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Book Reviews

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BOOK REVIEWS

THE LAWYERS. By Martin Mayer. New York: Harper & Row. Pp. 548. \$8.95. 1967.

"Oh wad some power the giftie gie us
To see oursels as others see us!"

"The Lawyers" fulfills Robert Burns' famous wish so far as the legal profession is concerned, but casts some doubt on how smart it was to wish it. Sometimes this mirror of the profession shows an image a bit too much like what our personal mirrors disclose before we have shaved and showered the morning after a night on the town.

After some six years of research Martin Mayer, who is not a lawyer, reports on who we are, what we do, why we do it, how we charge for it, how much we make, how we make it, why we are liked, why we are disliked, why we are trusted, why we are suspected, where we came from and where we are going.

He talks about the huge law factories of the cities and the lone lawyer in the prairie town; about the criminal lawyer, the probate lawyer, the office lawyer, the company lawyer, the patent lawyer, the admiralty lawyer, the common shyster and about Norman Dacey.

He talks about the Chief Justice of the United States and the lowliest justice of the peace; how judges are selected, what they are paid, how they work, what influences them, how fair they are and how prejudiced, and how much (how frighteningly much!) they have to do with making the law.

He talks about negligence and contributory negligence and warranties and privity, from the *Squib* case to strict liability; about *Escobedo* and *Miranda* and *Gideon*; about bail bonds and the inequalities of criminal sentencing; and how "plea bargaining" is taking the place of all the legal legerdemain of criminal law and procedure.

He talks about common law and civil law and natural law and constitutional law and statutory law and administrative law, and where and how all the hodgepodge of what we call "The Law" came from and whither it is bound.

Much of the time, he appears to be our friend, trying honestly

to understand us and to make the public understand us, appreciate us, and forgive us our trespasses. But when you are just about to clasp him to your bosom as a friend "who knows all about you and loves you just the same", he lowers the boom and flattens you with a most unflattering and sometimes painful criticism. Many of his sometimes abrasive and uncharitable barbs are at least partially justified; and they are usually delivered in good humor, like a mother scolding an errant child.

It would be strange indeed if any lawyer (or doctor or plumber, for that matter) would let a layman's conclusions about his profession go wholly unchallenged. The lawyer will find much to challenge here. It will, as one instance, be difficult for most lawyers to accept Mr. Mayer's thesis that there is something wrong about a lawyer taking advantage, for his client, of a provision of the law of which the lawyer personally disapproves, or, conversely, attacking the constitutionality of a law which he does approve on its merits. Nor will Mr. Mayer's disparagement of the "Missouri Plan" for the selection of judges be applauded by most of the profession. Yet, in fairness, we must concede Mr. Mayer's constitutional right to be wrong, and accept his misconceptions as his informed and honest judgment. It is barely possible, too, that some of us, upon reflection, will conclude that if these are the judgments of an informed and careful scholar, the uninformed public must be making even more harsh judgments, and will wonder if there is something we can do about it.

The amount of research which has gone into this book is staggering, and to round out his study the author has not hesitated to explore the fields of sociology, psychology and political science. He is not afraid to lock horns on a legal proposition with either Chief Justice Warren or Chief Justice Traynor of California (who, with Holmes and Frankfurter and Brandies, appear to be his legal heroes), and he plunges fearlessly into the sociology of legal aid and judicare, the philosophy of the Constitution, and the political science of re-apportionment. He belies the implication of the adage that only fools rush in where angels fear to tread, for he treads on the hallowed ground of the *Dartmouth College* case and *Marbury v. Madison* and *Brown v. Board of Education* with a firm, and sometimes irreverent, tread. His critical analysis of the "one man-one vote" rule is a delightful exercise in logic.

Mr. Mayer would have made a good lawyer, for he is a thorough student and an articulate writer, but his careful and readable studies of "Madison Avenue, U. S. A.", "The Schools" and now "The Lawyers" have demonstrated a faculty for making the

public understand the inner workings of a business or profession which is, perhaps, an even more worthwhile endeavor.

It is a shame that much of the book's value as a reference work (and such conscientious research and scholarship does merit its use as a reference) has been lost through failure to include a subject index. It is too much to expect one to search through 548 pages, arranged in no meaningful pattern, for the one point he is looking for. Too much "blood, sweat and tears" have gone into this compendium to have it read once and consigned to the shelf.

Mr. Mayer writes with grace and style, and the work is replete with anecdote and example (from Mr. Dooley and Mark Twain and Sandberg, to Plato and Montaigne and Holmes and Warren, to mention only a few), which makes for easy and entertaining reading. By a page index of sources at the end of the book, Mayer avoids excessive footnoting which otherwise would be required. He does not conform to the rules of the Style Manual for Legal Writing, but he is writing neither a text nor a brief nor an article for the Slippery Rock Law Review; he is writing a book to be read, about a profession to be understood.

In his preface he acknowledges that in tackling the lawyers he is getting into the "big leagues", and says "No other enterprise I have attempted to investigate has yielded so often the pleasant sensation of contact with a first-rate mind working on a first-rate problem. During the course of more than five years on this job, I have come to feel that one can on occasion thoroughly understand how a lawyer thinks about a given situation and still believe there are more productive ways to think about it — indeed, that there are areas of human experience where lawyer-like habits of mind positively inhibit understanding of what is actually happening. But I have not forgotten that this is the big leagues." This preface could as well be his conclusion, for that is what the book is all about. In spite of disagreements with many of his positions, there is much here to be taken to heart by lawyers, and wide readership will contribute much to the understanding of our profession by the public, and perhaps even by ourselves.

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HUGO BLACK AND THE SUPREME COURT. A SYMPOSIUM. Edited by Stephen Strickland. Indiana, Bobbs-Merrill Company, Inc. 1967. 365 pages.

It is particularly appropriate that on this, his thirtieth year on the bench of the United States Supreme Court, special emphasis be given to the elder statesman of the American judiciary. The year 1937, in which he was appointed, witnessed an unusual focus of public attention and controversy upon that most private branch of our government. President Roosevelt and the New Deal were facing defeat of their legislative program from an unlikely source. One after another, legislative projects of the New Deal went down to defeat before the nine man legislative review of the Supreme Court. Finally, even that mammoth economic relief project, the National Industrial Recovery Act, was declared invalid. With his mighty "blue eagle" cut down by these nine old men, Roosevelt retaliated. He launched what his opponents were to call his "court packing" plan, whereby he would be given authority to appoint up to six new justices. One of his leading advocates in the Congress was a Senator from Alabama named Hugo Lafayette Black.

With the retirement of Justice Van Devanter that same Hugo Black was appointed to the Supreme Court.

President Roosevelt sent his first appointee over to the Court in an atmosphere of shot and shell . . . Indeed, the appointment fight was the last real battle in Roosevelt's war with the Supreme Court and Black was the President's one man army of occupation.

Thus John Frank, one of the authors of this symposium, describes the initiation of Justice Hugo Black to the Supreme Court. With this and the subsequent controversy over his one time membership in the Ku Klux Klan, his present recognition as a liberal thinker and judicial philosopher appears as a glaring paradox.

More recently, one of America's widely circulated news magazines of a more liberal bent, noting Mr. Justice Black's eightieth birthday, could marvel at his "bitter dissent" to the upholding of a civil rights stand-in at a public library. It concluded that he "tends to see the seeds of mob violence even in a pacific protest demonstration."¹ Another prominent news magazine, with a more clearly conservative philosophy, examined his recent dissents in civil rights cases and other cases involving the role of the Court itself. It found that the justice who had previously been regarded as a leader of the "liberal" wing of the Court was now casting his

1. Newsweek, March 7, 1966, p. 27.

lot with the "conservatives".² The paradoxes of Hugo Lafayette Black seem still to be unwinding.

The philosophical and judicial reconciliation of these apparent paradoxes is substantially accomplished in this volume. The substance of it is the application of a consistent judicial philosophy to changing problems and a changing emphasis. The author cutting most directly and deeply to the issue is Irving Dilliard with a chapter entitled "The Individual and the Bill of Absolute Rights".

The authorship of this symposium is made up of equal portions of political scientists, law professors, and practicing lawyers, with a journalist thrown in for spice. The spice is, however, sprinkled very sparingly. This is a serious examination of Justice Black's judicial accomplishments and philosophy. But those searching for harsh criticism will not find it here. It is, perhaps, appropriate that a public figure of four score years be treated with respect. Yet it does not make for quite so lively reading.

The credentials of the various authors are impressive, but the work product varies in quality. A good portion of the essays have been published elsewhere. Randolph Paul, the prominent tax lawyer, whose fine article upon Justice Black and federal taxation appears in the symposium, died in 1956. For all of this, there is sufficient insight into the thought of a major judicial mind given here to make the sifting well worthwhile.

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2. U.S. News and World Report, March 21, 1966, p. 26.

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