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Book Reviews: Verdicts on Lawyers

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BOOK REVIEWS

VERDICTS ON LAWYERS. Edited by Ralph Nader* and Mark Green.** Thomas Y. Crowell Co., New York, New York. 1976. Pp. 341. $10.00. Reviewed by Eugene J. Davidson.†

Verdicts on Lawyers states that it is addressed "[t]o law students who pursue justice as their highest calling." Readers may be tempted to conclude that much of the book should have been dedicated to William Shakespeare's Dick the Butcher for his statement "The first thing we do, let's kill all the lawyers."[1] According to the publisher's promotional material, the book is a current critique of what is wrong with the legal profession. If the editors intended to present the dark side of the profession in a contentious manner, they succeeded. This is not to imply that all of the twenty-three articles are negative, contentious or partisan. "The Washington Lawyer: When to Say No,"[2] by Joseph A. Califano, Jr., makes a point which lawyers and lay-persons alike should read and heed. John P. MacKenzie's "Of Judges and the ABA"[3] discusses the role of the ABA in the federal judiciary selection process. In a seemingly objective manner, he marshalls his facts and makes his case.

If all the contributors to *Verdicts* were as dispassionate as Califano, MacKenzie, and several others, *Verdicts* would be a valuable addition to the literature on lawyers and the legal profession. But this was not to be, and indeed, the reader may fairly inquire whether the editors would even have preferred total objectivity.

The opening Overview[4] by Mr. Nader sets the tone for much of the book. To that outspoken critic the American legal profession is largely incestuous, corrupt, biased — you name it. According to Mr. Nader, ninety percent of the profession serve that group whose "legal and illegal interests are often directly adverse to the bottom 90 percent of the citizenry," and, the deployment of this ninety percent is a deliberate choice in favor of that affluent class "— a kind of retainer astigmatism."[5] Perhaps it is Mr. Nader's vision that is astigmatic. He would not apply to the legal pro-

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1. W. SHAKESPEARE, KING HENRY VI, PART II, IV. ii. 86.
2. Pp. 187–96.
3. Pp. 33–46.
4. Pp. vii–xviii.
5. P. viii.

fession a test of health applied to other professions.[6] To Mr. Nader this test is "a measure, not of the health but of the sickness of the [legal] profession and its resilient ability to stonewall critics via little concessions to a small, circumscribed legal services program by the federal government."[7]

Co-editor Mark Green's two articles "The ABA as Trade Association"[8] and "The Gross Legal Product: 'How much Justice Can You Afford',"[9] likewise are designed to produce more heat than light with allegations and charges made in cavalier fashion and innuendo employed to discredit.

No one has ever suggested, let alone claimed, that the legal profession is composed only of saints whose purpose is to do good and whose conduct is ever righteous. The world consists of saints and sinners and many who are in between. Edward W. Hoch is said to have written in the *Marion* (Kansas) *Record*: "There is so much good in the worst of us and so much bad in the best of us." This is as true of lawyers and their profession as it is of any other segment of our society.

The legal establishment freely admits its need to improve and the value of critical self-examination. Such examination, however, should not be partisan or sensation oriented. Partisanship and sensationalism may attract momentary attention but they do not contribute to understanding. Moreover, they may be counter-productive.

A case in point is Victor Rabinowitz's "The Prosecutor: The Duty to Seek Justice."[10] From his opening sentences,

> The legal profession, like most human institutions, stands firmly based on a multitude of cliches and platitudes that have, at the very best, only a peripheral relationship to reality. They are honored almost exclusively in the breach, and are repeated either sanctimoniously by those who seek to clothe their self interest in an outward show of liberalism or by those who would hope to make them come true.

to his closing statement,

> And John Doe and Mary Doe [thousands of plain people presumably like you and me], unable to cope with an aggressive and brutal governmental machinery, suffer unjust convictions spurred by energetic prosecutors who never read the writing on the facade of the Justice Department

6. That its health can be gauged by the extent internal dissent is tolerated. *Id.*
7. *Id.*
8. Pp. 3–19.
9. Pp. 63–79.
10. Pp. 231–41.

offices. ["The United States wins its point whenever justice is done to its citizens in the courts."]

Mr. Rabinowitz, in strident terms, proclaims that "most" (his word) prosecuting officials are "arrogant, aggressive, overzealous, and unscrupulous." He admits only to "exceptions" which occur at the highest administrative levels where the individual "may be above the battle" or on the "most junior levels, where the individual is, in a sense passing through" on the way to other things.[11] To prove his case, Mr. Rabinowitz relies on governmental violation of the *Brady* rule,[12] wiretapping, and the use of informers. His illustrations (proof if you will) are a few recent politically oriented cases and the Smith Act and Judith Coplon prosecutions. What Mr. Rabinowitz ignores is the simple fact that most criminal prosecutions do not involve the *Brady* rule or wiretaps. And what is immoral about the use of informers? To Mr. Rabinowitz, it is that they must produce something which can be "most easily" done by perjury or provocation of crime. This is, of course, easily said — but what proof does Mr. Rabinowitz offer that perjured or provocative informers are the rule rather than the occasional exception? None, just the innuendo.

The need to improve prosecutorial staffs is undeniable, but not for Mr. Rabinowitz's reasons. Admittedly, there are some who are arrogant, overzealous, etc. But to say "most" prosecutors calls for proof, not unsupported conclusions based on the sympathies of a lawyer whose entire career has been on the other side. Proudly confessing bias is neither an excuse nor a justification. There is no need for this and it could and should have been avoided.

Another case in point is Mr. Green's article, "The ABA as Trade Association." This appears to be essentially a rewrite, with some changes, of his article, "The ABA: The Rhetoric Has Changed but the Morality Lingers On," which appeared in the January, 1974 *Washington Monthly*.[13] In it, Mr. Green, *inter alia*, castigates the ABA Section on Patents, Trademark and Copyright Law for supporting amendments offered by Senator Scott to the proposed patent law legislation.[14] Singled out for special attention is Theodore Bowes. The so-called Scott amendments, however, are peripheral to the main problem confronting Congress, which is to reconcile

11. P. 232.

12. Brady v. Maryland, 373 U.S. 83, 87 (1962) ("The suppression by the prosecution of evidence favorable to an accused who has requested it, violates due process. . . .").

13. WASHINGTON MONTHLY, Jan. 1974, at 21–29. *Verdicts* fails to acknowledge this prior publication.

14. Pp. 11–12.

the differing views regarding the patent-antitrust law interface. To what extent should the patent holder's exclusivity rights yield to anti-trust concepts? Should Congress enact into law the Rule of Reason, as recommended by President Johnson's 1965 Commission on the Patent System,[15] or should Congress permit the Department of Justice to assault the patent holder's legal rights despite repeated rebuffs by the Supreme Court.[16]

It is one thing to argue the merits of the respective positions; it is another to stigmatize those who oppose the Department of Justice by quoting unnamed sources or labeling them a small clique whose proposals sought to legalize patent practices now prohibited under the antitrust laws.[17]

Charges as serious as Mr. Green's call for proof — not just unsupported allegations — but proof is not to be found in either *Verdicts* or its predecessor *Washington Monthly* article. Your reviewer, who as the representative of small business, served on the Commission on the Patent System and was involved in the formulation of Recommendation XXII, was neither aware of this alleged small clique, nor was he lobbied by big business, the ABA or any other organized group. Mr. Green would do well to read the article by Theodore Bowes in *Idea* entitled "The Patent Antitrust Law Interface: How Should It Be Defined?"[18] It is indeed unfortunate that facts and reason take a back seat to unsupported allegation.

The partisanship and overkill which your reviewer finds in much of *Verdicts* has impaired the book's value. *Verdicts* could have been an important contribution to the efforts to improve both the legal profession and the delivery of legal services. Its hard line will give aid and comfort to those Dick the Butchers among us, but it will do little to gain the active support of those who are best able to effect the changes the authors claim to espouse.

15. President's Comm'n on the Patent System, Recommendation XXII (Gov't Printing Office 1966).
16. *See, e.g.,* United States v. Huck Co., 382 U.S. 197 (1965).
17. Pp. 11 & 12.
18. 18 Idea 25-37 (PTC Research Foundation, Franklin Pierce Law Center 1976).