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Book Reviews

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BOOK REVIEWS

MY LIFE IN COURT*

As of this writing, Louis Nizer's *My Life in Court* is in first place on the non-fiction best-seller lists. That circumstance really furnishes the best commentary on the book, which deserves to be there and is a distinctly worthwhile addition to the body of non-technical literature about law and the courts. The book is a good one by any standards, piquant in the fact situations it involves, entertaining in character, and endowed with a wry and sometimes penetrating substratum of worldly wisdom concerning the manner in which law operates upon the lives of human beings.

Despite its title the work is not an autobiography. The author, a well-known New York attorney, has simply undertaken to describe the manner in which some of his most colorful cases were prepared and actually tried.[1] The attorney who reads it will find its appeal to the general public thoroughly understandable as soon as he savors the taste of the first chapter, an account of a lawsuit wherein the author represented Quentin Reynolds and recovered $175,000 in damages for libel from Westbrook Pegler and the Hearst chain of newspapers.[2] That chapter alone would make the book worth reading—when his deposition was taken prior to trial Mr. Pegler characterized some of his own writings as following a pro-communist line, and the account of the manner in which the trap was sprung in the courtroom is a distinctly gleeful one—but it is followed by a series of other cases which are sometimes of actually greater interest.

Among the other cases, not all of which are mentioned here for the simple reason that the reader is entitled to the pleasure of becoming acquainted with them for himself, are such memorabilia as the "War of the Roses"—Eleanor Holm's suit for divorce from Billy Rose, in many respects a battle of press releases;[3] a copyright action involving the hit song "Rum and

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* By Louis Nizer. Garden City, New York: Doubleday & Company, (1961); Pp. 524, $5.95.

1. Nizer remarks in one portion of this book that he is aware that no one is more boring than the lawyer who wants to tell you of his cases while you want to tell him of yours. This is often true, but this is by no means a boring book, as this review of it attempts to indicate.

2. The actual award was $1 in compensatory damages and $175,000 as exemplary damages. Compensatory damages are subject to income tax. Exemplary damages are not.

3. Mr. Rose had a newspaper column at his disposal and discussed the divorce action quite freely in it. In one such column he incautiously men-

Coca Cola," involving testimony by musical experts who presented their proof by playing instruments in the courtroom; a suit wherein some of the participants played a leading role in promoting the cause of Nazism in the United States prior to and during World War II, so informative in nature that FBI agents attended to take notes; and finally a multi-million-dollar proxy battle for control of Metro-Goldwyn-Mayer as taut and exciting as any conceivable courtroom drama.

If this sounds as though the cases described were imbued with elements of suspense and great human interest, Nizer would undoubtedly be the first to cheerfully concede the fact. His comment would be—he makes it explicitly in the prologue to the work—that fictional accounts of what happens in the courtroom run far behind reality and convey only a pale reflection of the actual tensions and pressures of a trial. Hence if some of the cases seem almost overdrawn, it is for the basic reason that the printed word is an inadequate medium to convey the totality of courtroom experiences.[4] The trials in question were real ones, the issues genuine, the legal issues sharply joined, the human values well argued. Those facts supply the real reason for the intrinsic interest of the book.

The intrinsic interest of the volume certainly does not stem from the inherent quality of its authorship. The book is unquestionably well-written, but there are times when it reads unavoidably like a courtroom transcript. There is, indeed, a good deal of transcript in it.

There is also something else for the discerning professional reader. There is, basically, the philosophy and techniques, as well as the insights, of the seasoned trial lawyer. Many of the points of technique mentioned almost incidentally in the book, for example, reflect meticulous preparation of the case. Nizer prepares for a cross-examination, for instance, by writing the questions he wants to ask the witness in ink of one color, and setting forth the answers the witness has previously given to the same questions on deposition or in other pretrial proceedings in ink of a different shade. Once well-launched on a cross-examination he is fundamentally a free-style artist, and

tioned the things he had given his wife in terms of houses, cars, wardrobe, servants, art treasures, etc. This was too much, and although Nizer and his client had attempted to avoid litigating the case in the newspapers a statement was issued to the effect that Mrs. Rose thanked Mr. Rose for supplying her with proof of the standard of living which was relevant in determining the mater of alimony.

4. A few Reviewers have remarked that the Author has not described any of the cases he has **lost.**

he remarks that it often takes him several hours to get from one prepared question to another, but the essential advance preparation is always there. His favorite technique in summation is to place a table before the jury box with each exhibit and deposition in plain view. As he argues the case he can point to the precise exhibit or statement in the deposition needed to substantiate his assertions, thereby giving his presentation a solid and documented character.

Nizer is also an adherent of what he calls the "rule of probabilities." Thus in the action involving Nazism in the United States, when a key witness gave unexpected testimony, Nizer analyzed the situation indicted by the testimony in the light of what *probably* should have happened. His conclusion was that approximately five factual consequences should have followed as a matter of probability. When he resumed cross-examination the next day he was able to establish each of the facts probability indicated ought to exist as being valid. This was not a dramatic cross-examination and its impact was not apparent at the time; but it was otherwise in the argument to the jury, when Nizer could fit the pieces of the jigsaw puzzle together to show what the probabilities were to what had actually happened. The book relates several instances where the rule of probabilities has led him directly to discovery of key witnesses.

This is, of course, not a work of substantive law. It was never intended to be. For all of that—or possibly because of it—the book is excellent reading for the practitioner as well as the layman, and it is warmly recommended. It will supply hours of unforgettable experiences.

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CONTROLS FOR OUTER SPACE*

"It would be my hope that the General Assembly, as a result of its consideration, would find the way to an agreement on a basic rule that outer space and the celestial bodies therein are not considered as capable of appropriation by any state, and that it would further affirm the overriding interest of the community of nations in the

* New York, By Philip C. Jessup and Howard J. Tauberfeld. Columbia University Press, (1959); 379 pages, $6.00.

peaceful and beneficial use of outer space and indicate steps for an international machinery to further this end."[1]

With these words the late Dag Hammarskjold, a martyr to the ideal of an ordered world, expressed his hope for the future of areas beyond this world. The perplexing problems of legal rights and liabilities arising through man's invasion of those regions beyond the earth must now try the intelligence and learning of legal minds. What was yesterday an interesting academic question has become today a practical problem. While the United States has noted this need through congressional committees, the government space agency, and the American Bar Association, our Commuist protagonists have also given the problem careful consideration. In 1959 the Academy of Sciences of the U.S.S.R. directed its Law Institute to set up a special scientific research commission of legal scholars to develop and popularize interplanetary law. This group is presently associated with a Space Law Committee organized at the 1960 meeting of the Soviet Association of International Law. In other Communist countries like preparation has been taking place, with such states as Czechoslovakia leaders in the field. Supplementary to the efforts of both East and West is the work of such groups as the International Astronautical Federation and the United Nations Committee on Peaceful Uses of Outer Space.

From this combination of attacks upon the problem has emerged a surprising degree of consensus. Leading Communist authorities seem in basic agreement with the American principle of renunciation of national sovereignty as to celestial bodies.[2] There is also a compatible approach to the problem of upper sovereignty—a limit upon the extent of national control reaching upward from the surface of the earth. The most realistic appraisal of such limitation is, in fact, offered by a Czechoslovakian legal scholar. His upward limit would be based not upon air density or gravitational effect, as has been suggested by some, but instead upon reasonable security from abuse by other states.[3] As to the general status of the regions

1. Address by Secretary General Dag Hammerskjold to the Annual Meeting of the Governor's Conference, May 19, 1958.
2. Address by Dr. Vladimir Kopal, Executive Editor of the Czechoslovakian Academy of Sciences International Law Journal, to the Third Space Law Colloqium, XIth Congress of the International Astronautical Federation, August 16, 1960; **see also** Crane, Guides to the Study of Communist Views on the Legal Problems of Space Exploration, Senate Committee on Aeronautical and Space Sciences, 87th Cong. 1st Sess. Legal Problems of Space Exploration 1011 (Comm. Print 1961).
3. "The reason that states in our time affirm their sovereignty over

of outer space, the approach appearing to have greatest support is the familiar international concept applied to the high seas *res omnium communis*, owned by all and used by all.

Yet even with the somewhat shakey understanding reached as to these major premises a multitude of problems remain, including such questions as allocation of radio frequencies, identification and coordination of landings and launchings, liability for damage caused by space vehicles, exact determinations of sovereign rights, rights of exploration and control of celestial bodies, and safeguards against contamination.

From examination of existing literature in the field there appear two major methods of approach as to legal handling of the problems of outer space. For purposes of simplified classification they might be termed the "common law" or "let's wait and see" approach and the "legislative" or "international agreement" approach. The distinction, familiar to one trained in the common law tradition, is that between solution to individual problems as they arise and as custom is established, **i. e.** the judge made law, and the preconceived regulation of activity, **i. e.** the legislative law.

The "common law" approach may be exemplified by the statement of Mr. Oscar Schachter, Director of the Legal Division of the United Nations. ". . . it is by positive collaboration and joint efforts, rather than through abstract principles, that governments are likely to achieve an appreciation of their common interest which, in the present state of international society, must serve as the foundation of an international legal order for outer space."[4] An advocate for the "legislative" approach can be found in United States Senator Kenneth B. Keating.[5] "In my judgment, we have reached a turning point in civilization—that is, the means to push out into space—where law can no longer afford to lag behind scientific achievement, but must stay abreast of it, or even anticipate it."[6]

Against this background we can then analyze Jessup and Taubenfeld's *Controls for Outer Space*. In this volume Philip

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the air-space is indeed not because of a certain density of air, or that air-space is penetrated by territorial gravity, or finally, that nations are able to control this space up to a certain limit. The decisive reason here is a fear from the abuse of this space by other states against the existence, independence, inviolability and prosperity of the subjacent state, **i. e.** the viewpoint of security."

4. Schachter, N.Y. County Lawyer's Ass'n. Bar Bull., June 1958.
5. Republican, State of New York.
6. Speech by Hon. Kenneth B. Keating, Before the IXth Annual Congress of the International Astronautical Federation, August 29, 1958.

Jessup, Hamilton Fish Professor of International Law and Diplomacy at Columbia University, a scholar and veteran international representative of the United States, combines with his younger associate, Howard Taubenfeld of Golden Gate College of Law in an analysis and attempted solution to this complex problem. Their suggested method of solution would necessitate the use of both approaches: international agreements setting up agencies of control, development of a common law of space through subsequent judicial handling of individual problems.

The book itself is written in a coldly judicial style, avoiding emotion or national prejudice and is devoid of sweeping generalizations or Utopian schemes. The first one third of the volume is entirely devoted to an enumeration and explanation of precedent in the area of international agencies. The authors set forth an astonishing number of known and little-known agencies through which international control has been exercised in the past, ranging from the International Commission of the Cape Spartel Light to the United Nations itself.

From this exhaustive research the authors reach certain general conclusions as to effective international agencies, among which are (1) A crucial factor in the success of a multinational administration is the effective internationalization of the administrative personnel. (2) Existing functional international organizations have replaced the old rule of unanimity with what the authors term "majoritanism". This means voting power might vary with the situation and a greater percentage vote be required for major action. It also includes weighted voting, allowing a nation greater voting power depending upon such variables as its importance in the field, its knowledge and technical ability or its geographic representation. (3) Operations by states through corporate forms also provides an escape from the sacrosanct principle of equality of states.

It is through application of this various precedent and their recognized principles that the authors attempt solutions of the problems of space law. In their attempt they find an analogous and possible intermediate step in solution of the problem of Anarctica. Here, where the claims and interests of some ten to twelve nations presently meet, lies an opportunity for a more unified experiment in international government. The United Nations and its facilities might be used, but which-

ever of the usuable forms of control are applied, the experience and pattern of cooperation developed thereby would be invaluable. The solution offered is no panacea for international ills but consists rather of certain sober suggestions coming from a wealth of experience and research.

The lawyer of this day would do well to cultivate an understanding, such as is offered by this book, of that frontier of legal development which climbs beyond the pale of the earth to expanses broader than the imagination of man. Legal scholarship must find the means of installing law into this expanse, else we shall be, in John Milton's words, "like one that had been led astray, through the heavens wide pathless way."

J. PHILIP JOHNSON