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Book Reviews

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BOOK REVIEWS

THE JURY RETURNS. By Louis Nizer. Garden City: Doubleday & Company. 1966. Pp. 438. $6.95.

When the eminent Lou Nizer writes a book, his publisher's press releases extol his and the book's virtues in excesses of hyperbole that would make some of the extravagant blurbs of moving picture previews (an industry with which Mr. Nizer is now connected) as flat as the pages of an almanac.

"Unbearable suspense"; "masterful work"; "profound understanding"; "sparkling legal memoir"; "suspenseful drama"; "poet and humanist"; "emotion charged"; "philosopher, psychologist, detective, literary critic, research scholar"; "thrilling masterpiece"—these are but a few of the more prosaic literary encomiums ascribed to the Great One and his latest work, *The Jury Returns.* It's a *Son of My Life in Court.*

Not only are these "once in a generation" literary blooms scattered in profuse full page advertisements of his work, but the names of those who "tingle with excitement" are newsworthy too. Thus, Senior U. S. Circuit Judge John Biggs, Jr., is almost reduced to literary epilepsy. Otto Preminger, he from flamboyant Hollywood where excesses are daily fare, becomes semantically choreutic.

But my good friend Lou deservedly knows those on high, in almost every field of endeavor, from a United States Supreme Court Justice through champion prize fighters to the stars in the moving picture firmament. I see no reason why Mr. Nizer can't ask these people what they think of his book. If they think it's good, then I don't know of any rules of ethics or good taste that proscribe their saying so in the most glowing terms—which they have done.

But, I think what we should examine in this review for lawyers of a book about lawyers is twofold: (1) is this latest Nizer book "good," and does it tell us things that lawyers should emulate; (2) should lawyer writers write about their cases or are they under ethical wraps to let others give the hearsay of that which the lawyer-author is the most knowledgeable?

In the first place, if someone is "good" I'm not offended at others (or him for that matter) telling about it, whether he's a pitcher or a fighter or an artist or an actor—or a lawyer. The real offense to me is the "build-up" of someone undeserving, say the president of a bar association who has achieved his lofty position solely by "going through the chairs." The layman conceives that this "Head of the Bar Association" must be some great shakes as a lawyer when in reality he never could really distinguish between a tort and a tart, or a felony and a misdemeanor, let alone the Rule in Shelley's case. He may have been just a sycophant, attended all of the meetings, and ingratiated himself to the point that finally it was said of him "Old Joe's been faithful and he's been around a long time. We've just got to make him a president this time."

That's a hell of a way to foist a lawyer's image on the public. Someone might hire him just because of that. I'm against any public relations buildup for such legal glass-jawed "champs."

On the other hand, when a trial lawyer's *really* great and when he does

great writing, I think our profession would be hypocritical (and slightly jealous) if we didn't let others say nice things about the Great One—and let him say nice things about himself. (After all, he knows his own capacity better than others.)

The nonwriting members of the Bar whose dangling participles and split infinitives are the least of their literary traumas and whose suspensefully interesting writing wouldn't qualify for the pages of a Sears Roebuck catalogue, might snidely say of Nizer's publicity, "He's gotten everybody to review and praise his book but LBJ!"—to which I'd answer, "Nizer doesn't need LBJ, but I think LBJ could use him—and a good number of literary and forensically capable lawyers like him!"

Last year the California Bar Association passed a resolution that "if Lou Nizer and Jake Ehrlich and Mel Belli write any more books, they'll be subject to discipline." I'm happy to see that Mr. Nizer wasn't frightened by this prepublication book burning threat; perhaps he had determined that even under the largesse of the United States Supreme Court's recent jurisdictional grants it would be difficult to see how California had jurisdiction over him.

Jake Ehrlich is just finishing his new book. And, I'm just finishing mine.[1] I believe it's a lawyer's duty to write of his profession. I know Gerry Geisler, a great lawyer and a great human being, got in trouble with the California State Bar because he wrote too personally about his own cases. I suppose if a good surgeon wrote too intimately about his patients he would be ethically errant, as well as in poor taste. It's more difficult in the law to describe a case without everyone knowing who the dramatis personae in the case are. In medicine, even surgical pictures can be taken without individual recognition.

But why should we lawyers leave the telling of our law stories to Raymond Burr and Erle Stanley Gardner, no matter how good each may be as an actor or author? (I think the Perry Mason stories are all to the good, because the gravamen for the layman is that there is a "Perry Mason" for everyone; justice, not money, is the fee; and no matter how hopeless and tough the case, if there's right there will be victory.)

Among lawyers there are fortunately some who are literarily gifted; and not only is it their right, but it is their duty to tell of their profession to the layman and the law student, the latter so he may be further enthused about this wonderful discipline of ours. Lou Nizer is one of those gifted human beings, writer as well as trial lawyer. For a bar association to proscribe his writing is medieval hypocrisy born of the ancient concept of "status quo lawyer"—and jealousy.

The Jury Returns is a valuable book. There is nothing unethical in it or about it. The procedures practiced are to be ethically emulated. The true story of trial law is told. It's hard work and meticulous detail that bring the victory, not the fortuitous phrase, the glib cross-examination, or the "born trial lawyer."

Here's Nizer writing of life and causation:

1 Mine happens to be called "The Law Revolt—The 100 Cases." It is a critique of State and Federal Supreme Court decisions over the last ten years to show that our present concern in the common law is for the "little man," the aberrant and minority groups—that if the courts "take care of the least of us, they'll take care of the most of us." I think, in my case, at least, my State Bar should be hard put to criticize me for praising our Supreme Court.

> We seem to live in a sea in which the actions of others, unknown to us and no matter how remote, affect the waves which move us. If during Hitler's beer hall *putsch,* he had fallen to the sidewalk a little more slowly and the bullets which flew over him had struck him, how many millions of people now dead would still be alive? If a Secret Service agent had made a "routine" check of a storage building in the line of President Kennedy's ride in Dallas and found Oswald waiting in a room with a gun, how would the future of the United States and the world have been affected? It is impossible to fathom the endless alternatives of other historical events, but we know that our lives are a constant accommodation to forces which we did not set in motion. However, this does not mean that we are not masters of our own destiny.[2]

I can't help but compare Nizer's books with those that I read in law school: Bill Fallon's biography, *The Great Mouthpiece,* and Earl Rogers' life story, *Take the Witness!* Fallon on the East Coast and Rogers on the West Coast were contemporaries though geographically separated by some 2,000 miles—which terrain, 2,000 miles long and half a mile wide, could have been inundated with 100 proof bourbon whiskey if all that commodity of which they both partook, albeit in their short lifetimes, was preserved in the same drain. One of these two was a dope addict, both were drunks, and unethical drunks at that. Both delighted in having "an artichoke" in the jury box, or at least an "anchor man"; and the pages of these books are replete with incidents that not only are unethical, but that are downright sharp practice and criminal. I suspect many a law student and layman got his concept of the sharp practice of the law from the stories of these lawyers in these two books. The books, though bubblingly interesting, did the law profession no good.

There is nothing like this in any of Nizer's books. He's meticulously ethical and where he's critical of his opposition he's factual. Indeed, if there is criticism of this last book, it's that he "hotfoots" no one. There's a little bit too much Pollyanna—and that's not law, because law is of and about trouble, much of it sordid trouble.

I know we're supposed to "have a drink with our opponent when the case is over," but sometimes there's too much bitterness, there's too much personality clash to do this. Maybe Mr. Nizer has been more fortunate than I. He has met many tough opponents; but they just happened really to be, deep down in their black insurance-company hearts, good guys that one could have a drink with after the bloodletting and gut rending. Some of my opponents were bastards in the courtroom and bastards out of the courtroom. And, some of my opponents have been "high placed" too. But, I couldn't drink with them after the case was over, and I couldn't be Pollyanna about their tactics—some of them. (Others I have found to be great and delightful human beings, and hard and courageous and intelligent courtroom battlers.)

Some of Mr. Nizer's cases flow to their successful verdict over all odds and obstacles a little too smoothly. Lou seems to have much more time, much more help, and much more money properly to prepare his case than I, for one, have. And from his telling of some of his actual cases, I really think that the money

2 NIZER, THE JURY RETURNS 253 (1966).

and time spent on preparation is out of proportion to the cause, impractical to the case. But then, that may very well be the secret that explains why he wins these impossible cases; and these are showcase cases, the ones he was impressed with enough to make an example of and win despite the cost.

We lawyers do know that we do even more gratuitous work than doctors; and sometimes we have to put in a contribution for the sake of justice, by means of the particular case that in no wise may pay for itself.

The Jury Returns is the "true story" of four separate cases: Paul Crump, the youngest man ever to be placed in a solitary death cell in Cook County Jail in Illinois; a rather abstruse divorce case; Fruehauf, the president of a famous industrial company, who was criminally tried for "giving" $200,000 to Dave Beck; and the defamation case wherein John Henry Falk received even more than my "The Adequate Award."

Paul Crump committed a brutal murder. He was kept alive, having been sentenced to death, by cat-and-mouse reprieves all too common in today's penal system. Eventually the time came for executive clemency and the unique issue was whether Crump had been "rehabilitated," whether he was the same Paul Crump who originally committed the murder. (Incidentally, this was one of the bases for Caryl Chessman's plea for executive clemency although Nizer would distinguish the two cases.)

But can one rehabilitate a murderer? How much of the punishment is just that, a deterrent; how much to improve the individual? Obviously with the sentence of death, the only improvement of the individual is for the hereafter; and perhaps such improvement should be more appropriately left to the prison chaplain rather than prison reform.

But Nizer makes a case for rehabilitation of the murderer. And he does it very well, too. He tells how he first conceded (he had to) that Crump had committed the heinous crime; Nizer even emphasized it, so that he could prove that was not the real issue before the clemency board.

He had a bit of a rough cross-examination for an unexpected witness. He had good, solid help from the big names in the Chicago community. Indeed, this support may have been a principal ingredient in the victory. But Nizer had only a short time to work on this case, and he must have devoted a Herculean number of minutes and hours to it in order to achieve the successful result of saving Crump from the electric chair. Nizer describes his travail:

> I intended the summation to buffet the judges emotionally from the fierce icy ugliness of execution, to the beautiful warmth of man's return to humanity. I continued to create shock upon shock, from cold to hot, from foaming blackness to azure blue and green mixed with sunlight. When I had completed the excerpts from the affidavits and also the final act of the guards carrying off Crump's charred body in a cart, I turned to a concluding plea:
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> "The opinions in these affidavits are not those of some do-gooders, of some unsophisticated people who believe that everybody is good. These are hardened people accustomed to viciousness and incorrigibility.
>
> "We can't control the length of our lives, but we can control the depth and width. And Crump, even within prison walls, has demonstrated a growth of the width and depth of his life.

> "I am going to conclude by reading to you a statement which Paul Crump penned personally. He wrote it longhand. Nobody assisted him. He sent it to the Governor. This statement, entirely apart from its own meaning is a good indication of how this man has grown intellectually, in his articulateness, and also gives an insight into the fact that this is no longer the same man who committed those brutal crimes."[3]

On the rehabilitation issue, the opponents of executive clemency had postulated: "As we have said, rehabilitation, whether real or honestly imagined, or falsely posed, should not govern the recommendation of this Board. It is not a basis for clemency."[4] Nizer answered:

> This was a correct statement of the law, but it infuriated me. It reduced punishment to mere vengeance, or warning for the future. It ignored, no, worse than that, it rejected what seemed to me to be the only conscionable ground for ever inflicting pain—the hope of reform and redemption. Have we not in the twentieth century emerged from the darkness of death by retaliation? Was there no higher purpose for the brutalizing exaction of ending life, than that we had sated ourselves with revenge? Where rehabilitation has occurred, the total objective of punishment, it seemed to me, had been achieved. Yet the law said rehabilitation was "not a basis for clemency." It was a law which had to be reformed, and I was burning to make the attempt.[5]

The exemplar of Nizer's mastery of word and thought is his concluding of the Crump chapter,

> Words, like living things, are chemical. A word in one context will be soothingly unimportant. The same word in another context will have an explosive effect on the emotions. It is the sequence and mixture which turn the benign chemical into a volcanic force. In this instance, I felt not only deeply stirred, but the recipient through one word, extraordinarily placed, of the largest fee any lawyer ever got.
>
> The sentence at the end of Crump's letter read: "P.S. April 2, 1963 I celebrated my 33rd birthday. Thanks."[6]

The second of the four cases, a divorce suit, is rather abstruse for the layman; and indeed, there's more judge than jury appeal since divorce is judge-tried not jury-tried. As a lawyer, I could have wished that Mr. Nizer had written further on this case, or rather, perhaps chosen another case for the layman. Divorce is a damnable problem in today's society. It's a law laggard. We lawyers really haven't provided the proper forum or machinery to handle domestic cases.

The Fruehauf trial is fascinating in its unfolding, because it starts at the trial court and goes to the United States Supreme Court; in that tribunal we hear Mr. Nizer arguing, and feel all the drama and suspense that is usually expected and that usually comes from this highest legal body. It's a technical case, but Nizer explains the technicalities and the appellate procedures; and when

3 *Id.* at 121.
4 *Id.* at 75.
5 *Ibid.*
6 *Id.* at 137.

the decision, adverse to Nizer's clients, comes down from the Supreme Court the lay reader goes back into the trial court sympathetic to defendant Fruehauf. There's Beck, the labor czar; the drama of his presence; the suspense of unfavorable rulings by the trial judge; then reversals of these rulings; and the ultimate victory for Nizer's defendant.

But over all in this case, once it's ultimately unfolded, one really wonders whether Fruehauf should have been brought to trial in the first place. Perhaps this is just because Nizer does too good a job in explaining the justness of his client's cause. A $200,000 loan had been made from Fruehauf to Beck. Beck had previously, and honestly, done Fruehauf a financial favor. The Fruehauf-Beck loan was at ordinary interest rates, and there was nothing at all sinister about it. If it even technically violated a federal labor law, no jury, once the facts were properly explained, would have found Fruehauf guilty; and this was what Nizer explained to his jury for his deserved "not guilty" verdict.

I've always found the defamation case grossly underrated by lawyers in this country. Libel and slander verdicts, when this type of case is tried, generally result in higher awards than personal injury cases with catastrophic injuries. Thus, calling a doctor a dirty-handed bungler might result in an award in dollar damages higher than the verdict appraising the loss of a leg to a laborer. Unfortunately, part of the rationale here is that defamation is more of a wilful tort; and the jury tends to penalize, rather than to assess compensation. And so it was in the Faulk defamation case that there was the highest exemplary award in history, along with an astronomical award of general damages.

But, appellate courts in New York do not take kindly to these higher awards. They regard them simply as high awards, rather than assessing them and evaluating them in context as "adequate awards."

The highest awards in the common law world come from New York federal and state courts. I was in one case, involving wrongful death, where the verdict was just short of $1,000,000 in federal court, but had it not been set aside on appeal on other grounds, I'm afraid the appellate court might have looked unrealistically at the absolute amount of dollars rather than the absolute amount of personal injury.

Defamation is a gnawing, chronic injury. There is no hurt like that of the mind, and an insult to one's reputation is a twenty-four hour thing. The Faulk verdict was three and a half million dollars, a half million more than prayed for. The jury awarded $1,250,000 against each of the two appellants. Although the awards were ultimately whittled down on appeal, the story is a crackling one.

Said the appellate court in the whittling down process:

> "We are greatly concerned, however, with the size of the verdict—both as to compensatory and punitive damages. True, fixing the amount of damage is primarily in the province of the jury. . . . The court, if possible, should try to avoid invading that field. However, a court may not stand by idly when it is apparent that a verdict is shockingly excessive. A jury's verdict must have some relation to reality and it is the court's duty to keep it so.

> We find the verdict to be grossly excessive and most unrealistic—even in the field of entertainment."[7]

Here's how Nizer tells about the Faulk argument:

> We describe the final stages of Faulk's distress, the dispossess notice by his landlord, the exhaustion of his pride in borrowing from friends, and the exhaustion of their generosity, his final trek to Austin and the pitiful advertising agency he conducts from his home.
>
> "You cannot re-create his pain and anguish at a jury box. I have to leave it to your hearts. . . . There is no law that has ever been written that is as good as the law in your heart. . . . I will not go on with the rest of the terrible story of this man's ordeal, but now I place his life in your hands, very literally, because this man's reputation is either going to be restored by a verdict that will ring to the world, or he will be besmirched all over again.
>
> "I leave to your hands the doing of full justice, and if you do that, ladies and gentlemen, you can sleep well because God will be awake."[8]

And I liked this little vignette:

> I walked toward the telephone section and Vincent Hartnett emerged, almost colliding with me. We were face to face alone, and something had to be said. Before I could think of an ameliorating word, he began to speak. In a hollow, half-whispering voice, as if a holy man were pronouncing a prophecy, he intoned very slowly and emotionally, "We will appeal. Now, Mr. Nizer, it is all in God's hands!"
>
> "What makes you think it hasn't been there all the time," I replied.[9]

The hours while the jury is "out" are the ulcer hours. Nizer pictures this viceral part of *The Jury Returns* thusly:

> Then the vigil began. Waiting for a jury verdict is the most painful aspect of a trial. No matter how taxing the contest itself may be, one can pit his energies against the assault; one can summon up resources and resourcefulness for the mental struggle as well. But sitting helplessly while twelve men and women in an unapproachable room decide a client's fate is throbbing frustration. For some reason all thought runs downhill. The imagination constructs pictures of disaster and the mind conjures up the reasons for it; a witness's answer which hurt, a question which should not have been asked, a witness who should not have been called, an objection which should not have been made.
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> Another phenomenon during the vigil is that time increases anxiety. It is as if an invisible wire ran from the jury room to electrodes on one's wrists and temples and the current increased as the seconds ticked away. Tension grows. Inner tremors become more violent. The heart beats faster. The forehead and palms grow moist. The mouth goes dry. As the hours roll by, the suffering from not knowing becomes more unbearable. The physical torment only reflects the mental anguish. Inner disciplines must be strengthened to withstand the strain. Prolonged uncertainty is the devil's most ingenious instrument of torture.

7 *Id.* at 433.
8 *Id.* at 417.
9 *Id.* at 429.

> The first hour is the easiest. One cannot expect a jury to determine so quickly a case which took almost three months to try. Expecting no decision eases the exasperation of inactive pause.[10]

I'm attracted to Nizer's curly jet-black-haired, pensive picture on the dust jacket by Karsh of Ottawa (no less), but whoever did the illustrations within the book made our author into a rather stout and aborted bratwurst with a head on it. Though I haven't seen Lou in court, he must have more rhythm and grave than the chubby and tubby tied-floursack-man the illustrator makes him.

I'd recommend this book even to my socially oriented maiden Aunt Millicent (if I had one) who thinks "going to court" just isn't the honest thing to do, and who comes completely undone if the word "sue" is as much as uttered in polite drawing room conversation. *The Jury Returns* puts courts, trial law, and lawyers in a most favorable (and true) posture.

*Melvin M. Belli**

THE GOVERNMENT-SUBSIDIZED UNION MONOPOLY: A STUDY OF LABOR PRACTICES IN THE SHIPPING INDUSTRY. By Joseph H. Ball.[1] Washington: Labor Policy Ass'n. 1966. Pp. viii, 298. $7.00.

Although this book is written from the insulated viewpoint of a labor relations expert for the shipping combines and is distinctly one dimensional in prognosis, it is not without interest. Labor practices in the shipping industry, in Mr. Ball's estimation, can be reduced to a single question: "Will the unions permit this ship to work its cargo and sail on time?"[2] The author is concerned with labor "practices," not labor "relations," because he is irrevocably committed to the proposition that maritime unions have such monopoly power that conciliatory efforts on the part of the shipping interests can be effective only when made to appear as total capitulation.[3] In his view, unions are not willing to bargain collectively. They bargain only when subjected to legal pressure. Accordingly, they must be controlled.

The text is divided into three parts, dealing with the shipping industry today, its historical evolution, and the possible solutions to its labor problems. A basic premise underlying the author's examination of the shipping industry today is that the "almost chaotic" state of present-day collective bargaining has

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10 *Id.* at 422-23

* Partner, *Belli, Ashe, Conp & Choulos,* San Francisco and Los Angeles, Calif. Director and past Dean, International Academy of Trial Lawyers; Past President and Chairman of Torts Section, National Association of Claimants' Compensation Attorneys; President, Belli Foundation.

1 The author's qualifications are summarized on the jacket of the text:
> Joseph H. Ball has been a free-lance writer, a reporter, a political editor, a United States Senator, and an officer of one of the large shipping lines. He was a principal author of the Taft-Hartley Act, and became Chairman of the Joint Committee on Labor-Management Relations, the so-called "Watchdog" Committee, established pursuant to Title IV of the Act.

2 BALL, THE GOVERNMENT-SUBSIDIZED UNION MONOPOLY 89 (1966).

3 *Id.* at *passim.*

as its sole cause the imbalance of economic power in favor of the maritime unions. The precarious financial position of shipping interests in general, and of smaller, independent[4] shipping lines in particular, leaves the industry with no choice but to submit to the most extravagant union demands. The variety of economic weapons in the hands of the unions and their pronounced ability to outlast management in any serious strike combine to demand "collective capitulation" rather than collective bargaining.[5] At the outset, however, Ball fails to recognize that a multitude of factors are at play in defining the limits of a bargaining relationship, and that the weakened bargaining position of the shipping owners might not be attributable solely to union strength; rather, union dominance seems the natural result where management has demonstrated a marked inability to persevere in advancing its own position in contractual disputes.

To afford the reader a better understanding of the peculiar labor problems inherent in the shipping industry, a chapter is devoted to a technical description of ships and shipping. For anyone with a drop of Masefield's blood, this chapter is among the most intriguing in the book. Ball details the physical composition of modern freighters and tankers and explains the multitudinous uses to which they can be put. Typical voyages are outlined, and the methods of ownership and of chartering vessels are analyzed.

Since the early days of American clippers, competition for freight has spawned monopolistic tendencies in shippers. Ball carefully details Congress' historical interest in the industry and outlines the laws with which it must comply.[6] Most carriers today are organized into shipping conferences, with individual members adhering to tariffs and other regulations propounded by the conference. At the very heart of this conference arrangement is the antitrust exemption provided by Congress in the Shipping Act of 1916.[7]

A chapter concerning government aid to shipping is most informative. Ball, as a former United States Senator and a former officer of United States Lines, is uniquely qualified to comment on government aid from the vantage point of both donor and recipient. The United States, declaring the preservation of a domestic merchant marine to be in the interest of the national defense and

4 Independent shipping lines are those that do not receive direct federal subsidies for construction and operating expenses. These subsidies are not available for ships operating solely in domestic markets. Indirect subsidies are available for all ships by the discretionary allocation of government shipping requirements and by the limiting of all domestic carriage to U.S. flag vessels.

5 BALL, *op. cit. supra* note 2, at 5-11.

6 *Id.* at 16-29.

7 39 Stat. 728 (1916), as amended, 46 U.S.C. §§ 801-42 (1964), as amended, 46 U.S.C.A. §§ 801-42 (Supp. 1966). Under § 15 of the act, 75 Stat. 763 (1961), as amended, 46 U.S.C. § 814 (1964), the implementation of rate agreements filed with and approved by the Federal Maritime Commission is not subject to attack under the antitrust laws. It was the feeling of the industry that conferences meeting the requirements of the statute in their organic agreements were totally exempt from antitrust regulation. BALL, *op. cit. supra* note 2, at 16. However, in an opinion delivered after the publication of Mr. Ball's book, Mr. Chief Justice Warren, speaking for a unanimous Court, shattered that illusion. Carnation Co. v. Pacific Westbound Conference, 383 U.S. 213 (1966). The Court held that the implementation of rate-making agreements not approved by the Federal Maritime Commission is now subject to the furies of antitrust. *Id.* at 216. Mr. Ball would have been pleased to comment on this decision if he had been able to do so.

safety, has provided numerous direct and indirect subsidies for shipping lines.[8] Six tables graphically portray the physical characteristics of the industry, the percentage of its income received from government and nongovernment sources, and the cost picture of domestic lines in relation to foreign flag vessels.[9]

At this juncture, Ball turns to an analysis of a number of specific factors that, in his view, provide the basis for the power of maritime unions. The first is "job action," which he asserts is peculiar to the industry.[10] Under the microscope, however, job action is nothing more or less than slowdowns and featherbedding, problems not indigenous to the maritime industry alone. Union hiring halls are labelled the single greatest source of power that enables maritime unions, representing both seamen and longshoremen, to dictate the terms of their contracts.[11] Since job openings are filled by the union and not the employer, loyalty of the employee is directed towards the union, not the employer. But can it be expected that a company will command greater loyalty than a union? Ball might be interested in the answer of labor relations experts in industries where the hiring hall is unknown. Another basis of the unions' power, which Ball characterizes as the "Picket Line Taboo,"[12] is simply the refusal to cross an authorized picket line, a union weapon familiar to the most casual reader of the morning paper.[13] The final source of power evolves from what the author denominates as "legal and social factors." For example, as a result of changing social mores, union leaders today are equated with the "robber barons" of the late nineteenth century.[14]

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8 The 1936 Act cancelled the mail subsidy contracts and offered in lieu thereof two new subsidies. One, termed an operating differential subsidy, provided that the Government would reimburse the operator on an essential trade route for the difference between the cost of wages, insurance, subsistence and maintenance and repairs on his U.S. flag vessels and the weighted average of such costs for the foreign flag vessels operating in competition with him on the particular trade route involved. The second, called a construction differential subsidy, provided that the Government would pay the difference between the cost of constructing replacement vessels in the United States and the costs in a foreign shipyard considered typical for the trade route involved. BALL, *op. cit. supra* note 2, at 31-32. These subsidies, along with the allocation of government freighting needs, provide the life's blood of survival for most U.S. shipping. *Id.* at 33.

9 *Id.* at 36-43.

10 *Id.* at 49.

11 *Id.* at 52.

12 *Id.* at 59.

13 Ball discusses a number of clauses, found in most contracts, that greatly increase union power. Among the most interesting is the "ten-day clause," requiring owners to pay full wages to many of the crew if the vessel remains in port ten days or less. This purportedly enables the unions to institute small, annoying tie-ups with minimal effects on their members. *Id.* at 62-63. The author fails to consider the possibility that continuity of personnel, deemed desirable by shippers, can be assured only by the existence of this or a similar clause.

14 The change in social mores in the past half century has contributed to and reinforced the legal and political climate in which unions wield their power. Fifty years ago business executives who managed to build profitable enterprises were highly regarded by the public as substantial contributors to the employment and prosperity of the community and the nation. Strikes generally were frowned upon, with most of the public adopting a "guilty until proven innocent" attitude toward strikers and their leaders. This unthinking attitude on the part of the public has now swung the full 180 degrees to where strikes and their leaders are regarded generally as noble and unselfish and employers who "provoke" a strike as flint-hearted, greedy and irresponsible, a reaction which is just as indefensible as the opposite one a half century ago. The "public be damned" attitude of many union leaders today

Having explained for the uninitiated the foundation of union power, Ball devotes a chapter to illustrating the "irresponsible"[15] uses of this power. Six examples are given; the most effective recitation of horrors describes in maudlin prose the sad history of the nuclear ship *Savannah*. Union jurisdictional quarrels, inefficient multiagency regulation by the Government, and confusing awards by a noted arbitrator combined to materially delay the sailing and effective use of the first nuclear-powered merchant ship. Final judgment on the precise cause of what is an admitted fiasco is best reserved until labor representatives reply to Ball's charges.

The second major division of the text portrays the historical development of labor relations in the industry. Although this division consumes a greater portion of the text than either of the other parts, it requires the least comment. From unions in embryo to their final maturation into economic giants, Ball presents the story clearly and candidly. It is in his examination of the industry's history, as contrasted with his management-oriented view of the industry's present and future, that the reader feels most secure in accepting Ball's conclusions. He declines to spare the shipping interests, enunciating in detail the subhuman conditions under which earlier generations of seamen and longshoremen worked and lived.[16] He gives deserved attention to responsible union leaders, notably Andrew Furuseth of the International Seamen's Union.[17] His summary of the period between the World Wars is particularly candid:

> Thus, from 1921 until 1934, maritime employers exercised virtually complete unilateral control over their labor relations, both afloat and ashore. They had ample opportunities to work out and apply solutions to the industry's labor relations problems, particularly the traditional casual nature of maritime employment, and to win the loyalty of their labor force. Unfortunately, the employers' record of effort in this field, let alone accomplishment, was almost nil.[18]

Unfortunately for the ultimate impact of his book, Ball fails to relate these failings to current problems, never stopping to consider how this lost opportunity, rather than, or at least in addition to, capricious use of absolute union power, might be the cornerstone of antagonistic relations.

Two interesting tales are woven into Ball's historical fabric. Current divisions in maritime unions have their origins in the Thirties.[19] The growth of this

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is strikingly similar to that of the last century's "robber barons." Both union leaders and business executives, now as then, can be equally greedy and short-sighted where self-interest is involved. *Id.* at 68.

15 *Id.* at 70.

16 *Id.* at 95-98.

17 This legislative success was due in large measure to the character, ability and untiring efforts of Andrew Furuseth. A bachelor, Furuseth literally devoted his entire life to the seamen's cause. He refused to accept pay greater than the equivalent of an able seaman's earnings, and lived frugally in a rooming house in Washington when not travelling for the union. He had little formal education, having gone to sea as a boy, but he became an excellent pamphleteer, bombarding Congressional committees and individual members with petitions, letters, statements and personal appeals. An indefatigable lobbyist, he became a familiar and respected figure to presidents, cabinet members and Congressional leaders during his 45-year sojourn in the nation's capital. *Id.* at 104.

18 *Id.* at 115.

19 *Id.* at 134.

jurisdictional thicket is intriguing. Major oil companies have traditionally owned large fleets of tankers. Seamen on these tankers, who have formed independent unions, tend to remain with the same companies for the duration of their careers, creating a base for enduring relationships unique in the industry.[20]

Postwar developments in offshore labor relations have been overshadowed by spectacular events involving longshoremen, particularly on the West Coast. Over a period of twenty years, the International Longshoremen Workers' Union (ILWU) and the Pacific Maritime Association (PMA)[21] have nurtured mutual concern for mutual problems into an ambitious partnership, designed to eliminate featherbedding and other wasteful practices. After preliminary agreements had tested the basic concept,[22] a "Mechanization and Modernization Agreement" was signed in October 1960 to take effect January 1, 1961, and to run until July 1, 1966.[23] In return for a total employer contribution of 29 million dollars,[24] the union agreed:

> 1. To eliminate multiple handling of cargo and "skimming" of pallet loads. . . .
>
> 2. To eliminate employment of "unnecessary men," recognizing that in many operations some men of necessity are idle during part of the cycle.
>
> 3. To change sling load limits wherever conditions had changed since the limits were established originally. Since most such limits had been imposed in the late 1930s or early 1940s, this meant that most of them were subject to change.
>
> 4. To change gang sizes and manning requirements whenever changes

20 The fascinating story of the independent tanker unions is told in considerable detail in the 1964 book "Never Off Pay" by John J. Collins, a Fordham University professor who served as advisory counsellor to nearly all of them on the Atlantic Coast from their inception through their long struggles with the national unions and their very successful bargaining for 25 years without a single strike. *Id.* at 138. Ball's delineation of the reasons for this tranquility shows factors poles apart from those in other maritime unions. The success of these independent unions can serve as a guide in many bargaining relationships outside of this particular industry:

> (1) The tanker operators had been relatively good employers, compared to the rest of the shipping industry, during the open shop period of the 1920s and early 1930s. . . .
>
> (2) The company negotiating teams included many men . . . who had sailed themselves on tankers and had come up through the ranks. . . .
>
> (3) All members of the union were full time seagoing employees of the company, who kept ultimate control of the union's affairs in their hands through referendums and annual elections. . . .
>
> (4) Union membership was voluntary and union officers and negotiators were elected annually and also had to be full time seagoing employees of the company who took leaves of absence for negotiations. . . .
>
> (5) Because of all these factors, each negotiating team recognized and accepted the fact that the other side was just as sincerely interested in the future welfare of the employing company and its employees as was its side. . . . *Id.* at 147-48.

21 The Pacific Maritime Association is a nonprofit corporation made up of common and contract carriers, marine terminal operators, and stevedore contractors on the West Coast. Its *raison d'être* is the conduct of labor negotiations for its members.

22 See *Id.* at 191-92 for the terms of the preliminary agreements.

23 *Id.* at 192-93.

24 The ILWU agreed to allow PMA to determine the method to be used in raising this sum. PMA. after some dispute, decided to assess its members a set amount per ton of cargo handled. This method of assessment survived a vigorous attack before the Federal Maritime Commission. The Commission's view — that the method did not violate any of the provisions of the Shipping Act of 1916 — has recently been upheld by the United States Court of Appeals for the District of Columbia Circuit. Volkswagenwerk Aktiengesellschaft v. FMC, 371 F.2d 747 (D.D.C. 1966). The opinion details the nature of the agreement and all facets of assessment and collection.

> in methods of operation or introduction of new machinery justified such change.[25]

Ball explains the uses to which the employer contribution is being put by the union[26] and questions whether the agreement will survive renegotiation in 1966. It has.[27] While Ball does not give this unprecedented labor agreement the space and close scrutiny it deserves, he does acknowledge that it is unique.[28] All parties to the agreement have expressed at least a minimum satisfaction by renegotiating the agreement last summer. The real possibility that this first step could be the model for similar agreements in other industries is illustrated by the adoption of a limited version of the West Coast agreement by labor and management representatives in three eastern cities.[29]

Part two of the text closes with a detailed discussion of earning ratios between maritime and nonrelated industries and discusses the types of featherbedding and job stoppages common to each.

The author embarks on the third and final section of the book with a recapitulation of the development of maritime union power, a power which marks "the complete reversal of the relative power of unions and employers in the maritime industry in less than two decades . . . ."[30] The reader has awaited policy recommendations throughout his voyage to the maritime industry's past and present, and the author provides them in the final three chapters. In reaching his conclusions and in formulating his proposals, Ball assumes that what must be curtailed is "this tremendous imbalance in bargaining power which makes a mockery of collective bargaining in the maritime industry."[31] He postulates three ways to

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25 BALL, *op. cit. supra* note 2, at 193.

26 *Id.* at 193-95.

27 "The current ILWU-PMA longshore agreement, which was signed on July 6, 1966, runs from July 1, 1966 to July 1, 1971 and provides for an employer financed Mechanization Fund in the amount of $34,500,000 over the 5-year period." Letter from John J. Fenton, Assistant Director, Contract Data & Research, Pacific Maritime Association, December 19, 1966, to this reviewer, on file in the office of the *Notre Dame Lawyer.*

28 The Pacific Maritime Association appears to have gone a step further than any other industry has been willing to go to obtain union agreement on removal of restrictive and featherbedding work rules and a free hand to introduce machines and change operation methods. Other industries have agreed that some provisions must be made to lessen or eliminate the impact of mechanization on the individuals in their basic work force. The railroads proposed to do this by permitting normal attrition of the work force to reduce total employment gradually, but were opposed by the unions. PMA appears to have gone further and recognized a sort of union property right in work rules originally imposed on the industry by the union's superior economic power, and in the eyes of the union at least has agreed that the work force is entitled to a share in the savings in labor costs resulting from the introduction of new machinery and methods, a share over and above fair wages and fringe benefits. BALL, *op. cit. supra* note 2, at 196.

29 *Id.* at 217-20.

30 *Id.* at 245. After having developed the background for this assertion throughout the text, Ball specifies the reasons for this amazing shift in power:

> It is my conclusion that the five factors which contributed most to reversing completely the balance of union-management power in shipping between 1933 and 1953 were policies and actions of the Federal Government, the past record of shipping employers, inherent weaknesses of maritime management's bargaining position in dealing with unions, the excessive power of picket lines in this industry, and the peculiar seniority systems it developed. *Id.* at 248.

These factors appear to be significant in most industries.

31 *Id.* at 261.

approach a solution to the problem,[32] and finally determines that government intervention through legislation aimed at the heart of union strength is a necessity. With legislation required, the only remaining problem is to select the proper form:

> Four possible legislative solutions to the maritime industry's labor relations problems have been discussed, proposed or tried, either here or in other nations. The four are Government ownership and operation of the minimum U.S. flag fleet considered essential to our economy and national defense, compulsory arbitration of maritime labor disputes, reliance on foreign flag vessels for our shipping needs, and application of antitrust restraints to maritime unions.[33]

Although Government ownership and operation of the minimum U.S. flag fleet considered essential to our national security might be regarded as only an extension of the massive aid program presently conducted by the Government, Ball dismisses it as ineffective in solving basic labor relations problems. He feels the Government would be faced with the same problems as private industry unless it assumed control of both shipboard and longshore activities. This is too much for Ball:

> Therefore, despite the subsidies now required to sustain our merchant marine, which would justify a socialist solution of its problems more than in an unsubsidized industry, Government ownership should be a last resort, to be attempted only if all other possible solutions are found wanting or fail in practice.[34]

Compulsory arbitration is considered next and rejected, both because it does not alter the monopolistic structure of the maritime unions and because it encourages rather than inhibits protracted negotiations.[35] The third possible legislative solution is to allow American ship operators to purchase their ships and hire their crews on the world market. This solution is considered undesirable for a number of reasons.[36] Finally, Ball reaches his ultimate solution,

32 There are three ways to approach a solution. One is to point out the problem and its causes and leave it to the parties directly concerned, the unions and the employer groups in this industry, to take the corrective action indicated. A second method would be through legislation, the passage of a new law or laws aimed at correcting the imbalance in power, which at least partially is due to statutes previously enacted in this field. The third way to a solution would be a combination of the first two: some new legislation coupled with constructive action by the parties themselves. *Id.* at 261.

33 *Id.* at 266-67.

34 *Id.* at 273.

35 Ball is convinced that the possibility of arbitration is "enough to keep both sides from laying on the table their best offers to settle and avoid a strike." *Id.* at 277.

36 But there are other weaknesses in this solution of maritime labor relations problems in addition to its reversal of the merchant marine policy enunciated repeatedly by Congress. It would involve the same difficult problems in liquidation of the present subsidy program as would Government ownership and operation. While it would go far toward solving the labor relations problems with shipboard unions, *it would employ the drastic means of largely eliminating shipboard employment of American seamen.* That is a little like amputating a leg to cure a sprained ankle. *An even more serious drawback* to reliance on foreign flag ships is that it would not touch the situation as regards the longshore unions. The monopolistic power of these shoreside unions and their intransigence in its use has [sic] created more national emergencies in recent years than have the seamen's unions. *Id.* at 284-85. (Emphasis added.)

one that is not surprising since it is the very rationale for his book. Ball's recommendation: "Apply antitrust restraints to maritime unions."[37] Historical development, analysis of the present, prognosis for the future — all point inexorably to the final paragraph:

> Solution of maritime labor relations problems by application of antitrust restraints to its unions is the soundest of those discussed. It would preserve an American Merchant marine, declared repeatedly by Congress to be essential to our nation's commerce and defense. It is a liberal rather than a socialistic solution, and it attacks the root causes of the problem rather than attempting to control its effects. This is true whether the approach is a limited one prescribing specific rules for the maritime industry, or whether the more general method of making existing antitrust restraints applicable to the industry's unions is followed, although the latter has more advantages and is sounder in principle.[38]

The ultimate impression left with the careful reader is that of a book written primarily for those who, by predisposition, will give wholehearted support to the policy views of the author.[39] This is unfortunate, since Ball is quite entertaining in his description of ships and shipping and since his history is well documented and unbiased in the telling. In the last analysis, however, the broad sweep of Ball's pen in policy matters fails to hide a basic weakness. He is primarily interested in reaching a preconceived solution, and he fails to produce the factual data needed to persuade the reader that solutions to labor problems in the shipping industry actually lie *solely* within the collective hands of labor. If the pen is to have a mightier effect than the sword, the partisan must wield it with a subtler stroke than does Mr. Ball.

*Francis M. Gregory, Jr.**

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37 *Id.* at 285.

38 *Id.* at 294.

39 The Labor Policy Association, at least in the cover advertisements for its other publications, does not appear to discourage this approach. The following synopses are taken from the jacket of the Ball book:

> Professor Boarman examines the automatic economic regulators of union monopoly powers and shows how they have been so vitiated by government interferences that they no longer perform their normal functions, and he disposes of the weakly wishful theory of eventual union self-restraint with one of the classic sentences of this forthright book: "Monopolists who fail to maximize their own advantage in a given situation are merely being stupid." *Union Monopolies and Antitrust Restraints,* by Patrick M. Boarman. This is a thorough and meticulously documented analysis of the weird decisions of the NLRB since the present majority took charge, which have created anarchy in labor relations law.
>
> With rare professional skill derived of long and intimate experience in NLRB affairs, Mr. McGuiness presents issue by issue in case after case the evidence in support of the charges against the Board that it has gone far toward nullifying the work of Congress in the Taft-Hartley and Landrum-Griffin Acts. *The New Frontier NLRB,* by Kenneth C. McGuiness.

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THE LAWYER IN MODERN SOCIETY. By Vern Countryman[1] and Ted Finman.[2] Boston: Little, Brown and Company. 1966. Pp. xxii, 911. $13.00.

This book of cases and materials on professional responsibility faces squarely what it terms the "over-all problem" of the lawyer as a representative of a client: "whether the lawyer, in pursuing his client's interests, has a responsibility to take account of conflicting interests."[3] The drama of the lawyer's work lies in this possibility of conflicts of duties. That a lawyer should not steal from his client, that he should be competent to do the job he undertakes, that he should charge a fair fee — these A, B, C's of ethics apply to all men and are applied without special difficulty to the particular tasks of the lawyer. There is not much greater complexity in the additional requirement that, in the client's own interest, the lawyer should take account of interests that conflict with the client's; that is, in the exhortation to the wise lawyer not to overreach for his client lest his client find himself in trouble. Moderation has long been the mark of prudent counsel. The special and central problem of the lawyer is reached only when it is suggested that, apart from his client's interests and the demands of the law, there are restraints on his action, and there are responsibilities he must assume. Countryman and Finman effectively explore this problem.

The different contexts in which the problem may arise are distinguished: the context of adjudicatory proceedings where an adversary lawyer who will check the lawyer's efforts is provided by the process itself;[4] the area of negotiation where bargain rather than decision is the objective, and adversaries must collaborate;[5] the realm of unilateral action where, for example, the client makes a will or files a tax return, and there is no direct adversary to the lawyer.[6] The categories, the authors note, are not rigid, but are convenient for analysis. The authors believe that in each category there are values that the lawyer must respect besides the law and his client's wishes; broadly, these values are fairness in the treatment of individuals, the encouragement of behavior consistent with basic social goods, and the integrity of the processes by which lawyers act.[7] The authors' material is well arranged to exhibit the dilemmas that respect for these values may present the lawyers and to raise questions in concrete ways as to what respect for these values means. For example, does an emotional presentation to the jury distort the trial process, or does it respect it?[8] What is the lawyer's duty of fairness when he is drafting for a client a form contract he knows will be used in dealing with laymen who will have no counsel?[9] What is the lawyer's duty to protect the integrity of the process when dealing with an administrative agency unaware of law unfavorable to his client?[10] It may be that there are some lawyers who would shrug off all these questions as academic speculation unre-

1 Professor of Law, Harvard Law School.
2 Professor of Law, University of Wisconsin Law School.
3 COUNTRYMAN & FINMAN, THE LAWYER IN MODERN SOCIETY 185 (1966).
4 *Id.* at 188-278.
5 *Id.* at 279-302.
6 *Id.* at 302-20.
7 *Id.* at 186.
8 *Id.* at 247-52.
9 *Id.* at 300.
10 *Id.* at 227-28.

lated to the hard economic pressures of their practice. It is unlikely that such lawyers have a consciousness of their own dignity as men. It is probable that the present generation of law students will be drawn to explore such questions which center about the creative role of the lawyer.

Works of this kind exorcise the old and narrow individualism that in practice measured a lawyer's duty by a client's interest. It is now plain to all students of the profession that there is a large zone where the lawyer himself is the creator of values. He is not totally free; he serves a client. But the social interests he serves besides his client are sufficiently indeterminate, the ways of realizing them sufficiently unmarked, that the lawyer can himself choose what he will create. This creative responsibility of the lawyer has, of course, already been given reality by some leading lawyers; but only recently has it become evident how broad the opportunities are, and how universal the creative role may be. In the assumption of professional responsibility the lawyer gives himself a function that is personal not technical, free not servile, social not selfish, and creative not mechanical.

The existence of such lawyers could only be predicted to occur in quantity if the education of lawyers supported self-directing responsibility. Countryman and Finman rightly consider that an assessment of the lawyer today requires some knowledge of his education. As they indicate, as recently as 1948 only 37% of American lawyers had received college degrees, only 61% had law degrees. By 1964 these percentages had respectively risen to 63% and 87%.[11] It would seem certain that all practicing lawyers eventually will be graduates of colleges and graduates of law schools. These statistical increases are only part of the change. The law schools have been making serious demands on the colleges to provide not narrow technical training, but instruction in the humanities to the potential law student.[12] The law schools in a variety of courses are self-consciously exploring professional responsibility, policy science, and the social implications of law. What was once done with some indirection by a few leaders is now being purposefully done by the substantial number of schools that can claim to be national law schools. The night school, the part-time school, and the proprietary school have not been extinguished; but they have declined. The total change in quality, in the increase of the good, the decline of the bad, and the improvement of the average since, say, 1935, has inaugurated a new era for legal education. It is because of these changes that it does not seem chimerical to envision the lawyers of the future as persons consciously creating values.

The Lawyer in Modern Society provides extensive material on one change, however, which seems to militate against any increase in the personal role of the lawyer. This change is the emergence of group practice of law. Canon 35 of the American Bar Association's Professional Ethics, adopted in 1928, is unequivocal: "A lawyer may accept employment from any organization . . . but this employment should not include the rendering of legal services to the members of such an organization in respect to their individual affairs." In 1963 state application of this principle was found to be unconstitutional in the special case

11 *Id.* at 2.
12 *Id.* at 642-52.

of a civil rights organization in *N.A.A.C.P. v. Button*[13]; then, in *Brotherhood of Railway Trainmen* v. *Virginia State Bar*,[14] the Court held that a state could not constitutionally prevent a union from channelling the individual legal business of its members to selected cousel. Studies indicate that already other groups practice law;[15] the Army's provisions for civil advice to servicemen is a particularly clear case.[16] A committee of the California State Bar has called for frank recognition and encouragement of the group principle as the best way of meeting the needs of many who now cannot afford, or do not know of, legal remedies.[17] The local neighborhood legal clinics financed by the Office of Economic Opportunity under the authority of title II of the Economic Opportunity Act[18] embody the group principle.

The full implications of this sweeping change will not be realized for at least a generation. The old paradigm — a lawyer with single eye serving one individual — is gone. It had already been substantially altered by the service of lawyers to corporations; only fiction could treat as a single entity the several interests therein embraced. Now, however, court decisions and federal action require the open acceptance of a new model: the lawyer serving at the same time a group and the members of a group. The interests of group and members may often conflict. They do when dissenting shareholders are ranged against controlling shareholders. They do when the militant policies of a civil rights organization differ from the pacific values of some small town parent who has authorized litigation for desegration in his name. They do when an injured tort victim would prefer quick compromise to his union's interest in establishing a rule of liability. The conflicts admitted, the lawyer must be vested with the responsibilities of arbiter. It is for him to act fairly, to decide what is just between group and member, to create a standard. He has been doing this for a century in guiding corporate arrangements; he can do as well or better in guiding other groups. But it is desirable that his responsibility be acknowledged, not half concealed. The result of acknowledgment is that the independence of the lawyer is not destroyed by the interjection of a "lay intermediary" between the lawyer and the client. The lawyer has never been independent in the sense that he can function without a client. He is more independent if, instead of being bound to one, he is the arbiter between the two for whom he acts.

This book is comprehensive; it includes causes, material, and citations dealing with all the major areas of relevance to the functioning of the lawyer in America. Comparative material, however, would have been useful. Attention is drawn to Arthur A. Murphy's valuable article on the role the Army assigns defense counsel,[19] but comparative material is not generally used. Study of lawyers in continental legal systems, in Eastern Europe, and in the canon law would have provided useful illumination of the special role of the lawyer in the

13 371 U.S. 415 (1963).
14 377 U.S. 1 (1964).
15 COUNTRYMAN & FINMAN, *op. cit. supra* note 3, at 560-65.
16 *Id.* at 564-65.
17 *Id.* at 575.
18 78 Stat. 516, 42 U.S.C. § 2782 (1964), as amended, 42 U.S.C.A. § 2782 (Supp. 1965).
19 COUNTRYMAN & FINMAN, *op. cit. supra* note 3, at 197, citing Murphy, *The Army Defense Counsel: Unusual Ethics for an Unusual Advocate,* 61 COLUM. L. REV. 233 (1961).

Anglo-American courts. Above all, one kind of comparative material would be useful both to provide illuminating contrast and to show continuity: examples of the functions of lawyers in earlier Anglo-American history. After all, as lawyers we work within the basic framework of a system that little more than a century ago treated some people as property, that in its English form denied felony defendants counsel until 1836, and that considered it proper for congressmen to be paid privately for their legislative efforts. Only the last example is mentioned by the authors, who refer to the relations of Daniel Webster and Nicholas Biddle.[20] Other examples of substantial historical change are not dwelt on. History is important to suggest to the student the antiquity and vitality of the process he is entering. It is even more important to suggest how much dross has been purged from the system and how much more remains to be eliminated. "The sun is but a morning star."

*John T. Noonan, Jr.**

20 COUNTRYMAN & FINMAN, *op. cit. supra* note 3, at 139.

* Professor of Professional Responsibility, Notre Dame Law School; Author: THE SCHOLASTIC ANALYSIS OF USURY; CONTRACEPTION, A HISTORY OF THE TEACHING OF THE CATHOLIC THEOLOGIANS AND CANONISTS.

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