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Book Reviews

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My Life in Court. By Louis Nizer. Garden City, N.Y., Doubleday, Inc., 1961. Pp. 524. $5.95.

If Louis Nizer set out to write about his life in court to demonstrate that truth can be not only stranger than fiction but also more thrilling, he proved this point admirably. He provides his readers with a graphic picture of the real excitement of courtroom action as he presents details of some of his famous victories.[1] In developing his stories, Mr. Nizer arouses interest early in his presentation by pointing ahead to forthcoming action and invariably prefaces his remarks concerning legal issues with a clear, simple explanation of the point of law involved. He manages to keep the lay reader's head well above water.

To most lawyers the principles of law discussed by the author are elementary, but a young attorney, unless he is exceptional, should come away from this book with some new insight into courtroom tactics and techniques. From venue consideration and jury selection, through direct and cross-examination, past summations and on to appeal, Louis Nizer, as he unfolds his tales, reveals his winning approach. Basic is hard work and a good deal of common sense (he chooses to rename the latter his "rule of probability" which guides him to, among other things, the questions to be asked and the evidence to be searched for). In addition he adds courtroom savoir faire gained from long years of experience, an honest straight forward manner, and most important, I think, pride in and love for his work and profession.

Such pride and love is revealed throughout this book. For example:

> "This was another night in which I worked through to morning and returned to court. During that awesome stillness which one can find only in the hours preceding daybreak, I like to 'plough deep while sluggards sleep'."[2]

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[1] Query: Were there no interesting defeats which might have rounded out this presentation?

Presented are: the libel suits of Professor Foerster against Victor Ridder (issue: Nazism in the United States during World War II) and Quentin Reynolds against Westbrook Pegler and the Hearst papers; the divorce actions of Eleanor against Billy Rose and Dolly against John Astor; a suit for plagiarism of the music to "Rum and Coca Cola"; Loew's proxy fight between Vogel and Louis B. Mayer and the Tomlinson group; and two plaintiffs' negligence actions, one against an obstetrician for malpractice resulting in the death of mother and child, and another by a widow for damages in a *res ipsa* death action against a railroad for loss of a young husband.

[2] Nizer, My Life in Court, 134.

"[I]n this case, I had every issue of the *Staats-Zeitung* over a period of fifteen years translated into English. Each news item of significance, each editorial, each special feature was translated, indexed and numbered, so that I could call for it at a moment's notice during cross-examination."[3]

"This is the excitement of practicing law, far more than the culminating forensics in the courtroom. It is the struggle of the mind to cope with overawing physical forces, to pierce and shatter the hugest boulders with an idea, to overcome superior numbers and strength with nothing but thought."[4]

" . . . I believe I get more out of developing the facts and arguments for my associates than they do. It is a process of self-persuasion which gives substance as well as form to a naked idea. Sometimes, if the logical syllogism breaks down during my recital, I will interrupt myself with a criticism, and my associates are thereby made aware of the testing process of my recital. I am not merely informing them, I am challenging myself."[5]

When Mr. Nizer turns his attention on the problem of a lying witness he says:

"I have often heard cynical comments by laymen about lawyers' ethics, how they fashion a witness's testimony and teach him to lie. Aside from the fact that the noble traditions of the legal profession are at least as well observed as those of other professional men I can earnestly report that I have never met a topnotch lawyer whose sense of honor did not meet the highest standards. The reason for this is not compressed within the ethical proprieties of Bar Association rules or the high character required for following the highest calling of all, that of being an advisor. The reason is also to be found in the practical fact that lack of scruples leads to defeat. If an opponent permits his client to lie or if through lack of preparation he is unaware that his client is deliberately lying, he assures his own downfall. A thousand facts spring up to bedevil the lie; I never am so certain of success as when a witness has deliberately fabricated evidence. For, if I am prepared and persistent, such a witness cannot survive. A jury may forgive a wit-

[3] *Id.*, 290.
[4] *Supra*, n. 2, 490.
[5] *Supra*, n. 2, 468.

> ness's error in fact. We all make them. But it will never forgive a deliberate lie."[6]

If a lawyer's only reason for keeping his witness truthful is fear of his opposing counsel's adeptness in cross-examination, he falls from the ranks of honorable "top notch lawyers." He will find ample opportunity to misuse the trust that court and client have placed in him in other areas where he will be unobstructed by probing questions of opposing counsel. Here is where self respect, pride and love of work and profession demand the establishment and enforcement of personal standards and the obedience to the unenforcible. Here is where we separate from the masses those who have qualities which are essential for "greatness in law."

Unquestionably, Louis Nizer demonstrates to his readers that he is a lawyer with skill, and a man of principle. What brought him to his high station? I think that this is a question that an author writing about his own accomplishments must be prepared to answer. Mr. Nizer introduces himself to us in his present state, our only clue to his development being given in the preface.

> "While working as a delivery boy during summers for the Regal Shoe Stores, I used to wander over to the Supreme Court building nearby. I had dreamed of being a trial lawyer when I grew up, and the lure of famous lawyers appearing in special summer Parts was as irresistible as the announcement that Enrico Caruso would sing."[7]

Is a child's dream of being a trial lawyer an adequate answer to the development of a mature advocate with an ethical conscience? I think not. Rather, I think a reader, especially a young lawyer, law student, or pre-law student, would like to know more about Mr. Nizer's roots. How did he get his start? Was he at the top of his law school class or just an average student? Did he begin to practice immediately or did he clerk upon graduation, and if the latter was it helpful? Personally, I am even more interested in knowing how, where and when an ethical legal conscience developed. Were the high principles we see in this book engendered by home background, or, were they, as is often the case, worked out in law school and early practice through an inner struggle which succeeded in subordinating immediate gain or enjoyment to ultimate self respect

[6] *Supra*, n. 2, 327.
[7] *Supra*, n. 2, 13.

in the law. For the student now going to law school who is happy with less than his maximum output; for the young lawyer who has little concern for what his contributions to the profession and the community will be; for all those who would be ready to admit that they are out for the "money in law" regardless of the ethical compromises they may have to make, Mr. Nizer presents a challenge.

In "My Life in Court", Louis Nizer gives both layman and lawyer an enjoyable and instructive experience. He has however concentrated on displaying his notable success and has failed to answer basic and most interesting questions. Mr. Nizer — what made you the way you are?

ROBERT WHITMAN*

Trial By Newspaper. By Harold W. Sullivan. Hyannis, Massachusetts. The Patriot Press, 1961. Pp. xxiv, 250. $5.00.

On one of the last opinion days of the last term of the Supreme Court the Court reversed a lower federal court's refusal to issue a writ of habeas corpus upon petitioner's contention that his conviction had been obtained in violation of the Fourteenth Amendment in that he did not receive a fair trial due to inflammatory newspaper accounts prior to the trial. Concurring, Mr. Justice Frankfurter noted:

> "Not a term passes without this Court being importuned to review convictions, had in States throughout the country, in which substantial claims are made that a jury trial has been distorted because of inflammatory newspaper accounts — too often . . . with the prosecutor's collaboration. * * * [S]uch disregard of fundamental fairness is so flagrant that the Court is compelled to reverse a conviction in which prejudical newspaper intrusion has poisoned the outcome."[1]

Shortly thereafter, Dean Erwin Griswold[2] of the Harvard Law School, addressing the Section on Judicial Administration at the American Bar Association Convention, objected to the interference with the proper administration of justice by the sensational and inaccurate handling of pre-trial stories by the news media. Dean Griswold, too, laid "equal" blame on prosecuting attorneys who make

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[1] Irvin v. Dowd, 366 U.S. 717, 730 (1961) (concurring opinion).
[2] 30 U. S. Law Week, 2089 (1961).

inadmissible evidence available to the press and make inflammatory statements regarding criminal defendants. These views were endorsed by Judge Stanley N. Barnes of the Ninth Circuit Court of Appeals.

However, at the same convention, before a different conference, Chief Judge Frank Hall of the Colorado Supreme Court gave a favorable report of the Colorado experience after that state rejected Canon 35[3] of the Canons of Judicial Ethics and, thereby, allowed photographs, broadcasts and telecasts of trial proceedings. The Chief Judge praised the cooperation of the press in the maintenance of the dignity of judicial proceedings.

From this brief sketch of current events one can note the continuing quest for the proper balance between the rights of a free press and the necessity of a fair trial. In light of these events one might seek a dispassionate critique of the problem of "trial by newspapers" and a scholarly presentation of the judicial treatment of the problem. If such a searcher should choose Mr. Sullivan's book, he would be disappointed. Mr. Sullivan has written a polemic. His effort is more befitting the journalist he attacks than a man of his legal training. His basic faults include an argumentative style, overstatement, old illustrations, and a failure to realize the effect of relevant case law.

Mr. Sullivan apparently attempts to shock the reader into appreciation of the need to read his work by asserting:

> "There is *scarcely one inmate* of our fifty state penitentiaries who has had a fair and impartial trial . . . and this is because of Trial by Newspaper."[4]

Press comment on, and handling of, crimes, arrests, arraignments, etc., present an obstacle to the dispassionate atmosphere demanded of a truly fair trial. However, Mr. Sullivan's words paint too broad a picture. The atrocious crime and the trial of those accused of it create press interest sufficient to cause a possible impairment of the judicial process. But not every inmate of the state penitentiaries has been involved in such crimes and not even all those who have been so involved have been the subject of intense newspaper comment sufficient to defeat a fair trial.

Mr. Sullivan's mode of approach begins with an introductory chapter posing the question: "If we are willing to proceed against the citizens for jury tampering, why do not members of the judiciary proceed against the daily

[3] Canons of Judicial Ethics, No. 35 (West, 1959), 59.
[4] SULLIVAN, xvii.

instances of jury tampering by the press?"[5] Thereafter, the author presents ten case studies of notorious trials, none occurring after 1941,[6] which he argues were tried in the press rather than in court. At various junctures in the discourse the author notes that the newspapers could have been and, in his view, should have been, cited for contempt, citing English or old American cases. Indeed, this is his answer to the problem of trial by newspapers.[7] He disposes of *Bridges v. California*[8] by terming it a "lamentable decision" giving "little comfort" to "lovers of justice." But the fact remains that the Supreme Court in *Bridges* and a line of cases following it[9] has crippled the judiciary's ability to cite the news media for contempt by stating that the comments cannot be punished as contempt unless they pose a "serious and imminent threat"[10] to the administration of justice. Thus the older requirement of merely a "reasonable tendency"[11] to obstruct justice was forsaken. The *Bridges* doctrine may be ripe for repudiation due to its tendency to make freedom of the press an absolute and to the Court's recent abhorence of "absolute" liberties.[12] But the point against Mr. Sullivan is that he makes essentially no effort to meet the legal arguments used to justify *Bridges*.

Perhaps the contempt power is the only effective remedy for trial by newspaper. However, it is not a foregone conclusion, as Mr. Sullivan implies throughout his work, that the power can be used to punish obstreperous newsmen. Mr. Sullivan's failure to grasp this, his style of presentation, his failure to present any alternatives to contempt as a means of solving the problem and his failure to provide an index while sandwiching his text between a bevy of quotations which add color but not light to the subject — defeat a desire to praise the book.

M. ALBERT FIGINSKI

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[5] *Id.*, 8.

[6] Such a series of dated illustrations gives one the feeling that the news media's sensational style has yielded to a more rational presentation less likely to impair justice.

[7] SULLIVAN, 239.

[8] 314 U.S. 252 (1941).

[9] See Craig v. Harney, 331 U.S. 367 (1947); Pennekamp v. Florida, 328 U.S. 331 (1946); Hoffman v. Perrucci, 222 F. 2d 709 (3d Cir. 1955); United States v. Leviton, 193 F. 2d 848, 857 (2d Cir. 1951); United States v. American Machinery Co., 116 F. Supp. 160, 163 (E.D. Wash. 1953); Baltimore Radio Show, Inc. v. State, 193 Md. 300, 323 ff., 67 A. 2d 497, *cert. den.* 338 U.S. 912 (1950).

[10] Craig v. Harney, 331 U.S. 367, 373 (1947); Bridges v. California, 314 U.S. 252 (1941).

[11] Toledo Newspaper Co. v. United States, 247 U.S. 402 (1917).

[12] *Cf.*, Mr. Justice Frankfurter, concurring in Irvin v. Dowd, *supra*, no. 1, 730.