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Book Review [Lawsuit]

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BOOK REVIEW

LAWSUIT. By Stuart M. Speiser. New York, NY: Horizon Press. 1980. Pp. 617. Hardbound, $40.00. Softcover, $9.95.

Reviewed by John R. Williams*

A litigant, attorney Stuart M. Speiser indicates in the preface to his new book, *Lawsuit,* is "a person about to give up his skin for the hope of retaining his bones."[1] This well-known plaintiff lawyer uses his recent 617-page volume to reveal the strategies and money dynamics employed by a new breed of plaintiff attorney to retain more than bones for their clients.

Unlike many such books in which noted trial attorneys "open their files" to the public by popular writing, Mr. Speiser avoids flamboyancy and self-congratulation, is not excessively self-serving, and does not emote the "Robin Hood" complex (champion of the victimized and the poor against the corporate fortresses of power and wealth in society) in spite of his "entrepreneur-lawyer" label. He does not exude the overpowering arrogance of so many trial lawyers' "attorney" books.

This aviation disaster plaintiff specialist, who with his colleagues has, since 1948, played a key role in shaping the format of recovery in major aircraft and personal injury litigation, chronicles part of the history of this litigation by an examination and evaluation of his own files, and a discussion of early catastrophe cases where recovery was not obtained.

A former commercial airline and military pilot himself, Speiser now has law offices in New York, London, Los Angeles and Washington, and has authored eighteen legal books, including textbooks for lawyers. With this background and ex-

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1. S. SPEISER, LAWSUIT (1980) (quoting A. BIERCE, THE DEVIL'S DICTIONARY 194 (1911)).

pertise to draw upon, Speiser has marshalled a great recall of actual case file material and testimony transcripts to tell great stories.

This book is not the courtroom drama popularized by the Louis Nizer "my life" books, although the book does embody detailed accounts of plaintiff personal injury and wrongful death litigation. Instead, it is an eye-opening account of the painstaking work, the investigation and discovery, the pretrial preparation, the investment of personal money for financing, the total commitment of lawyers and staff, and the collateral and procedural appeals issues in order to get to the merits, which goes on in prosecuting this kind of litigation. Yet, this complex story is told in a readable narrative that can capture the fascination of non-lawyers and trial lawyers alike.

It is a book for trial lawyers about trial lawyers. It is a book for law students who want to read more about torts, discovery, and procedure than can be found in a textbook appellate case-by-case format, and for those students who want to see the practical workings of these law school subjects in the world of courtrooms, trial lawyer strategy, and money leverage. It is, in essence, a seminar.

In telling of his cases, Speiser is never dull. He certainly has good material to work with—some of the major landmark aviation cases in United States litigation history.

As in all books of this genre, because of the lack of time, the wealth of material, and the editing required to maintain interest and flow, the book sometimes shows a plaintiff, who is fighting substantial odds, attaining success too easily and smoothly. Despite the deceptive ease of victory, however, the book embodies excellent clinical studies in major case handling and problem solving. Without preaching, it proves in practice the well-worn theme that hard work and meticulous detail bring results.

Speiser makes it clear that cases of this magnitude are financially impossible to handle by the one-time general-practitioner lawyer. The book points out that the willingness to commit both time and money resources without the reassurance of regular periodic compensation is demanded in order to properly prepare these kinds of cases for explosive settlement leverage and for the threat against an opponent at trial.

In one chapter, Speiser traces the history of the early

American tort lawyer from colonial times to 1950.[2] He theorizes that recovery for accident victims would have impeded the industrial revolution. By describing cases like the sinking of the *Titanic*,[3] and the Iroquois Theater and Triangle Shirtwaist Company fires,[4] Speiser makes his point that such a great legal "obstacle course" was created that injured plaintiffs were simply not recovering. These catastrophe cases further show that even when plaintiffs recovered, the verdicts were small, that the defendants were represented by more skillful and influential lawyers, and that the plaintiffs' lawyers were often poorly prepared and unimpressive. In contrast to these early cases, Speiser uses his own cases and those of other modern court lawyers to drive home the point that plaintiffs in this country would never be able to recover enough money to make a suit against defense giants worthwhile, were it not for the development of what Speiser terms the "trinity of torts."[5] The book attributes the advent of plaintiffs' "equality" in the courtroom to three features of the American legal system that are unique to American court litigation: the right to jury trial in civil cases, the contingent fee, and the entrepreneur-lawyer concept. As discussed below, one of the less appealing aspects of this extremely interesting book is the author's repeated attempts to drive this point home too hard and too often.

Without question, the most interesting chapter is the one which opens the book: the case of *Ralph Nader v. General Motors Corporation*.[6] Lawyer or not, everyone has heard of this David-Goliath confrontation. Yet, this chapter takes one behind the scenes to see how the fight of a law firm on behalf of a consumer advocate against a corporation with assets greater than some nations not only resulted in a substantial settlement without necessity of trial, but also resulted in an apology by the president of that corporation. The plot unfolds with as much suspense as it would in a novel.

Each chapter in *Lawsuit* is a separate unit. The book is not one to be read at a single sitting, but instead one to enjoy on a case-by-case basis. Not only is the book a "busman's hol-

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2. S. SPEISER, *supra* note 1, at 119-91.

3. *Id.* at 131 (discussing Ocean Steam Navigation Co., Ltd. v. Mellor, 233 U.S. 718 (1914)).

4. S. SPEISER, *supra* note 1, at 133-38.

5. *Id.* at 119-20.

6. *Id.* at 1-118.

iday" to a lawyer-reviewer who handles tort litigation on a regular basis, but it quickly and simply takes one through a series of cases that would be interesting even to a layman. Speiser tells of the air disaster at the Grand Canyon,[7] the collision at Page Field,[8] the Ford Pinto case,[9] the thalidomide babies,[10] and the unsuccessful Roberto Clemente case.[11] He also shows how American tort law has had worldwide effect through the catastrophe air crashes of which we all read periodically: The Turkish Airlines DC-10 crash at the Ermenonville Forest,[12] the 1973 Varig Paris crash,[13] the Onassis case,[14] and the raid on Entebbe.[15] As previously noted, he has good material with which to work.

As with any author writing with massive background and experience in a limited field, parts of Speiser's book are not as interesting as others. Some parts are aimed at and would be appealing only to a very narrow audience. The chapter entitled "Interview With a Tort Lawyer"[16] is labeled as a compendium of questions and answers concerning the topics covered earlier in the book. It really should have been left for another volume. That section is a catch-all attempt to respond in advance to what could be criticism of plaintiff lawyers in general. It is a little too philosophical, largely superficial, and sometimes self-serving. The space taken by this apologetic chapter would have been better devoted to another one of his interesting cases.

His discussion of "The New Breed,"[17] an avowed attempt to introduce the reader to a few examples of tort lawyers in the 1980's, resembles a fraternity class reunion back-slapping. It might be of interest, perhaps, to a limited group, but the chapter deviates from the main advertised purpose of a "renowned lawyer opening his files to reveal the strategy behind landmark cases." If the chapter decreases your interest, do

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7. *Id.* at 192-270.
8. *Id.* at 271-99.
9. *Id.* at 355-66.
10. *Id.* at 366-69.
11. *Id.* at 373-419 (discussing Clemente v. United States, 422 F. Supp. 564 (D.P.R. 1976), *rev'd* 567 F.2d 1140 (1st Cir. 1977), *cert. denied*, 435 U.S. 1006 (1978)).
12. S. SPEISER, *supra* note 1, at 420-69.
13. *Id.* at 469-72.
14. *Id.* at 473-87.
15. *Id.* at 487-92.
16. *Id.* at 582-98.
17. *Id.* at 540-81.

not put down the book; skip the chapter and read on.

This reviewer felt that the author tried too hard to make the reader accept his claim that the entrepreneur-lawyer allowed the plaintiff to achieve equality in the courts. There is no question that the danger of a talented and aggressive plaintiff lawyer and the threat of a large judgment are factors in successful plaintiff cases. The thesis does not, however, give enough credit for adequate accident compensation to the development of the court system, the role of liability insurance, the changes in American philosophy following Franklin Delano Roosevelt and World War II, the upholding of higher monetary awards by the appellate courts, and the growth of the contingency fee contract. Mr. Speiser makes his point, and it has some validity. With the ability he has to argue points, however, he sometimes tries too hard "to document the importance of the entrepreneur-lawyer."[18]

Do these minor flaws and deviations, perhaps seen only in the eyes of the reviewer, vitiate the depth, importance, and downright pleasure of the book? Not at all. What you don't like, if anything, pass. Don't, however, pass up the book. Since the book is new, the jury may still be out. Chances are that Mr. Speiser's book will secure for its author, as it should under our system of justice, another favorable verdict by unanimous vote.

18. *Id.* at 533.