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Carlin: Lawyers on Their Own: A Study of Individual Practitioners in Chicago

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BOOK REVIEWS

Lawyers on Their Own: A Study of Individual Practitioners in Chicago. By JEROME E. CARLIN. Ithaca, N.Y.: Rutgers University Press, 1962. $6.00.

This is a provocative book, though not particularly well-written. A subject herein is treated which should be discussed at great length—a subject that is close to the heart of the reviewer—namely, "The Lawyer on His Own"; the individual practitioner as differentiated from a member of a partnership of lawyers. It treats of his background, his education, his emotional needs, if any, to be a lawyer, and a general history of his life as a practicing lawyer, with his personal views toward his clients, his practice and the public.

It was with some diffidence that the writer approached this task. He values the friendship of the father of the author, who is a member of one of the most distinguished legal firms of Chicago. He has met the author on several occasions and is impressed with his sincerity. Though he is a lawyer, he has eschewed a practice such as his father's and settled down to a more sedentary position in the administration of Columbia University, with a much more modest remuneration than he could achieve as a practicing lawyer.

This book was reviewed by Melvin M. Belli, the eminent San Francisco personal injury expert, who seems to indicate that the problem raised in this book has become a contest between the lawyers described and the upper echelon of big firms, or, as Belli puts it: "a jungle in which dinner-jacketed barristers stalk their clients, ply their cunning and consume their quarry just as avariciously as does the legal lone wolf. . . ." I understand that this book will also be reviewed for other periodicals by lawyers of the upper echelon group mentioned by Belli, and I suspect that their reviews will be quite different from that of Belli, that the individual lawyer is at the bottom of the legal totem pole due to his own inefficiencies. The truth must lie somewhere in between.

First a word as to methodology. The author interviewed ninety-three of some seven thousand individually practicing lawyers of Chicago. Of these, only forty-nine are full-time practitioners. The reviewer questions the adequacy of such sampling. The reviewer also questions how much credence can be given on the delicate subjects covered by a questionnaire or interview conducted by one without any firsthand experience in the subject matter, far removed in training and having no feeling or sympathy for, as he sees it, the hapless individuals he is describing. Particularly true is the general tenor of the personal injury lawyer's complaint that while he is not an ambulance chaser, there are too many others who are. Mr. Carlin places too much emphasis on answers such as these. The author of such a study should be able to take judicial notice of some things.

The remarks made by most of the divorce lawyers that their primary concern was a reconciliation of the parties at the expense of their fees also bears questioning. It reminds the reviewer of a survey made by Vance Packard as reported in his admirable book, "The Hidden Persuaders." He interviewed sixty people and questioned them as to whether they had ever borrowed money from a finance company. A negative response was elicited from all. This could

possibly be true, except all sixty names were taken from finance company files as borrowers. It is hoped that another study will be made of the same subject, eliciting the aid of some lawyers who have a more intimate knowledge of the subject. I am sure a grant from a foundation could be secured for this purpose.

Mr. Carlin paints a dismal picture of the average lawyer on his own, if there is such a person. He finds him to be of parents at least one of whom is foreign born, his father a proprietor of a small business with no college education and often not a high school graduate. His legal education is divided; one-third coming from proprietary law schools; mostly evening schools; and practically all having minimal entrance requirements; one-third from schools with university connections, which schools have both day and night law schools; and one-third from university-connected law schools having only day schools, which institutions are described by those having attended these schools as "the best schools." Outside of those graduating from the so-called preferred schools, less than one-third of practitioners of this class have a preparatory degree. (The reviewer feels the current and future graduates will soon radically change this percentage.) His practice is less desirable, both as to type and lucrativeness, the choice practice being plucked by the elite firms. If he is what the author described as a lower-level attorney, most of his time will be spent in tasks which will call for very little skill, most of which can be performed by his secretary. If he is of the upper-level variety, he will use much more legal skill, but not to the same extent as the partnership lawyer. He does not have equal legal knowledge as the partnership lawyer. He is not as efficient. He is not very active in the bar associations, partly because of his own choice and partly because it is barred to him by the upper echelon. (An interpolation is necessary at this point. All these views are those of the author and not necessarily those of the reviewer.) His practice may be varied, with the exception that the more profitable business will not be available to him. He is dissatisfied with his lot, and here the author is at his best in a chapter with the piquant title, "The Anatomy of Dissatisfaction." He is dissatisfied with his type of practice, he is dissatisfied with the competition which he encounters from unauthorized sources, he is dissatisfied with his lack of financial success, but, most of all, he is dissatisfied with the lower state of public respect and esteem to which he has fallen.

Therein lies the great interest of the reviewer of this book. The reviewer has been a lawyer "on his own" for over thirty years. He has run the gamut of such a practice from originally handling collections to having been connected with situations of such financial magnitude that he is now involved in the periphery of the partnership lawyer. He is full of nostalgic memories, however, of what his practice has been through the years. He remembers many clients from his early years whom he still represents, having appeared in police courts because of their children's peccadillos, having advised them in acquiring a home, handling a personal injury case, helping them solve their personal problems and being, besides a lawyer, a friend and confidant. He was then a typical legal counterpart of another dying breed, the family doctor, who now is fast becoming the internist. The reviewer had discussed a kindred problem with other general practitioners. They complain that today when a client suffers personal injuries, the case is lost because of a doctor or someone else referring another lawyer; the real estate deal is lost because the broker or lend-

ing institution handles it; a divorce case is lost because a hairdresser refers it to a divorce specialist. Added to this is the fact that the ever-increasing complications of our tax and other laws continue to plague the individual lawyer and benefit the larger firms. It is impossible for an individual lawyer to compete on such cases with a large firm. These firms have lawyers who, at a moment's notice, can give answers to problems with which they are familiar, because of constant repetitive specialization, each phase of which the individual attorney would have to research with an additional consumption of time. Thus, it is much more economical for large firms to handle many more complicated pieces of business than an independent practitioner. Of course, this is not true of individual lawyers who specialize in most branches of the law in practices limited to personal injury, divorce, trial work and other fields where time permits a reasonably industrious attorney to master his specialty. However, even here, in a more complicated field such as corporation law, even though he may compete somewhat successfully with the large firm, his task is more difficult because of the many ramifications of his specialty. However, most of all the private practitioner suffers from lack of prestige, and this is his greatest source of dissatisfaction. Unlike his country brother, who still practices as his urban counterpart would like, he no longer has the complete confidence of his client.

Nor does the reviewer feel the problem of the legally inadequate lawyer can be solved by referring to a specialist any matter involving great legal skill. Overlooking legal propriety in fee-splitting references, I feel that in cases wherein two lawyers must share one fee for one legal task, there very well could be a tendency to charge an unwarranted fee. Nothing in this practice can help such a lawyer's self-esteem or his public image. A contractor does not belong in the practice of law. These remarks, of course, should not be taken to mean that in unusual cases, a reference would not be proper.

The reviewer is aware of the fact that this book purports to be a clinical study, and such fact-finding need not suggest cures for the ills which are turned up by such a study, but the reviewer feels that if the author were more sympathetic to his subject, he would extend himself and check possible cures to alleviate the problem. The reviewer further feels that a middle ground accommodating both positions could be found in the formation of small legal firms where the lawyer can still be in a position of a lay "Father-Confessor" to his clients who may need secular help, and still be in a position where each member of the firm could develop some specialties and, yet, not lose contact with his client, which is so precious to the reviewer, still giving his clients service of competence. There is no experience which the reviewer has enjoyed more than the rare pleasure of undergoing the privilege of the relationship of attorney and client. He feels that this is lost in the big firm and that under this possible suggestion, it may be preserved and yet the client would be given adequate service. Thus both horns of the dilemma may be escaped.

The reviewer does not wish to belabor this point, but it is best illustrated by a true story which happened about four years ago. He was sitting in a deal with an esteemed colleague on one side of the table. On the other side were nine members of a large legal firm, a legal draftsman, a real estate man, a tax advisor, a Securities Exchange Commission expert, *ad infinitum.* My friend quipped: "Not only am I outnumbered, not only am I surrounded, I am

inundated." My friend is now dead, and I feel his kind is also dying, being inundated by the floodtide of so-called progress. However, it is sad to reflect that with this flood, something else is being washed away—the old-time general practitioner—the result of which must be detrimental to society.

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A Man for All Seasons. By ROBERT BOLT. "The New Theatre of Europe," edited by Robert W. Corrigan—Delta, 1962. $2.25.

For too long, the true meaning of legal ethics has eluded too many lawyers. It is thought that legal ethics is an assortment either of rules of etiquette or of rules to augment the individual lawyer's income. In this view, it becomes unprofessional to solicit clients because such conduct resembles the distasteful, ungentlemanly conduct of street hawkers. And information from the client is privileged from disclosure in order to encourage persons to call upon lawyers, which will enhance the lawyer's financial position. In fact, many lawyers hold the canons of ethics in low esteem out of a feeling of animosity toward what they claim to be unrealistic standards foisted upon them by those who can afford to obey their dictates.

This evaluation misconceives the role of legal ethics by eroding its importance as the proper functioning of the lawyer's right conscience. In this light, the business of solicitation is condemned because it encourages frauds upon hapless defendants and equally hapless victims. Powers of attorney are given without understanding; retainer forms are signed without complete explanation and under the stress of injury; settlements are made without the client's participation or consent; civil actions are instituted for exorbitant or fraudulent amounts. So, too, communications from the client are held in confidence because, without the protection of secrecy, the client would be more circumspect in making incriminating revelations. Such reluctance would strike at the heart of the lawyer-client relationship.

That legal ethics is but the rule of conscience is made painfully clear in Robert Bolt's drama of St. Thomas More's martyrdom. To St. Thomas, obedience to conscience came before life itself. To lawyers today, the promptings are less crucial since conscience is more often in conflict with the desire for wealth or esteem than any other temptation.

This play, an international success, speaks in words that can appeal to every man and portrays the life of a man for all ages. Gentle humor marks its progress at every stage. Observe, for example, the banter between St. Thomas and his wife as she urges him to drink his medicine:

Alice: "Drink it. Great men get colds in the head just the same as commoners."

More: "That's dangerous, leveling talk, Alice. Beware of the Tower."

Prophetic words. In time of crisis, when the strain on conscience is greatest, just as in moments of prophecy, humor informs the occasion illuminating it without distortion and making it more endurable. Otherwise, how explain St. Thomas' moving acceptance of his execution: