climb down at the same time?"

"Yeah. Helps balance the scaffold."

"Please go on."

"Well, then we unlock the casters and roll the scaffold, say about six feet. Then we lock the casters, climb back up the scaffold and go on painting."

"You both climbed up at the same time?"

"Yeah, that's what I already said. Helps balance the scaffold."

"With two men painting from a two foot by ten foot platform, you could paint a ceiling area about six feet by fourteen feet in one scaffold position. Right?"

"Yeah, about that."

"There were overhead pipes in the way?"

"Yeah, they get painted later. Some red, some aluminum."

"You always paint the pipes later."

"As you stood on the platform the pipes were about head height?"

"Yeah, between your shoulders and your head. You could easily take hold of 'em."

"Mr. Wilson, have you ever been up on this type of scaffold with the casters unlocked?"

"You're not supposed to do that. It's against the rules."

"But haven't you ever been up on this type of scaffold while someone rolled the scaffold to the next position?"

"I don't remember."

"Well, Mr. Wilson, you weigh 280 pounds. If it took about twenty minutes to paint a section of ceiling that means you had to climb up and down three times an hour. In an eight hour day, that's 24 times. Didn't you find it easier to have Joe climb down and move the scaffold a few feet—"

"Your Honor, I object! He is leading the witness."

"Objection sustained. Please re-phrase your question."

"Thank you, Your Honor. Mr. Wilson. Did Joe Dennis, on the morning of the accident, ever roll the scaffold to a new position with you on it?"

"No—no. I always climbed down too. We both moved it."

"But isn't it a fact, that with all four casters unlocked, on a smooth concrete floor like the one on which the accident occurred, the scaffold rolls easily, even with two men on it?"

"I suppose so."

"Now, Mr. Wilson—suppose you and I were painting this courtroom ceiling. We are up on the scaffold. There are pipes to take hold of. The casters are unlocked. We have just finished painting a section of the ceiling and we want to move to another section. What's to prevent us from taking hold of the pipes and pulling—"

"Your Honor! I object. This is pure speculation. It has nothing to do with the case at issue. He is asking the witness for a conclusion."

"Objection sustained. This line of questioning is not at all clear as to its producing admissible testimony."

"Very well, Your Honor. Mr. Wilson, as I recall your testimony earlier today, you say that you have returned to work."

"Yeah, but I can't handle tools or turn valves like I used to."

"You're right-handed aren't you, Mr. Wilson?"

"Yeah."

"And you say your wrist still bothers you?"

"Yeah. Gets tired more quick than it used to. Goes limp before the end of a day."

"The work records introduced at this trial show that you

have been working regularly now for nine months at full pay. Is that right?"

"Whatever it says, it must be O.K."

"Does your hip still bother you?"

"A little."

"But it wasn't broken, was it?"

"No. I'd be all right, I guess, if it wasn't for my wrist."

"Right after the accident you were taken to Memorial Hospital?"

"Yeah. That's where they fixed me up."

"That's where they examined your wrist?"

"Yeah. They said it was a bad sprain. I thought it was broke."

"Mr. Wilson, I show you a certified copy of the Memorial Hospital record of your examination. It is signed by the doctor in attendance and filled out and signed by the nurse in charge. In two places it states the location of your injury. Will you please read what it says?"

"You mean this here?"

"Yes, Mr. Wilson."

"Left wrist."

"No further questions."

PLAINTIFF'S ATTORNEY: REDIRECT

"Mr. Wilson, your injuries caused you loss of five and a half months' work, didn't they?"

"Yeah."

"And your wrist and your hip still bother you?"

"They sure do."

"Did that nurse make a mistake in recording which of your wrists was injured?"

"She must of. It's this wrist that gives me trouble."

"And when you woke up from being knocked unconscious you saw the scaffold lying there on the floor and one of the casters broken off at the stem?"

"Yeah. It's right here. On that table over there."

"No further questions. We have no further witnesses."

"We will now take our customary afternoon recess. This court will convene again promptly at 3:15."

DEFENDANT'S ATTORNEY: EXAMINATION OF
SECOND WITNESS FOR DEFENSE

"Mr. Johnson, you have been present during the testimony of the plaintiff?"

"Yes."

"And you heard the testimony that this caster, broken at the stem, was one of the four casters on the scaffold involved in the accident?"

"Yes."

"And that after the accident there was this broken caster lying on the floor?"

"Yes."

"Is it reasonable, then to assume that the caster stem was defective, that it broke while the men were on the scaffold, and that its breaking caused the scaffold to tip and fall?"

"No."

"You said 'no?'"

"That's right. No."

"Then if you don't think that the broken caster stem was the cause of the accident, how do you explain its being broken?"

"In my opinion the broken caster was a result of the accident, not the cause."

"How do you explain that?"

"These were heavy men. As the scaffold fell it might readily have bounced on the concrete floor with considerable impact. It is quite conceivable that this impact, sidewise, of the caster against the concrete, could fracture the caster stem. There is no evidence of a previous crack or partial fracture."

"Then how, in your opinion, could the accident have occurred?"

"The men probably pulled themselves over—"

"Your Honor, I object. This is pure speculation. It is based on no evidence or testimony in this case."

"But, Your Honor. May I remind the plaintiff's attorney that the witness has been qualified as an expert in scaffold design and usage. This line of questioning is leading up to evidence which I am sure the court will agree is conclusive in this case."

"Objection over-ruled, on the assurance that the objective of this line of questioning is established."

"Thank you, Your Honor. Mr. Johnson, you say that the men probably pulled themselves over. How would you explain this probability?"

"The scaffold rolls so easily when the casters are unlocked that on this job it would be a great temptation to take hold of the overhead pipes and pull the scaffold from position to position. This would avoid the effort of climbing down, unlocking the casters, repositioning the scaffold, locking the casters, and climbing up again. However, if they forgot to unlock one or more casters when they climbed up the last time, then when they were ready to position the scaffold the next time by pulling on the overhead pipes, the scaffold wouldn't

roll. It would tip, because of the locked caster, and fall. This could be readily demonstrated with the identical scaffold here in the courtroom."

"Your Honor, I object. Such a demonstration would endanger the personnel, furniture and facilities here in the courtroom. It is pure sensationalism. It is based on speculative questioning irrelevant and immaterial to this case."

"Your Honor, we do not intend to tip this scaffold here in the courtroom. The witness has simply testified that his conclusion can be readily demonstrated with the identical scaffold here in the courtroom."

"Very well. Please continue."

"Mr. Johnson, is there any other likely manner in which the scaffold could have been tipped over?"

"Yes. If one of the men had descended to move the scaffold, leaving the other on the platform. If the man on the floor forgot to unlock one or more of the casters before pushing the scaffold toward the new position, he could tip the scaffold over by pushing on it. This would be quite possible if the man above were to be standing over at one side of the scaffold where his weight would be almost directly above the casters on that side—towards the direction the scaffold was being pushed. This could be readily demonstrated with the identical scaffold here—"

"Your Honor!"

"Does the defendant propose such a demonstration?"

"No, Your Honor."

"Very well, please get to the point."

"We will, Your Honor. Mr. Johnson, have you measured the room in which the accident occurred?"

"Yes."

"What was the ceiling height?"

"Thirteen feet, three inches."

"A six foot man with a brush would require a platform height of about six feet in order to work efficiently?"

"Yes, this allows seven feet from platform to ceiling."

"And the height of the overhead pipes?"

"This measured 11½ to 12½ feet depending on the pipes."

"And your measurements and photographs were witnessed and verified by Mr. Jack Thompson, foreman in charge of the plant?"

"Yes, as indicated in the testimony given by Mr. Thompson yesterday afternoon."

"At what height is the platform on the scaffold here in the courtroom?"

"Six feet, one inch."

"Will you please measure this and show the court?"

"Yes."

"To the best of your knowledge, Mr. Johnson, is this scaffold here in the courtroom exactly like the one involved in the accident?"

"Yes."

"And what significant conclusion can be reached by the use of this scaffold?"

"That under the circumstances indicated by the testimony given in this case the accident could not have occurred."

"You mean to say that with this scaffold here in this courtroom you can prove that conclusion?"

"Yes."

"I would caution the witness that the court cannot permit any demonstration that will endanger the safety

of persons in this court. Nor can we tolerate any damage to courtroom furniture or effects. At the time of the defendant's request to erect this scaffold in this courtroom, we made this clear."

"Yes, Your Honor. You can be sure that admonition will be respected. Mr. Johnson, you have just stated the opinion that under the circumstances testified to in this case the accident could not have occurred. Is that correct?"

"Yes, and Mr. Gleisen and I are ready to demonstrate the reasonableness of this conclusion."

"Will you please do so, Mr. Johnson?"

(Mr. Gleisen and the witness approach the scaffold. The casters are locked. One man climbs one ladder frame while the other climbs the opposite frame. The two men walk back and forth on the platform, simulating painting the ceiling. Then they descend, one at each end of the scaffold. The witness returns to the witness stand.)

"What does this demonstration prove?"

"That the accident could not have occurred because of a broken caster stem."

"What do you mean?"

(The witness walks over to the scaffold, takes one of the casters out from under the scaffold leg by merely lifting it. He hands it to the Judge. The caster has no stem. It was simply placed under one corner of the scaffold.)

"You mean to say—I can't believe it. Let's be sure the jury has a full understanding of this. You felt perfectly safe up there?"

"Yes, Your Honor. Since all four casters were locked the scaffold did not move when weight was applied at both ends. That is when there is weight on all four legs. One

broken caster causes no instability. It's just like a block of wood placed under the short leg on a four-legged table."

"But that caster would have fallen over and tipped the scaffold if the scaffold had been bumped sideways before you climbed it."

"Yes, Your Honor. And the men would have been warned not to ascend."

"And if the caster were unlocked the wheel would be offset and the broken stem would not permit this caster to support this leg of the scaffold."

"Correct, Your Honor, again warning the man of an unsafe condition."

"I must ask the witness to repeat the demonstration. Will the jury please join me in standing near the scaffold and examining this caster as the demonstration proceeds?"

(Mr. Gleisen and the witness repeat the demonstration.)

"The defense rests, Your Honor."

"No questions, Your Honor."

The responsibility for his product is the manufacturer's own, and he is liable for accidental injury or property damage incurred in its use. Although there are no accurate records available, a conservative estimate puts the number of product liability cases handled by the courts at 10,000 annually. And perhaps four times as many are settled out of court. Claims are based on the recently-established principle that the user can recover against the seller or manufacturer if the product or service is dangerous through their negligence.

Liability has been predicated increasingly on warranty.