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Book Review

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their lives if they would confess and name those who were involved with them, combine to set the stage for the gruesome detail of the appalling death chamber scene.

The first three-quarters of the book will appeal to the reader's legal acumen, curiosity and ability to analyze. The last quarter will touch the emotions of everyone—no matter what his opinion of the case itself.

Of special interest to lawyers is Nizer's treatment of the problems involved in the trial of a criminal case wherein co-conspirators are used to testify against each other in order to make the prosecution's case. Of equal interest is the author's explanation of the different roles played by a trial judge in a federal court proceeding wherein the judge is allowed the power to comment on the evidence and literally "conduct the trial," as opposed to the state judge who must hear the case as an impartial legal referee while maintaining a position of strict neutrality throughout. Not all federal judges question witnesses, interrupt counsel, and comment on the evidence. Judge Irving Kaufman did this in the Rosenberg case, and the analysis of why it was not error for him to have done so makes the lawyer-reader once again wonder whether the federal system is superior to or as good as the system followed by most states.

For all of those who are interested in reading a trial lawyer's account and analysis of the Rosenberg case, *The Implosion Conspiracy* is worth reading. For all law students who are interested in the art of advocacy and the trial of cases in a court of law, *The Implosion Conspiracy* is especially rewarding.

*Reviewed by Thomas O. Gorman**

ENVIRONMENTAL LITIGATION, by James B. MacDonald and
John E. Conway, Madison, Wisconsin, University of Wisconsin
Press, 1972. 438 pp.

Environmental Litigation, by MacDonald and Conway, is a sketch-book type of text in the field. As the authors point out in the preface, there is, at this point, no cohesive, well-defined body of law which can be called "environmental." Rather, there is a fragmentary development encompassing points of law from other fields. The stated purpose of the text thus becomes to consolidate these fragments.

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With this purpose in mind, the book opens with a brief overview of the area designed to introduce the novice to the field. From this opening, the authors proceed to emphasize, in outline fashion, remedies, standing, causes of action, and procedural defenses. These topics are broached in the same general fashion as the introductory chapter — as a sketchy overview. The authors, in chapter after chapter, cite the current cases and statutes, state the general rules, and move on to the next subject. The work thus serves as a useful case finder but appears to lack depth. Included at the end of the text are sample pleadings which the novice will find helpful. The book thus, in hornbook fashion, reports the current state of the art.

Taking the premise that the book is designed to enable beginners in the field to handle environmental litigation and that environmental law, at present, is a conglomeration of techniques borrowed from other areas of law, the text appears to have two serious shortcomings. The first premise is that the book is a lesson plan designed to aid the beginner in handling actual environmental suits. In handling suits of this type, as in handling any lawsuit, there is more to grasp than just the basic principles involved. Particularly in the environmental field, one of the many problems the potential litigant faces is the problem of proof. For example, in a suit based on nuisance wherein the plaintiff is seeking damages, isolating the causation factor — the link between the pollution and the damage to the client — may present an almost overwhelming problem. The authors, as many authors in the field prior to them have done, while arming the attorney with a knowledge of the basic law in the area, fail to tell the beginning practitioner how to relate the law to his client in order to obtain a damage award. Thus the authors might well have included a section on investigative techniques and methods of proof. What the inexperienced litigant is left with, is a knowledge of the law but no way to connect his “theory” to the damage his client has suffered — therefore no recovery. In this respect the text resembles the typical law school course and also the typical legal textbook — an overview of the law with no necessary connection to reality. In brief, while the authors attempt at various points in the book to illustrate some of the problems in the field, the reader is left, like the law student, suspended in the air. Knowledge of this type, while possibly intellectually stimulating, is of little practical value in the fight against pollution and of slight comfort to the injured party suffering from its effects. It should be noted, however, that in this respect, the text is little different from others in the field. Books which actually apply the knowledge they seek to impart seem to be rare.

The second premise of the work is that environmental law is, in its present state, in a formulative phase and therefore a mix-

ture of forms and ideas from other areas of law. It would therefore seem appropriate, at least in areas where there is little development, for the authors to suggest relevant analogies from other areas. For example, in a typical industrialized setting, there may be hundreds of persons injured from the same source of pollution. A class action pursuant to the Federal Rules of Civil Procedure, Rule 23 (assuming federal jurisdiction could be invoked, perhaps pursuant to the Clean Air Act, with a pendent claim in nuisance for damages) might be an appropriate way to seek damages and to force a halt to the pollution. However, again there are many problems to be overcome. While there is a common thread to the suit—the alleged damage from air pollution—the disparity in types of damages suffered by the potential class members may militate against a class suit. To solve such problems, the sensible use of the split trial concept as developed in security cases under the Securities and Exchange Act may provide one answer. See, for example, *Green v. Wolf Corp.*, 406 F.2d 291 (2d Cir. 1968) *cert. denied*, 395 U.S. 911 (1969). However, the authors, after recognizing that environmental law is in the pains of birth and that much of the existing law in the field has been borrowed from other areas, fail to adequately develop the premise by following through with appropriate analogies. Rather, they are content to do what other text writers in the area have done before them—to compile what law exists at the present time. The work thus lacks imaginative depth.

Overall, the text serves as a useful introduction to the area. The authors have developed a good text insofar as it does report the basic law in the field. However, that is all the book does. In short, the authors, after recognizing some of the problems with the area in the preface, proceed to ignore many of these problems and simply act as newspaper reporters. The book will serve the beginner well in introducing him to the basic concepts involved in the field. However, once he has learned these basic concepts, he is left, like the student in law school, to grope on his own for a way to apply them.