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Down and Dirty in the Global Village: Jack Webb's Guide to International Commercial Litigation

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Cover Page Footnote

Baker & McKenzie, New York. Baker & McKenzie, New York. Fonvielle & Hinkle Professor of Litigation, The Florida State University College of Law.

Book Review

DOWN AND DIRTY IN THE GLOBAL VILLAGE: JACK WEBB'S GUIDE TO INTERNATIONAL COMMERCIAL LITIGATION

Litigating International Commercial Disputes.
By Lawrence W. Newman* & David Zaslowsky.**
St. Paul: West Publishing Co., 1996. Pp. XLIII, 429. $ 50.00
(softbound, reissued annually).

JEFFREY W. STEMPEL***

As observers of law and life note, there are at least as many contradictions as consistencies.[1] On the one hand, similarly to Clifford Geertz's observation about knowledge, all law can be seen as local.[2] On the other hand, economies and cultures are becoming increasingly global.[3] Can law be far behind? The synthesized view on these two seemingly contradicting approaches to law is that both are true to a large degree. Law and dispute resolution are increasingly international in scope, but the actual means by which one disputes (and prevails or dodges judgment enforcement) remains local in large degree. Comparatively few lawyers may have an "international law practice" (although the number undoubtedly increases every day), but many lawyers will be involved in some significant transnational litigation during their careers.

As a consequence, the legal profession increasingly pays attention to transnational disputing and enforcement of commercial rights, with a corresponding increase in the number of useful books on the subject. *Litigating International Commercial Disputes*, by Lawrence W. Newman

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1. *See* Duncan Kennedy, *Form and Substance in Private Law Adjudication*, 89 HARV. L. REV. 1685 (1976) (identifying concept of "fundamental contradiction" in law, with inherent tensions existing in most legal concepts, doctrines, and institutions).

2. *See* CLIFFORD GEERTZ, LOCAL KNOWLEDGE: FURTHER ESSAYS IN INTERPRETIVE ANTHROPOLOGY (1983).

3. Some ascribe this tendency to economics, *see, e.g.*, LESTER THUROW, THE FUTURE OF CAPITALISM: HOW TODAY'S ECONOMIC FORCES SHAPE TOMORROW'S WORLD (1996); others, to entertainment media, *see, e.g.*, MARSHALL MCLUHAN, UNDERSTANDING MEDIA: THE EXTENSIONS OF MAN (1964).

and David Zaslowsky,[4] is part of what might be termed the first wave of this trend.[5] Written by practitioners and for practitioners, it provides a comprehensive overview of the transnational disputing process. Although the book is literally jammed with information (right down to the small type in footnotes—bring your reading glasses), it is designed as an overview and template rather than a highly detailed multivolume treatise.[6]

The book is organized in chronological order of typical litigation by a plaintiff seeking to have rights recognized and enforced. After a short overview chapter comparing American and foreign litigation (Chapter 1), it begins its chronological presentation with prejudgment attachment (Chapter 2) and proceeds to review the following:

- personal jurisdiction of foreign parties (Chapter 3);
- subject-matter jurisdiction (Chapter 4);
- service of process (Chapter 5);[7]
- forum selection and choice-of-law clauses (Chapter 6);
- forum non conveniens and comity (Chapter 7);
- the Act of State doctrine (Chapter 8);
- cases involving foreign sovereigns (Chapter 9);
- antitrust injunctions (Chapter 10);
- obtaining evidence abroad (Chapter 11);
- presenting evidence (Chapter 12);
- enforcing foreign judgments (Chapter 13);
- assistance to foreign proceedings (Chapter 14);

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4. LAWRENCE W. NEWMAN & DAVID ZASLOWSKY, LITIGATING INTERNATIONAL COMMERCIAL DISPUTES (1996).

5. Other books on international litigation predate Newman & Zaslowsky but are aimed more at students than practitioners. *See, e.g.*, GARY B. BORN & DAVID WESTIN, INTERNATIONAL CIVIL LITIGATION IN UNITED STATES COURTS (3d ed. 1996); RUSSELL J. WEINTRAUB, INTERNATIONAL LITIGATION AND ARBITRATION: PRACTICE AND PLANNING (1994).

6. *See* Andreas F. Lowenfeld, *Foreword* to NEWMAN & ZASLOWSKY, *supra* note 4, at xv-xvi ("Any lawyer faced with an international dispute . . . would do well to begin his or her search with Newman and Zaslowsky, and to follow the leads they provide.").

7. The implication of Chapter 5 is that for transnational disputes, even more than for domestic disputes, a claimant will often want to pursue attachment before worrying about service of process.

- interaction of international arbitration and the courts (Chapter 15).

The reader embroiled in an international dispute will find the Newman and Zaslowsky book very useful as an orienting device but will ordinarily need to follow through with not only review of the cited cases but also consultation with other secondary sources, such as specialized treatises and law review articles. Some of the sections of the book are succinct but excellent.[8]

I do not criticize this comprehensive but condensed focus by Newman and Zaslowsky. Their book is most valuable as both a starting point for analysis when faced with transnational litigation problems and as a continual reference source. It can provide a useful refresher for dealing with informal inquiries and may even constitute "one-stop shopping" for the lawyer who needs a general answer in a hurry. Paperback and relatively slim (429 pages including the index and table of cases) and inexpensive for a trade manual ($50),[9] it would work well as part of a litigator's traveling library and includes 14 (that's right, 14; count 'em, 14) useful appendices reproducing key statutes, treaties, and other important sources of law or policy.[10] It would work well as the one book a lawyer has within reach if an unexpected question arises at oral argument, in chambers, during deposition, or during a conference call.

In more than 400 pages, I found only a few technical points about which to quibble. Some are purely cosmetic. For example, in its titles and table of contents, the book suggests that in the United States "*Quasi in Rem Jurisdiction* [has been] Eliminated"[11] as a consequence of *Shaffer*

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8. *See, e.g.*, NEWMAN & ZASLOWSKY, *supra* note 4, § 11.1 (discussing obstacles to obtaining evidence abroad); *see also id.* § 13.1 (discussing concept and history of comity).

9. The publisher's apparent plan to issue a "new edition" of the handbook every year rather than a supplement or pocket part may require more funds to keep the book current. Even so, with many publishers charging something close to or above $50 for a pocket part or supplement to a hardbound treatise, obtaining updates in one unified volume at the cost of $50 may be comparatively less expensive for the user in light of value received.

10. Although the United States Arbitration Act, 9 U.S.C. §§ 1-16 (1995), is not reproduced, an omission I view as an error, the selection of appendices is useful and includes the following: New York Attachment Statute (Appendix A); Delaware Attachment Statute (Appendix B); Rule 4 of the Federal Rules of Civil Procedure regarding service of process (Appendix C); New York Service of Process Statute (Appendix D); the Hague Service Convention (Appendix E); State Department Circular Concerning Hague Service Convention (Appendix F); Inter-American Convention on Letters Rogatory (Appendix G); Hague Evidence Convention (Appendix H); Hague Convention Abolishing Legalization (Appendix I); Excerpts from the American Law Institute's *Restatement (Third) of Foreign Relations Law of the United States* (Appendix J); Section 304 of the Bankruptcy Code regarding cases ancillary to foreign proceedings (Appendix K); New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (Appendix L); Foreign Sovereign Immunities Act (Appendix M); and Uniform Foreign Money-Judgments Recognition Act (Appendix N).

11. NEWMAN & ZASLOWSKY, *supra* note 4, at xxxv.

v. Heitner.[12] As the text of the book later makes clear, the issue is a good deal more complicated and uncertain.[13] Although *Shaffer v. Heitner* caused a near-lethal blow to the sort of expansive quasi in rem jurisdiction that treated intangible contract rights as "property" within the forum state, variants of quasi in rem attachment continue in some degree as a means of seizing property for both jurisdictional and negotiation purposes.[14] Thus some judge-made form of the device appears to continue to exist in some states despite *Shaffer*'s insistence that all forms of personal jurisdiction generally satisfy the "minimum contacts" test requiring that defendants have sufficient contact with the forum state to make the exercise of personal jurisdiction substantively fair.[15] In fact, Newman and Zaslowsky provide an excellent discussion of quasi in rem jurisdiction after *Shaffer v. Heitner*,[16] quite a feat, considering that the doctrine was (according to the Table of Contents) eliminated. In addition, some of the section headings could provide more information.[17] There are also some arguable omissions.[18] The discussion of general personal jurisdiction over a defendant (as opposed to specific personal jurisdiction, in which the defendant's contact with the forum state is related to the claim) is too brief and insufficiently clear.[19] Likewise, the discussion of arbitration[20] focuses on foreign arbitration to the exclusion of domestic arbitration against a foreign entity and to the

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12. 433 U.S. 186 (1977) (invalidating Delaware statute permitting claimant to "sequester" shares of corporation owned by target defendant as means of obtaining quasi in rem jurisdiction, even where stock is not physically present in state).

13. NEWMAN & ZASLOWSKY, *supra* note 4, §§ 2.1.1-.1.2.

14. *See* Michael B. Mushlin, *The New Quasi in Rem Jurisdiction: New York's Revival of a Doctrine Whose Time Has Passed*, 55 BROOK. L. REV. 1059, 1063, 1089-1103 (1990) (criticizing a new concept of quasi in rem jurisdiction invented by the New York high court and adopted in a limited number of states and arguing that it should be abolished as fallacious, outdated, and unconstitutional).

15. *See, e.g.*, Banco Ambrosiano v. Artoc Bank & Trust Co., 62 N.Y.2d 65 (N.Y. 1984) (upholding quasi in rem jurisdiction over a Bahamian bank whose sole contact with New York was a bank account that it maintained in this state). While in New York the tendency toward using quasi in rem attachment is the strongest, nine other states—Florida, Louisiana, Maryland, Minnesota, New Hampshire, North Carolina, Mississippi, Pennsylvania, and Utah—seem to be willing to recognize quasi in rem attachment. *See* Mushlin, *supra* note 14, 1098-1103. The continued persistence of such attachment remains itself controversial. *See id.* at 1125-27.

16. NEWMAN & ZASLOWSKY, *supra* note 4, § 3.5.

17. *See, e.g., id.* ch. 4. Thus chapter 4 is divided into six sections with flat and uninformative titles, rather than speaking titles conveying information to the reader. In section 8.2, heading regarding doctrinal exceptions to the Act of State doctrine could similarly be improved.

18. *See id.* § 1.1 (discussing most important statutes with exclusive federal jurisdiction but neglecting to include antitrust law on the list); *id.* § 9.3.3 (discussing De Letelier v. Republic of Chile, 575 F. Supp. 1217 (S.D.N.Y. 1983), *rev'd on other grounds*, 748 F. 2d 790 (2d Cir. 1984), but failing to note that the case sprang from a notorious and politically controversial event—the apparent assassination of an expatriate opponent of the military junta government of Chile that had been installed in 1974 with the complicity, and perhaps even the covert support, of the American government to topple an elected Marxist regime).

19. *See id.* § 3.2.

20. *See id.* § 15.2.3.

consequent interaction of and differences between the New York Convention[21] and the United States Arbitration Act.[22] On the whole, however, the book is thorough and well-done.

Newman and Zaslowsky's focus is relentlessly practical, and their delivery direct. It is as if mythical television cop Jack Webb decided to write a hybrid nutshell/hornbook: just the facts, m'am, served up meat and potatoes style without so much as a sprig of parsley to garnish. Within this genre, Newman and Zaslowsky have produced a very good book. I'm just not sure I like the genre particularly well. Just as I was never much of a "Dragnet" fan, I find it hard to appreciate this well-crafted book as much as I probably should.

Some of this may stem from an academic's bent, but some fault, I believe, also lies with an unduly narrow practitioner's focus. The issue was anticipated to some extent by N.Y.U. Professor of Law Andreas Lowenfeld, who stated in his foreword to the book:

> Newman and Zaslowsky are both experienced practitioners who have made their way successfully over many of the hurdles of litigation across national frontiers, and they have a good feel for what it is that the lawyer in a hurry wants to know and should want to know. The authors are less concerned than we professors are with the "better view," or the proposals for reform, or what one country can learn from another. But they understand what litigation is about—winning, losing, and settling.[23]

With all due respect to Professor Lowenfeld's dichotomy between the practical practitioner and the ivory-tower academician, I remain unconvinced that a pragmatic book needs to be so bloodless regarding point of view and so assiduously nonevaluative about the wisdom or foolishness of the law. As discussed below, having a thesis about the way international disputing should work is part of the means by which a practitioner can be more effective.

Thus my prime misgiving with the book is its flat, Jack Webb style presentation of doctrine and case law. The book, although quite good, could have been dramatically better (and still useful in the real world) had the authors included their viewpoints on the topic. Even where Newman and Zaslowsky identify conflicting rules and diverging lines of cases, they are annoyingly neutral in dishing forth these facts.[24]

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21. Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 38.

22. 9 U.S.C. §§ 1-16 (1995).

23. Andreas F. Lowenfeld, *Foreword* to NEWMAN & ZASLOWSKY, *supra* note 4, at xv.

24. For example:

When reading the book cover to cover (and I realize the typical user will not do it in this manner), the effect is both mind-numbing and annoying (annoying in the sense that one finally wants to grab the authors by the figurative lapels and shake them, screaming "what do you think the rule should be?!!!") Sometimes, Newman and Zaslowsky's tendency toward the noncommittal results even in refraining from addressing the obvious tactical issues lurking behind a description of the situation abroad.[25]

Attorneys taught constitutional law through Professor Gerald Gunther's casebook[26] will appreciate the frustration. The Gunther book—although deservedly a classic with valuable content—often punctuates key cases with a seemingly endless set of unanswered, difficult, and sometimes near-rhetorical questions. For any student who is not a future Laurence Tribe, the answers are effectively secreted away in the teacher's manual or perhaps in the cases cited without elaboration in the notes following the major case excerpts. Only the most nerdily intellectual of students chased down these cases (or even has the stamina to wade through all of Professor Gunther's questions). The lawyer reading the Newman and Zaslowsky book is left with similar frustration. Which cases are correctly decided? Why? Mum's the word on this front from a legal team that rivals Sergeant Friday and his sidekick, Sergeant Gannon, in their aversion to opinion.

Although many observers may take the position that author's opinion has no place, or only a limited place, in a treatise or handbook, especially one of general applicability aimed at the nonexpert, I disagree. It is precisely the nonexpert or beginner who can use a little guidance in assessing a new area. Author's opinions and explanation do not brainwash the reader, but rather assist him or her (unless the reader is a mere empty vessel, which, at least in theory, should be precluded by the requirements for entry into the legal profession). Even where the reader disagrees with the author's assessment, the author's framing sharpens insight and learning, if nothing else, by making the book provocative enough to read quickly and remember well. To take

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> The federal circuits are split on the stringency of the test for granting antisuit injunctions. The older cases, in the Fifth and Ninth Circuit, as well as a recent Seventh Circuit case, have established a more lenient test, while most of the more recent cases in the District of Columbia, Second, and Sixth circuits have set more demanding standards for granting such injunctions.

NEWMAN & ZASLOWSKY, *supra* note 4, § 10.0. Throughout the rest of Chapter 10, the reader searches in vain for the authors' views as to the various judicial standards regarding antisuit injunctions.

25. *See id.* § 11.1-.4 (outlining problems and methods of obtaining evidence abroad but making no suggestion as to optimal use of limited devices for American litigator seeking evidence on a par with that obtainable domestically).

26. *See* GERALD GUNTHER, CONSTITUTIONAL LAW (11th ed. 1985).

an obvious example, Judge Richard Posner's *Economic Analysis of Law*[27] can be maddening in its refusal to consider all relevant aspects of a problem or its sheer political conservatism. Yet Judge Posner's book is by far the most accessible tract for noneconomists. Judge Posner achieves this not only by being a better writer than many others in the field but also by presenting thesis and assessments galore that hold the reader's interest, challenge the reader, frame the issue, and provide mnemonic hooks.

Despite my overall admiration for the Newman and Zaslowsky book, reading it reminded me, ironically, of Judge Posner's criticism of Professor Hurst's history of the lumber industry.[28] Although Professor Hurst is a respected emeritus professor at the University of Wisconsin Law School, Posner's sharp prose shows no mercy in describing Hurst's mega-history, which Posner characterizes as stupefying the reader into submission through the incessant and interminable presentation of minuscule and encyclopedic fact after fact after fact after .... Well, you get the picture.[29] My suggestion to Newman, Zaslowsky, and other treatise-writers is less grandiose than Judge Posner's suggestion that academic writing proceed from some positive theoretic viewpoint. A good handbook on international litigation need not have an overarching theory of the international disputing process—or even a positive theory of judicial and arbitral behavior—but it should at least have and reveal the author's perspective on significant questions of doctrine, strategy, key case law, and the like.[30]

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27. RICHARD A. POSNER, ECONOMIC ANALYSIS OF LAW (4th ed. 1992).

28. RICHARD A. POSNER, OVERCOMING LAW 427 (1995) (criticizing JAMES WILLARD HURST, LAW AND ECONOMIC GROWTH: THE LEGAL HISTORY OF THE LUMBER INDUSTRY IN WISCONSIN, 1836-1915 (1964)).

29. Posner is quite a bit more acid than my paraphrase:

> I once tried to read Willard Hurst's magnum opus, a massive tome on the history of the lumber industry of Wisconsin, but didn't get far. The book is a dense mass of description—lucid, intelligent, and I am sure scrupulously accurate, but so wanting in a theoretical framework—in a perceptible *point*—as to be unreadable, almost as if the author had forgotten to arrange his words into sentences. It is a warning that the taste for fact that I would like to see developed in judges and law professors will turn to gall if unaccompanied by a taste for theory—not normative theory, so not what passes for theory in constitutional law, but positive theory, economic or otherwise, that guides the search for significant facts.

Id. (footnotes omitted).

30. Of course, an overarching theory is not inconsistent with my more modest suggestion. For example, if one's theory is that international litigation reflects irreconcilable cultural tensions regarding privacy, business prerogative, consumer protection, and justice, then one logically holds different views about forum shopping than if one instead hypothesizes an integrated and cooperative mix of litigation systems seeking the same brand of substantive justice. If one holds the former view, counsel should forum shop to the maximum extent possible in order to assist clients, taking chances on failure in an attempt to avoid hostile systems that will not appreciate the cosmic correctness of the client's position. Similarly, this lawyer probably favors airtight arbitration clauses as a means of avoiding the idiosyncrasies of given systems. If one takes the latter view, one is probably less aggressive about

Lots of data without organization and assessment can be information overload, the writer's equivalent of the old litigator's trick of hiding a few relevant documents in a warehouse of paper "produced" in response to a discovery request. Recall the apologetic assessment of a Ronald Reagan supporter after the first debate with challenger Walter Mondale in 1984, where the President was described as "brutalized by statistics" by his debate preparation coaches.[31] In the second debate, we saw Reagan the master politician telling a self-deprecating joke or two (for instance, "Age should not be an issue in this campaign: I won't use my opponent's youth and inexperience against him") and presenting his policy views through anecdotes and homilies rather than recitations from the Statistical Abstract.[32] Regardless of one's view of the substantive content, the Reaganesque story line ("Morning in America" and all that) was far more effective as communication, just as Judge Posner's more pointed academic work is light-years beyond others in the genre.

In the spirit of exhuming past presidential politics, "let me be perfectly clear":[33] Newman and Zaslowsky are not subject to the Posnerian criticism of Hurst; their book is not unduly lengthy; it is succinctly written, and it has a variety of useful information. However, Newman and Zaslowsky are subject to the Hurst criticism to the extent that they present their facts (and statutes and cases are the facts of a legal treatise) without much varnish or gloss. All puns aside, the unvarnished presentation is simply too austere to be of maximum benefit to the reader.

Newman and Zaslowsky, partners in the international law powerhouse firm Baker & McKenzie, surely have some considered opinions about the doctrines and cases they recite. I would have enjoyed reading them and hope to see their views presented at some length in subsequent editions. Even with their assiduous avoidance of expressing any opinion, their book is most readable and useful when it does something

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forum shopping, surprise attachments, and the like, believing that a case will come out essentially the same irrespective of forum.

31. *See* James R. Dickenson, *From Modest White House Post: Darman Rose in Power and Performance*, Jan. 11, 1985, THE WASH. POST, at A19; *see also* Rowland Evans & Robert Novak, *Reagan Done in by Statistics*, THE SAN DIEGO UNION-TRIB., Oct. 10, 1984, at B10.

32. *See* Joni Balter, *Debate Viewers Here Stand by Their Man*, SEATTLE TIMES, Oct. 22, 1984, at A5. President Reagan's meandering story of driving along the California coast, delivered as his debate summary and mercifully and politely cut off by moderator Edwin Newman, suggests that even a clever narrative loses force when it loses focus and becomes too detached from the nitty-gritty of germane facts. Regarding law, the nitty-gritty of a treatise remains case law and doctrine: mere theory and viewpoint can not sustain a treatise.

33. This, of course, was a favorite phrase of President Richard Nixon. *See* Deborah Mathis, *Basically, Bush Likes His Verbal Crutches*, ARKANSAS GAZETTE, Aug. 23, 1989, at 7B (describing Nixon's use of "perfectly clear" warm-up to answering question and similar repeated vocalized pauses of President George Bush).

more than spew case and doctrine at the reader in the treatise, equivalent to a machine gun. For example, their discussions of the Act of State doctrine,[34] which provides significant historical perspective on the doctrine as developed through leading cases, such as *Underhill v. Hernandez*[35] and *Banco Nacional de Cuba v. Sabbatino*,[36] is a particularly good section. This section orients the reader succinctly but gently in a pragmatic way that, nonetheless, is comprehensive—at least to the degree that a one-volume treatise can be comprehensive about anything. The book's discussion of international comity,[37] which begins with the inaugural case of *Hilton v. Guyot*,[38] also works well.

An explanation suggests itself. Perhaps practitioner authors with significant transnational litigation case loads are reluctant to express their personal views in print for fear of being whipsawed in the future as opponents quote the authors' own hornbook back at them in contested cases. Perhaps successful practitioner authors want to keep some play in the proverbial legal joints, so that they may argue either side of an issue in future proceedings. To the extent that either phenomenon exists (and either is as likely to be subconscious as conscious), this argues in favor of nonpractitioner treatise authors. If this is part of the problem, it may suggest a deeper problem of lawyers trying to be too flexible and free to argue whatever legal position serves today's client even if the opposite position is what serves tomorrow's client. Although one view is that lawyers are "mere utensils that may move from client to client so long as properly sanitized,"[39] there may come a point at which even lawyers who would prefer to practice under the

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34. *See* NEWMAN & ZASLOWSKY, *supra* note 4, § 8.1.

35. 168 U.S. 250 (1897). In *Underhill*, the Court dismissed an action brought by a U.S. citizen against Venezuelan government and reasoned, justifying the dismissal, that a United States court may not "sit in judgment on the acts of the government of another [country] done within its own territory." *Id.* at 252, 254.

36. 376 U.S. 398 (1964) (holding that the Act of State doctrine precluded a United States court from reviewing validity of expropriation of a sugar company by the Cuban government, even though the expropriation allegedly violated customary international law).

37. *See* NEWMAN & ZASLOWSKY, *supra* note 4, § 13.1.1.

38. 159 U.S. 113 (1895) (holding that the principle of comity warranted recognition of a foreign-country judgment in the United States).

39. This saying is attributed to the late noted trial lawyer Norman Roy Grutman, who appeared to live the adage. Grutman is perhaps best known for his defense of *Penthouse* magazine in a libel suit, Pring v. Penthouse Int'l, Ltd., 695 F.2d 438 (10th Cir. 1982), brought by noted plaintiff's lawyer and television commentator Gerry Spence, and for Grutman's subsequent representation of evangelist and political activist Rev. Jerry Fallwell against *Hustler* magazine in *Hustler Magazine v. Falwell*, 485 U.S. 46 (1988). *See* GERRY SPENCE, TRIAL BY FIRE: THE TRUE STORY OF A WOMAN'S ORDEAL AT THE HANDS OF THE LAW (1986) (describing history of *Pring v. Penthouse* litigation with extensive accounts of Grutman's role). I am grateful to Miami attorney Jay Sokolowsky, Grutman's friend and co-counsel in other cases, for sharing this aphorism.

"neutral partisan" (or "hired gun") model of lawyering[40] must elect one side of the fence on legal (as well as factual) issues, such as the reach of national jurisdiction, the best approach to choice of law, deference to a given government's domestic policy, and the like.[41]

However, at this point, we should not strain to conclude that business interests truncate legal analysis, should not require lawyers to specialize in representing certain clients, and certainly should not disqualify neutral partisan lawyers as legal commentators. If treatises are written only by academicians, the world of treatises would be significantly impoverished by the absence of practitioner expertise, especially in "specialty" legal areas, such as international law, where there exist comparatively few academic experts and fewer still willing to invest time in writing a treatise. Furthermore, experienced practitioners have interesting things to say about legal doctrines and developments—if they only see them. While it is, of course, important that practitioner treatise-writers not distort the content in hopes of using self-created "authority" to benefit future clients and allies, this edict of integrity does not require the practitioner author to refrain from all expressions of opinion. Rather than view practitioner authors as intrinsically incapable of expressing viewpoints, I would prefer to see a body of treatise literature in which practitioners set forth not only their technical experience but also their policy insights derived from that experience. Newman and Zaslowsky, as a team and as a treatise, are more than halfway toward the goal. In fact, they are actually close enough to make their work as frustrating to read as it is useful.

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40. *See* Rob Atkinson, *A Dissenter's Commentary on the Professionalism Crusade*, 74 TEX. L. REV. 259, 304-12 (1995) (broadly categorizing attorneys as: (i) neutral partisans, who, focusing on zealous representation of clients, act on the assumption that a lawyer may use any legally permitted means to achieve client's ends; (ii) "legal acolytes," who focus on integrity of justice system; and (iii) "moral individualists," who operate more in the nature of movement lawyers for a cause).

41. *See generally* THOMAS GEOGHEGAN, WHICH SIDE ARE YOU ON?: TRYING TO BE FOR LABOR WHEN IT'S FLAT ON ITS BACK (1991) (suggesting that lawyers cannot regularly represent clients with dramatically conflicting interests in labor disputes).