

Lawyers

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The Lawyers. MARTIN MAYER. New York: Harper & Row. 1967. Pp. xviii, 586. \$8.95.

Mr. Mayer, turning his attention and his ample talents from *Wall Street; Men and Money* and *Madison Avenue, USA* to the great public profession, has produced a big, brilliant, and ambitious book. Too ambitious, perhaps. Its style is semi-light and its profusion of quotations impressive, although on closer look many of them are pretty old and the same sources are used over and over again—too much reliance on sometimes casual observations of too few people, it would seem. This is not a solid study or a political science text marking out the place and work of lawyers in our society. Much of it is impressionistic, descending at times almost to mere gossip. Yet it contains many penetrating insights. It reads well on almost every page, and is a bright and attractive miscellany of information about laws, lawyers, law schools, and courts. But in the end its very ambition is overweening and self-defeating. No one volume can hope to limn adequately the 300,000 American lawyers and their infinitely varied activities, any more than any single book could paint a complete picture of the American clergy or of American college professors. Such a work, however skilled its writing, is bound to be spotty and episodic, leaving the reader vaguely dissatisfied. The lay reader of *The Lawyers* will acquire a lot of information and the lawyer reader will get new starts for reflections about his craft. But it remains that the book covers too much and tries too hard.

To this reviewer's taste the author did best in the forty-five pages he devoted to the law schools, searching out their strengths and weaknesses with a practiced and fairly accurate eye. Law school instruction, especially in the first year, is, he asserts, "more intense and more intelligent teaching than is offered in any other variety of academic institution in the United States"¹—a bold and sweeping statement indeed. (The author seems to have visited only a few of the law schools.) But what he seems to mean is that the new law student is required to do more work and more intensive work than in his undergraduate college and that the better law teachers force their students to think analytically and express themselves clearly, to "think like lawyers"—in short, to prepare themselves for intellectual and community leadership.

Mr. Mayer gives us, too, a brief but useful history of legal education in England and America, an adequate discussion of the case

¹ P. 74.

method, some traditional anecdotes about famous law professors, and a glimpse of the slow-but-steady changes in teaching methods and materials. Quite correctly, he notes that law students work hard and live together, that there is a surprising dearth of Negro applicants, and that law schools operating only at night have almost disappeared. Evening or late-afternoon classes at the better schools had become respectable, but most night sessions are now being phased out, probably because prosperity plus the availability of grants and loans make it possible for most students to attend daytime classes and spend the rest of the day hours (and many night hours) in reading and study.

Like this reviewer, Mr. Mayer takes a dim view of bar examinations, though of course a case can be made for such tests in a state with several schools. It is more difficult to concur with the author's statement that in the law schools "the bottom has been eliminated." No one familiar with the problems inherent in selective admission systems will deny that every school makes plenty of mistakes and that such mistakes are sometimes irremediable. Agreement there must be with our author's reluctant conclusion that, despite the vast improvements in law school training, "the problem of the law school is that startlingly little is known systematically about the real world of the lawyer . . ."² But the writer of a book like this has a similar problem. Since the world of the lawyer is as large as society, it is absurd to ask the law school to know all about, and to train for, every kind of lawyer activity. Much more emphasis is being placed today on direct preparation for professional practice, and one suspects from the scanty description of modern "practice courses" in today's law schools that the author has not visited Cornell.

The brief chapter on "Jurisprudence," while not exactly a disaster, is so skimpy and simplistic that omission might have been wiser. But when he writes about the law and "People"—criminal cases, personal injury claims, justice and the poor, etc.—Martin Mayer is witty and human, compassionate and understanding. Here he seems to have talked to just the right people (including Harris Steinberg, advocate extraordinary, who must, however, have been taken aback by the double entendre "not quite so sober"³). The author really got down to the basics of crime prosecution in this country, learning at least three things few laymen know: first, that a prime function of police and prosecutors is the intelligent and selective refusal to prosecute;⁴ sec-

² P. 118.

³ P. 156.

⁴ See D. KARLEN, *ANGLO-AMERICAN CRIMINAL JUSTICE* (1967).

ond, that all but a small percentage of those who are actually prosecuted either plead guilty or are convicted; and third, that negotiated guilty pleas are not only legitimate but also essential to reasonably prompt disposition of criminal charges. The whole system of plea bargaining is nowhere better explained and justified than in this book. It is interesting, too, that Mayer learned what few lawyers and no newspaper or magazine commentators seemed to know in 1963, that *Gideon v. Wainwright*⁵ made no new law at all in most of the states and that in most states lawyers had been provided for indigent defendants for many decades before Gideon's case.

The book's whole treatment of "criminal justice" is sympathetic and understanding. When Martin Mayer writes about the human side of an institution he is a master of insight and appreciation. His treatment of the *Escobedo-Miranda* developments is superb. As an intelligent layman, he senses the incongruity of the modern efforts to exclude questioning of the accused, which in itself has been a staple of Anglo-American judicial procedure for centuries. Judges and law professors who have never come into real contact with investigations of crime, but who are highly articulate, make it appear that it is essentially dangerous to let a man admit his guilt, indeed, that there is something socially undesirable about proving guilt. Policemen, less articulate but more involved, experienced, and conscious of their responsibility for public order, are frustrated and embittered by judicial decisions that they believe unreasonably limit them in carrying out their duties. Sometime, someone has to resolve this conflict.

The surveys of personal injury law practice and litigation and of the burgeoning poverty programs are timely and penetrating. Eyebrows rise a little, however, at the calm and casual statement that "[a]t least two large insurance companies employ adjusters who seek bribes before raising initial offers."⁶ Strange indeed, if indeed true. As to the poverty programs, Mayer makes the interesting point that the zealous people who run them have a tendency to go pretty far out in their insistence on the "rights" of their welfare-client clients, and even to criticize the Legal Aid Societies, which they accuse of being establishment-minded or property-oriented. This (again if true) is an interesting progression from the situation noticed a few years ago of the Legal Aid attorneys in criminal cases being so concerned and single-minded in their defense of the indigent accused as sometimes to overlook basic social values and the necessities of the community. All these parts of

⁵ 372 U.S. 335 (1963).

⁶ P. 260.

the book establish again and again Mr. Mayer's skill at portraying the human side of institutions which from a distance look cold and impersonal.

The third part of this bulky tome is headed "Business" and deals variously with corporation lawyers, Washington lawyers, and lawyers with even narrower specialties. It begins with a Mr. Dooley quotation (new to this reviewer) which is absolutely priceless and not to be spoiled by repetition here. In each of its segments the third part of the book is notable mainly for its fine capsule histories. But most of the rest of these chapters is rather well-worn material, smoothly written but lacking anything really worthwhile, except perhaps in the descriptions of the few tight specialties like customs law, patent law, copyright law, practice before certain Federal administrative agencies, and the like. Equally trite are "The Business of the Courts," "Personality of the Judge," and "The Supreme Court." After you have read for a while, after you have admired the professional polish and readability of the style, you begin to discover the various parts of the method. Mr. Mayer has done a lot of reading, comparatively little observing in the courts, and then, talking with people here and there (they sound like a lot of people, but there are 350,000 lawyers and judges in this country), he has picked up assorted truths, rumors and cliches. So assiduous has he been in lining up canards that he repeats even this one: "It is generally believed in New York that a contribution of at least \$10,000 to a political party is necessary before anyone will be nominated for a judgeship." On the contrary, it is believed by this reviewer, whose knowledge of New York courts and judges is not only beyond Mr. Mayer's but beyond compare, that no such thing is true or anywhere near true, that anyone who believes it would also swallow whole the "K. of C. Oath" and the "Protocols of Zion," and that an author who repeats such nonsense (together with the casual intimation that New York City's criminal court judges are believed to be "naturally corrupt") does a disservice to his readers and indicts himself as a rumor-monger.

While on the subject of errors, let it be noted that this book contains its full share. The author tells at one point that in New York a Sheriff's jury serves "in cases where the sanity of a public officer has been challenged."⁷ He errs greatly in more important areas. For example, his treatment and concept of "natural law" is naive and unin-

⁷ P. 479.

formed: "the essence of natural law is the idea that God would want justice done in the individual case."⁸

In sum, this book is charming and interesting, but not great. It is a product of great writing skill and enormous diligence in talking to people all over the country, in listing scattered opinions, and in collecting scattered quotes. But our hypothetical intelligent layman seriously interested in examining the laws and the lawyers and the courts must add to this heavy meal a large grain of salt, perhaps by combining a reading of Mayer's book with some others, like Griswold's *Law and Lawyers in the United States*, or Karlen's *Anglo-American Criminal Justice*, or Hurst's *Lawmakers*.

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⁸ P. 125.

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