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Martin Mayer, *The Lawyers*

Richard James

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BOOK REVIEWS

THE LAWYERS. By Martin Mayer. New York: Harper & Row. 1967.
Pp. xvii, 586. \$8.95

Martin Mayer's *The Lawyers* is a compilation of a layman's impressions of the legal profession. It is obvious that extensive research and study on the part of the author went into his work and the result is a highly readable and somewhat informative blend of facts, statistics, anecdotes and quotations. It is unfortunate, however, that the subject with which the book is concerned impressed the author so unfavorably.

On the whole, Mr. Mayer's book presents a rather uncomplimentary picture of the legal profession. In discussing law and lawyers from the "county seat lawyer" poring over an abstract to a senior partner in a large Wall Street firm advising a corporation president, the author finds much to criticize and little to commend. The overall portrayal is one of rather greedy and undedicated specialists who engage for pay in the manipulation of that which laymen do not understand. Perhaps the saddest aspect of all is that after his exhaustive research the author professes to have found only one necessary societal function which the lawyer performs: the writing of enforceable contracts.

While Mr. Mayer found the lawyer performing only one *necessary* societal function, he also found him plying his skills in the performance of many other services which the author suggests could be performed as well by a non-lawyer. In the performance of such services the lawyer is usually cast in the role of a negotiator or advisor. Not much law is involved, for instance, in the handling of a personal injury claim. The lawyer merely negotiates the best possible settlement for his client, and only if all else fails does a trial ensue. The author does concede, however, that a claimant who has a lawyer usually recovers more than the claimant without a lawyer. It might be noted that by employing Mr. Mayer's reasoning one could argue that little of the practice of medicine is involved in the performance of an appendectomy, although actual success is measured by whether or not the patient survives and whether or not the correct organ is removed. The comparative simplicity of the operation does not suggest that a doctor is not needed.

This is not intended as a belittlement of either the author or his book, but rather as an example of Mr. Mayer's tendency toward broad generalization and often unjustified conclusions about law, lawyers and the practice of law. The reader should keep this tendency in mind. If this is done *The Lawyers* will prove to be both interesting and enlightening.

A striking feature of the book is that the author was able to cover nearly all aspects of the enormous subject matter which he examined. The lawyer, the law schools in which he is trained, the law with which he works, and the law offices and courts in which he makes his living are examined separately and in detail, with some attention in each case given to historical development.

The first topic discussed by Mr. Mayer is the legal profession itself and consequently, the people who comprise it. He places the activities of lawyers into four categories: fighting, negotiating, securing, and counseling. The fighting, of course, is done in courtrooms by a vanishing breed known as trial lawyers. The trial lawyer's importance has steadily diminished as the emphasis has shifted from trial to negotiation, from the courtroom to the law office. It is this shifting of emphasis and the resultant role of the lawyer as a negotiator which seems to perplex the author and to lead him to believe that lawyers just are not really lawyers anymore. The third category, securing, or the drafting of documents, is called by the author "the most legal of the lawyers' skills." The fourth, counseling, is styled the most likely to match the lawyers' image of themselves.

Mr. Mayer documents considerable professional, economic and ethnic diversity among lawyers. Regarding the great disparity in lawyers' incomes, he noted that ability as a lawyer and ability to make money are often not related. He recognizes that there are good lawyers and incompetent lawyers, and that good or bad, lawyers of today are basically specialists in one or a few areas of the law. Viewed ethnically, the profession has a disproportionately high number of Jews, and significantly few Negroes. Discrimination, especially in large law firms, is not uncommon, with the usual victims being Jews and Negroes.

Mr. Mayer seems to find little fault with the law schools. Conceding that they do not turn out lawyers, he sees them as orienting students toward understanding the law rather than practicing it. The latter is learned after graduation. The chapter on law schools contains an interesting discussion of the case method of teaching as opposed to the concept of training students for policy making. Overall, the quality of American law schools is high regardless of the method used.

In the chapter on jurisprudence, the author demonstrates an excellent understanding of what the law is and where it comes from. The development of legal principles is traced through several centuries, from exclusively common law to the present day trend toward statutory law. Various legal philosophies are considered, and the chapter contains quotations from eminent jurists, philosophers and practitioners, past and present. If nothing else, the discussion points up the divergence of views and lack of

agreement among legal scholars as to what the law is, what its purposes are, and how it seeks to achieve desired ends.

The area of criminal law is clearly one of the fountains of Mr. Mayer's disillusionment. He sees the predominate role of the lawyer, once again, as that of the negotiator. He is able to satisfactorily document the importance of plea bargaining between prosecutor and defense lawyer. In such a practice a guilty plea is secured through a promise of probation or by a reduction of the charge. A recent study disclosed that from 50 to 90 per cent of those persons charged with felonies in city criminal courts entered guilty pleas to lesser charges, while in Las Vegas, where reduction of felonies to misdemeanors is prohibited, only 20 per cent entered guilty pleas. The possible ludicrousness of the situation is illustrated by the case of the man charged with grand theft who mistakenly entered a plea of guilty to statutory rape because, as he later explained, he thought this lawyer had "made a deal."

Criminal law is seen by the author as not only society's method of deterring undesirable conduct, but also as an effective means of correcting social problems by proscribing conduct which creates or perpetuates such problems.

Mr. Mayer lauds the recent decisions of the United States Supreme Court in the area of criminal law as reasserting judicial control over criminal process. However, he considers the exclusionary rule inadequate because it does not halt illegal transgressions, but merely prohibits the use of fruits of such transgressions as evidence. He sees ultimate rectification of police abuses as coming only through better administrative procedures on the part of police departments.

The author's discussions of such diverse topics as the role of the prosecutor in criminal cases, bail, probation and imprisonment, insanity, and juvenile delinquency are general and informative, but his ideas are not always convincing.

The author attributes much of the social injustice present in our society to the fact that private property is the central institution of our legal system. The founding fathers of our country did not conceive of a propertyless class. Such a class developed and grew during the nineteenth century, at a time when our system was dedicated to stimulating production and the substantive law became loaded against the propertyless class. At the same time the courts were, for this class, inaccessible because of expense, and it was not until the advent of small claims courts and legal aid offices that any change for the better occurred. Legal aid offices have been largely financed by lawyers, but the author lays this fact more to a guilt complex on the part of the bar than to any basic altruism.

The author drifts rather aimlessly through such topics as corporate

practice, large law firms, and the practice of law in Washington. In Washington he found 4.7 per cent of the nation's lawyers either working for the federal government or engaged in the private law practice, usually specializing in a certain field of the law.

Discussed generally by Mr. Mayer are several areas of the law which lend themselves to specialization. Among these areas are patent law, admiralty, copyright law, and the law of the entertainment field. Such discussions are usually spiced by anecdotes and, though necessarily superficial, make interesting reading.

The author is impressed with the power and majesty of the courts, which he views as "genies from the bottle, knowing no master." However, he finds their extraordinary powers ill-suited to settle modern problems, with the result that many disputes traditionally resolved in courts are now settled through arbitration. Cumbersome procedures and multitudinous case loads, causing unreasonable delay in litigation, further detract from the efficacy of the courts in the performance of their traditional role of dispute settling.

Mr. Mayer is not altogether critical of judges, but he does dwell at times upon those who are unqualified, too old, or corrupt. Part of the problem stems from the manner of selection of judges. The author discusses the various ways in which judges have been chosen in the past, as well as new methods now being tried, and finds that some have merit, each has shortcomings.

The final chapter contains excellent discussions of theories about the proper role of the United States Supreme Court. Eminent legal scholars are quoted on both sides of the question of whether the Supreme Court should limit its decisions to the facts of a given case, or should indulge in broad generalization-which in effect legislates by judicial fiat. Quite clearly the present Court leans to the latter theory, the author suggests, and one who has read the Court's decisions in the area of civil rights, criminal procedure, and reapportionment is compelled to agree. An equally stimulating discussion of whether the Court should follow the law or seek to do justice is contained in the chapter.

The author offers high praise of the present Supreme Court, which he sees as having shaken our society out of the complacency in which it has managed to live with the obvious injustices of racial segregation, inequality and a multitude of other social wrongs. By so doing, it has improved the tone of the entire legal profession. In the final chapter Mr. Mayer at last finds, in Chief Justice Warren, a man who has enobled the legal profession.

RICHARD F. JAMES*

* Member of the Indiana Bar.