

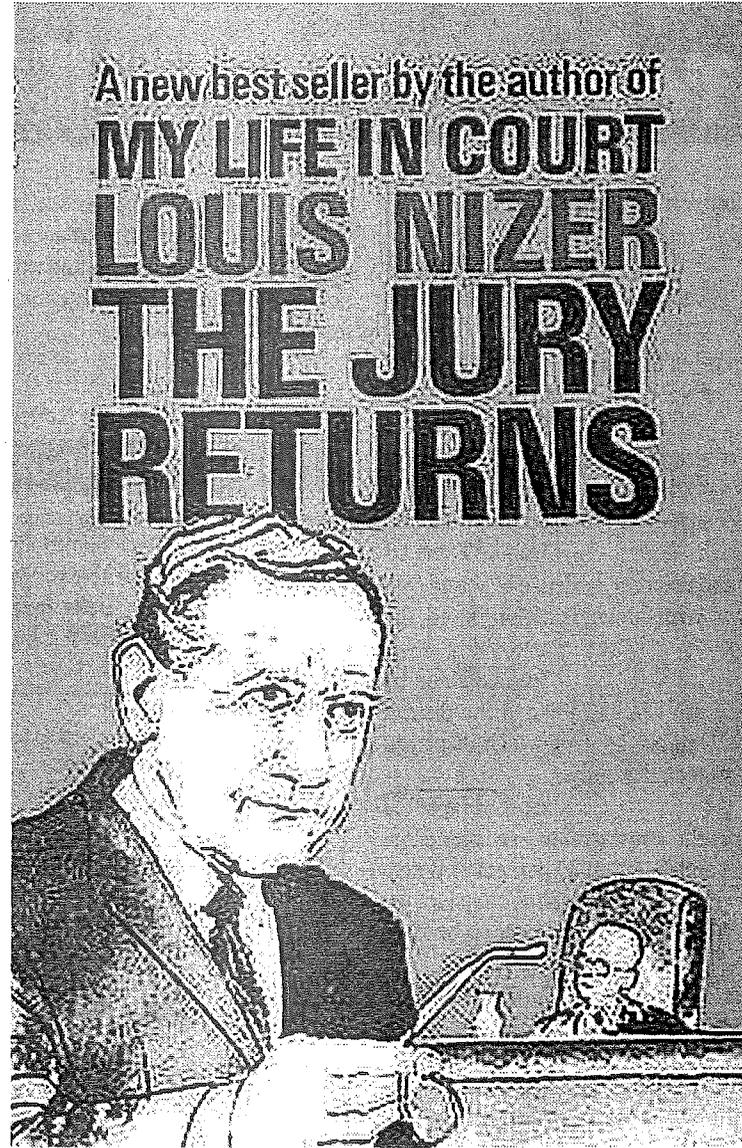
Lawyers: Put down the electronic legal menu for just a moment

By Robert Bunzel

San Francisco lawyer's lawyer Bill Edlund (Pillsbury Madison & Sutro 1956-1999 and Bartko Zankel Bunzel & Miller 1999-2016) died on Christmas Eve two years ago. Bill's daughter Cami gave our firm his legal library collected over 60+ years. The collection contains first-edition and hardbound biographies and histories of great trials, trial lawyers, judges and courts from England and the United States.

This article urges lawyers to put down for a moment the electronic legal menus we now rely on, check out some of these volumes, and immerse yourselves in remarkable trials past. The common law lives in these stories, and the psychological and legal burdens that trial lawyers today deal with are not new: giants before us walked the walk.

Trial lawyer Louis Nizer co-founded the NYC firm Phillips, Nizer, Benjamin, Krim & Ballon, and for a number of years Nizer was listed in the Guinness Book of World Records as the "highest-paid lawyer in the world." He represented many celebrities, including Charlie Chaplin, Johnny Carson, Salvador Dalí, Julius Erving, Mae West, and Roy Fruehauf of the Fruehauf Trailer Corporation. His most famous trials were libel cases, including for Quentin Reynolds against columnist Westbrook Pegler, and for John Henry Faulk against Aware, Inc., a right-wing organization that had falsely labeled Faulk a Communist. His representation of Reynolds inspired the Broadway play "A Case of Libel," while his



legal victory in the Faulk case was credited with "breaking the back of blacklisting in broadcasting."

Nizer's book "My Life in Court" (1961) was a best seller, while his 1996 continued memoir "The Jury Returns" is less known and out of print. It beckoned from a shelf in

the Edlund library. The book relates four seminal trials from Nizer's career, including his recounting of the Faulk trial. In 1955 Faulk (a popular CBS radio personality) fought for control of the American Federation of Television and Radio Artists against officers backed by Aware,

a right-wing McCarthyite group. Aware publicly accused Faulk of being a Communist and successfully pressured radio stations to not hire him. CBS vice president Edward R. Murrow supported Nizer's suit against Aware, while Aware and its backers were represented by the law firm of Roy Cohn (also counsel for Joe McCarthy). After five years of delaying tactics, in 1962 Nizer persuaded a New York jury to award Faulk the largest libel judgment in history to that date — \$3.5 million (later remitted to \$550,000).

One can read the Faulk trial as history, or view it as a portal to our current political infighting. A trial lawyer's reading of Nizer's account reveals a courtroom master detailing how our craft developed and still operates. We should relish the verities he offers on the following subjects, and be thankful that we work in the world Nizer helped build.

Persuasion and Truth

p. 249: "Unless the matter to be decided is sharply focused, the eye strays, the tongue is futile, and the mind struggles for comprehension."

p. 263: "I sometimes think that the most valuable byproduct of a lawsuit against the tyrants of the day is that it flushes them out of their private haunts and subjects them to public scrutiny. The shrinking process is quite prophylactic."

p. 285: "The art of persuasion is rarely a flash of light which sweeps away the darkness of resistance. It is the cumulative effect of ceaseless tiny illuminations which attract the mind in a certain direction, until almost imperceptibly and slowly it has

reached a conclusion."

p. 344: "The truth is a passkey which can open the most intricate locks."

p. 349: "The old saying, seeing is believing, is true in court, although in church, the reverse is probably true. There, one must believe in order to see."

p. 364: "Conspiratorial structures often have windows which look out upon ugly courtyards. We succeeded in prying open one of these barred windows and the sight was shocking."

p. 387: "The drama of the courtroom knows no logical development. Like all human affairs, it is unpredictable, and undisciplined. It shoots out in all directions, creating suspense and excitement through the propulsion of life's forces, rather than by the planned designed of an author. That is why the truth of a court trial is often stranger than the fiction of a most imaginative mind."

p. 411: "Robert Frost once wrote a wonderful line.... 'The people I am most scared of are the people who are scared.'"

Trial

p. 276: Concerning trial preparation: "the seeker for truth is no respecter of time or effort. He glories in evidence, and reconstructed fact, and explorations in advance of trial to prevent injustice through surprise or lack of preparation."

p. 294: When putting on the testimony of your witness, it may come, "slowly, like a barefooted man walking on a pebbled road, we trod over sharp objections to the description of the events which had engulfed

him."

p. 312: "But was there ever a lawsuit that did not have nerve-wracking defects? Law doesn't run any more smoothly than love."

p. 344: "Unlike a play which is designed to build to a single climax, a trial is often an undisciplined profusion of climaxes."

p. 348: The middle of the trial was "six weeks, during which neither Faulk nor our battery of lawyers had spent a single evening, Saturday and Sunday included, away from the office, laboring there on the next morning's adventure in the courtroom."

p. 354: "Cross-examination when it succeeds can pierce the most impressive exterior and reveal the character and motivation of the witness just as a fluoroscope machine un sentimentally depicts a raw pulsating heart."

p. 356: "There are some admissions which do not merely yield ground but virtually surrender the entire defense position."

p. 357: "Lawyers plan the sequence of their witnesses, so that each one gets the benefit of the persuasive draft preceding him, like automobile racers who like to ride second and be pulled forward by the vacuum created by the leading car."

p. 363: "When a witness darts about avoiding cross-examination arrows, he is bound sooner or later to run into one which was not even shot at him."

p. 407: "A speaker should avoid drinking water during his address because it breaks the audience's concentration on his words, and dis-

Pick up (actual) books from time to time

Continued from page 7

sipates the spell of whatever emotion he may have created." ... "Particularly ludicrous is the speaker who before he has even begun, ceremoniously lifts a glass of water, and drinks it slowly. The only excuse I can find for such a public display of thirst-quenching is when the glass is filled with gin, and the speaker desperately needs to stoke his fortitude."

p. 408: "Ordinarily, when a speaker doesn't strike oil in 15 minutes, he should stop boring."

Evidence

p. 253: "Chief Justice Charles Evans Hughes once said he 'never expected the court to rise to the icy stratosphere of certainty.'"

p. 366: "The law permits a searching of the mind to discover ill will. For this reason even a letter or note written by the defendant may be examined to discover whether the hatred in his heart had flowed onto paper."

p. 382: "Ordinarily, errors in dates are of no consequence. We are all fallible on fixing time. But sometimes a

date is crucial. It can reveal the falsity of entire testimony. For example, if the person claimed to have been involved in a conversation was out of the country at the time, the fiction of the testimony can be conclusively demonstrated instead of merely denied."

p. 349: "Visual evidence sticks in the mind better than oral statement. We comprehend through the eye more easily than through the ear." ... "Even in complicated antitrust litigations, color charts are worth thousands of explanatory words."

p. 397: "Statistical data is a language all its own, and it is not easy to parse. Like a foreign language learned by the mind but not the ear, which requires the slowing process of translation for comprehension, figures and percentages are difficult to absorb. I find that if they are translated into visual images they can be read and understood easily, because they are no longer unfamiliar symbols."

Settlement

p. 272: "The relationship between client and attorney is a delicate one

when it comes to settlement recommendations. The client's wishes should prevail, but to what extent must allowance be made for the fact that being emotionally involved, he should be protected against himself?"

Summation and Verdict

p. 417: In summation to the jury, "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."

p. 421: "One of the glories of our system of jurisprudence is the device of the Judge's charge. It is not only a legal education of the principles of applicable law, but it is a model of impartiality and inspiration to do justice without fear or favor, sympathy or prejudice.... The law is an artistic enterprise and each judge may mold his charge in whatever way he can best achieve lucidity."

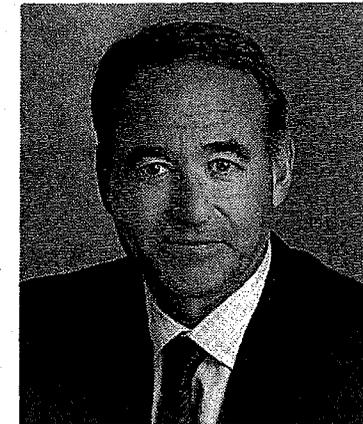
p. 422: In waiting for the jury, "another phenomenon during the vigil is that time increases anxiety. It is as if an invisible wire ran from the jury room to electrodes on one's wrists

and temples and the current increased as the seconds ticked away."

p. 429: After a trial, the losing lawyer says "we will appeal.... Now...it is all in God's hands!" While the winning lawyer retorts "What makes you think it hasn't been there all the time?"

Louis Nizer won the Faulk trial and many others. His observations remain current.

Rob Bunzel is the managing shareholder at Bartko Zankel Bunzel and Miller, a San Francisco litigation and real estate boutique firm.



BUNZEL