

# Nizer: The Jury Returns

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## Recommended Citation

George J. Glendening, *Nizer: The Jury Returns*, 16 DePaul L. Rev. 535 (1967)  
Available at: <https://via.library.depaul.edu/law-review/vol16/iss2/23>

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## BOOK REVIEWS

*The Jury Returns.* By LOUIS NIZER. Garden City: Doubleday and Company, 1966. Pp. 438. \$6.95.

Any legal conflict can be viewed through a variety of spectacles. To the lawyer, it is the mailed fist over which adversaries are called to do battle. To the judge, it is a problem in search of a solution. To the social scientist, it is a microcosmic sampling drawn from the conflicts of the larger order. Mr. Nizer's latest literary contribution represents an attempt, and at least a partially successful one, to present all of these views through the vehicle of a dramatic presentation which should appeal to both the lay public and the legal profession.

The book is divided into four parts, each dealing with a plaintiff-client whose case has far-reaching social and legal ramifications. There is Paul Crump, the Illinois murderer, twice sentenced to die in the electric chair, who became the pawn in a struggle between those who believed that deterrence and retribution should prevail as the primary goals of our criminal law and those who championed the cause of rehabilitation.

John Henry Faulk, a prominent radio and television performer in the mid-1950's, fell victim to the vicious blacklisting practices which existed in the entertainment industry during and shortly after the McCarthy era. His libel suit helped expose those practices to the glare of national publicity.

Roy Freuhauf was president of the trailer company which bore his name. His indictment for bribing a labor official, which came at the very end of the five-year statute of limitations and some years after he had already told the McClellan Committee of the details behind the \$200,000 loan made by him to Dave Beck, called into question the judgement of both the Government and Mr. Freuhauf.

Finally, there is the case of the anonymous wife whose husband prevailed in his suit for divorce at the hands of a corrupt judge. After all avenues of appeal were exhausted, and no other recourse appeared possible, Nizer conceived the novel idea of suing the former husband, his mother, his four brothers and the companies they controlled for conspiring to deprive the former wife of her marital rights. In this case, as in the other three, Nizer's client ultimately succeeded.

Through each of these vignettes the plot unfolds much as it would in a novel. The author may begin with a rough, but usually appealing, description of the main character. Crump's

broad shoulders, blacksmith's forearms, and trim waist made him appear shorter than his five feet ten. But power was evident in every movement. He had a high forehead worthy of better plans than he was making. He sported a thin mustache over a thick upper lip and at times a goatee, which accentuated the dazzling white of his teeth when he smiled. Sometimes, he affected a bandana, pirate style. His eyes were fierce brown softened by a liquid quality which made his face seem more handsome than it was. His sullenness combined with strength and recklessness had a special appeal for girls.<sup>1</sup>

<sup>1</sup> NIZER, *THE JURY RETURNS*, 3 (1966).

Later, the reader is left to weigh this man's tangible manifestations of rehabilitation against his refusal publicly to confess his guilt or to express any degree of penitence over what was admittedly a heinous crime. It is during the narration of the events leading up to the hearing of trial that one encounters the inevitable setbacks, such as the preliminary ruling in the *Freubauf* case that "intent" (to violate the law) was not a necessary element of the crime. The climax is reached, appropriately enough, with the return of the jury, although in Faulk's case this proved to be somewhat anticlimactic, as the jury had returned earlier to inquire whether it could award more than the amount of punitive damages which had been asked for.

Clearly, the author had good material to work with, yet the reenactment even of these cases might have been done much less forcefully than it was. Mr. Nizer's flair for the dramatic, which has undoubtedly helped him in no small way in achieving success as a trial lawyer, also has enabled him to recount his experiences in a manner that allows the reader to identify with him as he suffers through the unexpectedly damaging testimony of a witness who was thought to be "friendly," then rejoices in eliciting from a witness, on cross-examination, facts which help him establish his case, and, finally, ponders the techniques to be used during closing argument.

It is at the points where Nizer attempts to combine the essay with the dramatic form that one of the weaknesses of the book occurs. The question, for example, of whether "the law" is a science or an art is a complex philosophical one which has been extensively debated through the years. Nizer's abridged three or four page contribution to this argument, inserted, via the essay form, into various parts of the book, not only disrupts the flow of what is otherwise a rather tightly-knit narration of events, but also distracts from the very same point which has more tellingly been made, albeit implicitly, throughout the descriptive passages. The same flaw recurs during the development of his rehabilitation theme, where suddenly a sketchy two-page discourse on the proper goals of our penal system is thrust upon the reader.

One can read this book, however, without being too distracted by the asides and the homilies ("Resentment often drives a man to superiority, but there is no precise way of determining why the road for some is for good and others for evil"<sup>2</sup>). On the whole, the central ideas are well-developed in what one should find to be an entertaining as well as an enlightening work, a good collection of interesting cases well-retold.

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<sup>2</sup> *Id.* at 2.

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*The American Jury.* By HARRY KALVEN, JR., AND HANS ZEISEL. Boston: Little, Brown and Company, 1966. Pp. 545. \$15.00.

One of the basic tenets of our judicial system is the right of a person accused of a crime to trial by jury.<sup>1</sup> The exercise of this right has always been one of the major tactical considerations in criminal litigation, and there has been much written about the means of receiving the most favorable treatment for a defend-

<sup>1</sup> U.S. CONST. amend VI; ILL. CONST. art. II, § 5.