BOOK REVIEW

By Prof. Anthony Michael Sabino

Notwithstanding our Nassau County affiliations, most of us are well familiar with one of the most prestigious federal trial courts in the nation, the Southern District of New York. Often referred to as the “Mother Court,” because it was, in fact, the very first district court established under the new Constitution, the Southern District celebrates its 225th anniversary this year. Accompanying the pomp and ceremony being conducted at Foley Square is a fair amount of literature, including the book that is the subject of this review.

“The Mother Court,” (subtitled “Tales of Cases That Mattered in America’s Greatest Trial Court”) by attorney James D. Zirin is an eclectic work, composed of a wide variety of stories about the Southern District’s more famous trials and the sometimes colorful personalities that made them so. Certainly, it should not be mistaken for an encyclopedic history of the court and its cases. Rather, the author’s approach was to limit his time frame to the 20th Century, which, in turn, enabled him to sprinkle in some of his first hand experience. On that note, a few words about the author.

James Zirin is not only a fellow attorney, but a former prosecutor in the Southern District. As such, he bore personal witness to a number of the cases, counsel, and judges he speaks of. In particular, Mr. Zirin served as an Assistant US Attorney for Robert Morgenthau, the legendary Manhattan D.A. that we sometimes forget was US Attorney for the Southern District first. To be sure, Mother Court sometimes veers too much into a homage to the author’s former boss and the office he once served, but this is, at worst, a minor distraction. That said, let’s look at the author’s approach to his subject matter.

As previously stated, Mother Court is by no means a strict chronological history. Mr. Zirin takes a far more interesting tack. He selected a dozen or so broad topics of historical significance, usually according them a picturesque title. Some prosaic examples: “US v. The Mob” explores high profile organized crime cases; “Of The Liberal Cases” reviews the landmark First Amendment trials of Westmoreland v. CBS, Sharon v. Time, Inc, and so on. Not so prosaic: “US v. Us,” an analysis of the Rosenberg espionage trials, with some strong commentary on the days of McCarthyism and the Red Scare.

Thus, we commend to the reader Mother Court’s first point of interest. By avoiding a linear history of the Southern District, Zirin paints a more vibrant portrait by aligning these great trial stories in accord with the role they played, not only in the history of the law, but American history itself. This was a distinctly different approach, and it works quite well.

Next, Mr. Zirin not only addresses what happened in these historical cases, he liberally sprinkles the narrative with heretofore unknown or overlooked facts and observations about the participants. Here is where Mother Court benefits greatly from the author’s first person perspective or, in some cases, his close relationships with those actually involved in these landmark trials. Now, be forewarned: as a former prosecutor in the Southern District, the author might just be a little bit too enthusiastic in his praise of some of his contemporaries. But, once more, this is but a minor irritation, and does not detract at all from the insights he provides.

In the same vein, Mr. Zirin devotes an entire section to some of the “greats” of the Southern District bench. Certainly, that could not have been a simple task. Much like diehard fans debating the “Greatest” to ever play a particular sport, the author had to make some tough choices. It is not to this reviewer’s purpose to debate who Mr. Zirin put on or left off his list.

What is of particular value to the reader is that he breathes life into the names of the luminaries of the Southern District who authored some of its greatest legal precedents. Obviously, practitioners know to cite to these jurists because of their inestimable reputations. Yet it is refreshing to learn more about what personal traits made them great, not to mention Mr. Zirin’s frank discussion of their flaws and foibles. The latter just proves that judges are people too, a point attorneys – and the judges themselves – ought to remember.

Another point worthy of note is that the author does use footnotes, but not excessively so. Mr. Zirin is mindful that he is not

See MOTHER COURT, Page 20
writing a law review article. Rather, he takes a de minimis approach, and employs parentheticals merely as reference points for the case under discussion or, more importantly, to point the reader toward a different landmark that has bearing on the topic. It's intriguing to see a footnote used not as a mere page reference, but to foster the discussion.

In fairness to you, the reader of this review, did this writer find Mother Court beyond criticism? In truth, I cannot go so far. Its heavy emphasis upon landmark cases from roughly the World War II era to the present day left it wanting. There was no balance with the first century and a half of the Southern District's history. Admittedly, there was probably far less source material to work with, so the author cannot be totally faulted. Yet some incorporation of the growth of the Southern District's place in history, concomitant with the evolution of the nation, would have been welcome.

Indeed, if there is a glaring omission in Mother Court, it is the utter lack of mention of the "insider trading" cases that are one of the most prominent features of the Southern District's history. For those of you who, like this writer, practice business law, it is somewhat startling that the narrative lacks any reference to those great landmarks in securities law decided in the Southern District, such as the so-called Wall Street Journal case, the Martha Stewart trial, and others. To be sure, I did not expect reference to the newest of the insider trading cases that dominate today's headlines; that would be premature, as most of those cases are still on appeal. Yet it is inexplicable that Mr. Zirin, himself a sophisticated corporate litigator, failed to mention the great securities cases that have made the Southern District preeminent in this branch of the law, a fact even the Supreme Court has acknowledged.

All in all, Mother Court is a worthwhile read. It is far more interesting that a standard legal history, as its most compelling elements are the more human aspect of how trials are conducted, and the humanity of the people who conduct them in what is the oldest, and, arguably, the greatest federal trial court in the nation. Good reading to you.

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