BOOK NOTE

AN ANTHROPOLOGICAL STUDY OF THE LEGAL PROFESSION: ERWIN O. SMIGEL, THE WALL STREET LAWYER *

Walter O. Weyrauch †

A number of empirical studies of the legal profession have been published in recent years.[1] Some of them have relied on standardized methods of inquiry amenable to statistical analysis; others may be called anthropological studies of lawyers and, in a wider sense, of law. *The Wall Street Lawyer* seems to fit into the latter category—indeed the author has referred to his efforts as related to the field work of the social anthropologist. (Pp. 30-34.) [2]

This approach has resulted methodologically in less emphasis on quantification and statistical evaluation, and in greater reliance on pursuing pertinent information from all available sources, regardless of its amenability to categorization in a preconceived plan. We may view the author as a traveler into an uncharted region, Wall Street, intrigued by the customs of a foreign tribe, the Wall Street lawyers, taking notes of whatever appears worthy of observation. The result is a wealth of factual

---

* New York: The Free Press of Glencoe, 1964. Pp. xiv, 369. $6.95.

† Professor of Law, University of Florida. Dr. iur. 1951, University of Frankfort, Germany; LL.B. 1955, Georgetown University; LL.M. 1956, Harvard University; J.S.D. 1962, Yale University. Professor Weyrauch is the author of THE PERSONALITY OF LAWYERS (1964).

1 *E.g.*, CARLIN, LAWYERS ON THEIR OWN (1962) [hereinafter cited as CARLIN]; WEYRAUCH, THE PERSONALITY OF LAWYERS (1964) [hereinafter cited as WEYRAUCH]; Agger & Goldstein, Law Students and Politics—The Rising Elite, 1957 (unpublished paper in University of North Carolina Law Library) [hereinafter cited as Agger & Goldstein]; Carlin, Current Research in the Sociology of the Legal Profession, Aug. 1962 (Bureau of Applied Social Research, Columbia University); Lortie, The Striving Young Lawyer—A Study of Early Career Differentiation in the Chicago Bar, 1958 (unpublished Ph.D. dissertation, microfilmed, in University of Chicago Library); FREEMAN, *Counseling—A Study of Lawyers, Doctors and Clergymen*, in LEGAL INTERVIEWING AND COUNSELING 231 (1964) [hereinafter cited as FREEMAN]; Gold, *Lawyers in Politics*, 4 PACIFIC SOCIOLOGICAL REV. 84 (1961) [hereinafter cited as Gold]; Krastin, *The Lawyer in Society*, 8 W. RES. L. REV. 409 (1957) [hereinafter cited as Krastin]; Ladinsky, *The Impact of Social Backgrounds of Lawyers on Law Practice and the Law*, 16 J. LEGAL ED. 127 (1963) [hereinafter cited as Ladinsky]; Riesman, *Law and Sociology: Recruitment, Training and Colleagueship*, 9 STAN. L. REV. 643 (1957) [hereinafter cited as Riesman, *Law and Sociology*]; Rueschemeyer, *Doctors and Lawyers—A Comment on the Theory of the Professions*, 1 CAN. REV. SOCIOLOGY AND ANTHROPOLOGY 17 (1964) [hereinafter cited as Rueschemeyer].

2 Smigel is Chairman of the Department of Sociology and Anthropology at Washington Square College, New York University. As to anthropological studies of law, see WEYRAUCH 22-23; Hoebel, *Karl Llewellyn: Anthropological Jurisprude*, 18 RUTGERS L. REV. 735 (1964); Riesman, *Toward an Anthropological Science of Law and the Legal Profession*, 57 AMERICAN J. SOCIOLOGY 121 (1951). On the difference between anthropological and sociological approaches, see Kluckhohn, *Common Humanity and Diverse Cultures*, in THE HUMAN MEANING OF THE SOCIAL SCIENCES 245 (Lerner ed. 1959).

information, which in a standardized and quantified analysis might have been overlooked. He has noticed habits of dress, residential preferences, patterns of speech, demeanor, idiosyncrasies, and other matters that at first may appear trivial, but in the total context acquire significance.

One of the merits of *The Wall Street Lawyer* is that it is a study of an elite. Smigel, who is not a lawyer, has had the courage, perhaps the temerity, to describe what he saw and to describe it in balance. Despite the abundance of studies of the common man and of the deprived strata of the population, social scientists have shied away from elites,[3] not surprisingly in view of the fact that elites are ordinarily engaged in self-assertion rather than self-study. Standing only to lose, they are likely to distrust the intruder who wants to study them. On the other hand, the intruding social scientist is more immune from deprivations than, let us say, a law professor who studies lawyers. The social scientist, however, does have a legitimate interest in not diluting or cutting off his sources of information. He may want to return at a later time to the culture or subculture described in his publication. This requires a certain amount of tact or diplomacy, a balancing of the gains and losses from unfettered scientific disclosure with the potential benefits that may flow from continued friendly relations with his populace. Smigel has done remarkably well in these respects without compromising his high standards as a scholar. Even though the book contains material that can be viewed as derogatory, it is not probable that his treatment will be resented by Wall Street lawyers or by lawyers in general.

Methods of presentation are of help. In the early part of the book, credit is given to the public services of lawyers who started in large law firms. (Pp. 8-12.) In the conclusion the organization of large law firms is offered as a model for other professional work groups because of its combination of the advantages of bigness and specialization with a minimum of bureaucracy. There is praise for the professionalism of the Wall Street lawyer "which sets the stage for his creativity—a required ingredient when dealing with the esoteric, the difficult, and the exceptional." (P. 354.) Smigel also has emphasized that "disputation," within proper bounds,[4] is traditionally expected among lawyers even in the same office, since it sharpens issues to the benefit of clients and helps in the preparation of cases. Smigel has a valid claim to the same brand of leniency in presenting his well-balanced critique.

Style and choice of words are used in a fashion that, while giving necessary details, minimizes the danger of adverse reaction. It does make a difference, for example, whether one refers to reprehensible acts that have occurred in a law firm or merely to *indiscretions* and *laxities*. (Pp. 229-

[3] LASSWELL, THE FUTURE OF POLITICAL SCIENCE 184 (1963).

[4] The limits of propriety are established by "good judgment" and custom. SMIGEL, THE WALL STREET LAWYER 260-61, 322-29 (1964) [hereinafter cited as SMIGEL in footnotes]. A lawyer who clashes with the value preferences of a superior or who is perhaps of improper background may be in danger of being considered "contentious."

30.) I point out these factors because they are interesting in themselves. We may ask ourselves whether we lawyers are so awe-inspiring that these and other precautions are in order; or whether threatening appearance is a characteristic of all elites; or to what extent the outsider who studies an elite necessarily approaches it with undue apprehension.[5]

A positive consequence of cautious approaches is the possible appeal of Smigel's study to a large group of prospective readers. In spite of the seemingly narrow topic, the book can be read with profit for a variety of reasons. Readers may concentrate on a depth analysis of lawyers, a study of institutional patterns, or they may dwell on more superficial levels of office management and career strategies.

Certainly the neophyte lawyer about to enter a large law firm as an associate will be aided by a realistic assessment of his environment and his career chances. He should know that his advancement in the firm may depend only in part on professional competence, and that ethnic, social and regional background, and attendance of the "right" educational institutions have a bearing too. Not only is he expected to dress properly, in the same fashion as the business executives with whom he may have eventual contacts, but also to live at a proper address. He may be disturbed to learn that there is a statistical correlation between his address as an associate and his chances of becoming a partner. (Pp. 314-16.)

Law partners may read the book to appraise their own firms, even if smaller than the firms described and located outside of the Wall Street district or New York City. Smigel's observations of the Wall Street lawyer probably describe future patterns of the legal profession; we are witnessing a trend toward bigness and specialization in American law firms.

Any inquisitive reader, even a nonlawyer, will find the discussion of recruitment, work, and milieu fascinating: the description of the status hierarchy; the club-like atmosphere where even today eighty-eight percent of the partners have a "right" college or "acceptable" law school background (p. 74); where one is circumspect, methodical, prudent, disciplined, and expresses oneself with modesty; where the client is Standard Oil, perhaps even a foreign nation, Russia, Great Britain, or Japan; where the office is organized along what resembles caste and class lines, one "caste" being the professional people, the other the nonprofessional help; where it might be excusable for a lawyer to marry a secretary, but not to go out with her; where the partners and associates within the same caste form separate classes, the associates being treated as inferior and equal at the same time; where the lower strata of the population are everpresent in a subdued role yet not without a power of their own, whether as managing

[5] There is some evidence that caution may be in order in studying the legal profession. Scholars who have attempted such studies have been severely criticized, sometimes ridiculed. For an illustration, see Rogers, Book Review, 61 COLUM. L. REV. 308 (1961) (reviewing SCHUBERT, QUANTITATIVE ANALYSIS OF JUDICIAL BEHAVIOR (1960)). For the reaction of a Chicago individual practitioner to Carlin's *Lawyers on Their Own*, see Ross, Book Review, 12 DE PAUL L. REV. 369 (1963).

clerks of Jewish or Irish extraction with a law degree from a local night school and with the function of facilitating communication between the lower level officials in the courts and the Ivy-League lawyers in the firm (pp. 42, 119, 244-45), or as members of the nonprofessional staff (down to the messengers) who have their impact on the office milieu and thus on the lawyers who depend on them just as much as they depend on the lawyers.

In enumerating these and other criteria it is difficult to establish any list or logical sequence because the various categories of status blend; similarly, it may be difficult to determine whether an individual lawyer is a failure or a success. (Pp. 77-85.) Furthermore, recruitment and organizational patterns are interdependent. Lawyers of nonacceptable background or nonconforming personality, for instance, are either excluded in the hiring phase or eventually eased out, a process that results in a relatively homogeneous group remaining in the law firm; this homogeneity in culture and perspectives in turn is reflected in the organization of the law firm. Few formal rules are needed, and it becomes possible to have a well-functioning yet loosely-knit organization. In fact insistence on rules is somewhat frowned upon, and an associate who adheres to them too strictly may hurt his chances for a partnership. Office manuals are likely to be mislaid by the associates, and the partners pride themselves that they either do not need a written partnership agreement or at most one drawn in general terms, perhaps one page in length. (Pp. 211-16.)

Yet homogeneity, while facilitating smooth operation of big law firms, has its pitfalls too. Standardization through formal rules may be partly replaced by the compulsory aspects inherent in any standardization of personality. Some of the disturbing observations in Smigel's study, mentioned more or less incidentally, are perhaps related to this possibility. In speaking of the merits of law review editing, a fledgling lawyer has stated: "One other experience that work on the law review provides is that you learn to work hard and also at night. If I only worked from 9 to 5, *I wouldn't know what to do with the rest of my time.*" (P. 254.) (Emphasis added.)

In close context to this Smigel has tried to construct a model of an average associate's concept of self: "I feel that I am capable, responsible, and intelligent; that I have received superior training and that success in some form is inevitable; that I am destined to deal with important people and matters." (P. 255.)

This model is not unrealistic or exaggerated; there are indeed lawyers who apparently think of themselves in these terms or at least try to live up to this image. The image is, of course, disturbing in its indication of limited horizons, intellectually and otherwise. Perhaps it illustrates what has been referred to in another context as "trained incapacity." (P. 343.) While it may be doubted that the kind of person reflected in this model will ultimately succeed, for example, by being selected for partnership, it is true

that men of limited vision but of compulsive drives have sometimes been surprisingly successful.

Smigel has opened up numerous avenues of further inquiry. His comparative remarks on law firms and law schools, lawyers and law professors are fascinating. They are dispersed throughout the book but worthy of systematic collection and study.[6] American law faculties may be viewed, for instance, as associations of lawyers that are in many respects similar to law firms. Some faculties exceed Smigel's criterion of bigness, fifty members. Recruitment and career patterns of lawyers and law professors show many parallel features, and continued exchange takes place from law firms to law faculties and vice versa. Law schools, too, have few formal regulations.[7] Selective recruitment and the relative homogeneity of faculties, following Smigel's reasoning, may have made such regulations unnecessary.

Large law firms, too, have acquired more and more of the characteristics of law schools. They have become postgraduate vocational schools with a supervised educational program and a form of graduation, either elevation to partnership or transferal to an important position outside the law firm. They have created strong bonds of allegiance between the firm and the scores of alumni who do not become partners, but who leave under favorable conditions. Their later careers, whether in industry, government, or law practice, often lead to continued contacts beneficial to the firm's business. The unwritten policy that it is improper to fire a lawyer and that a firm is responsible for taking care of former associates "pays off" in continued loyalties, a stable clientele, and influential connections that permit short cuts. (Pp. 62-65, 262.) Similar notions are not unknown in the academic world.

It is sometimes objected that studies of this kind are fragmentary and that the generalizations drawn from small samples are speculative.[8] In a sense this may be true if the criticism is focused on a single study. However, there is now a steadily growing body of knowledge resulting from the efforts of different researchers who have employed a variety of research techniques and who have independently reached surprisingly uniform conclusions that often transcend form of practice and even culture. It is possible to draft a kind of cross-index from Smigel's findings to other studies:[9]

[6] *E.g.*, comparisons of job mobility, SMIGEL 111 n.6; managing partners to university administrators, *id.* at 238; ethics of law students, professors, and attorneys, *id.* at 289 n.21; academic freedom to professional independence, *id.* at 349-50.

[7] See Richard, *Faculty Regulations of American Law Schools*, 13 CLEV.-MAR. L. REV. 581 (1964).

[8] See Frey, Book Review, 13 BUFFALO L. REV. 293 (1963); Ross, *supra* note 5. Both reviews were of Carlin's *Lawyers on Their Own*. The criticism coincides with standard objections to anthropological methods: poor workmanship in detail, insufficient attention to quantitative method, greater interest in producing hypotheses than in testing them, more description of the personality of the field worker than of the culture in question. See Kluckhohn, *supra* note 2, at 257-67.

[9] Emphasis is on references to the books by Smigel and Weyrauch that were simultaneously published and of different research design and scope, one based on interviews with Wall Street lawyers, the other on interviews with German lawyers.

Lawyers cherish a notion of being autonomous and adhere to a philosophy of individualism.[10] However, interviewing a small sample soon results in repetitious responses on major issues and, therefore, a collective portrait of a relatively homogeneous group is possible.[11]

Lawyers are reserved toward the social sciences and object to institutional studies of the legal profession in much the same manner as clergymen object to a study of the church.[12] They put a high premium on hard work, legal skills, and professional responsibilities.[13] They are devoted to the law in the sense of a quest for the absolute,[14] claim intuitive powers,[15] and are concerned with relevancies and procedures.[16] Upper-level lawyers may be fascinated by aesthetics[17] and may deplore not having chosen an academic career.[18] Lawyers are concerned with status and prestige, think in terms of hierarchies, and show deference to seniority[19] and confidential relationships.[20] They possess esprit de corps and are governed by a largely unwritten code of behavior.[21] They tend to worry and are concerned with questions of security.[22] Lawyers specializing in large scale financial transactions or aspiring to high professional standards consider it improper to talk about finances or about questions relating to income and investments. They complain about being burdened by corporate clients with business decisions, and stress that in their professional relations to law partners and associates money or property is of no concern.[23]

Their recruitment and career patterns follow ethnic lines with a premium for "clean-cut" appearances and the "right" educational and social

---

[10] CARLIN 184-88; SMIGEL 224, 293; WEYRAUCH 78 n.3, 248-49, 278; Ladinsky 129; Riesman, *Law and Sociology* 670. See also Brown, *Legal Research: The Resource Base and Traditional Approaches*, American Behavioral Scientist, Dec. 1963, pp. 3, 6.

[11] SMIGEL 14, 30; WEYRAUCH 41, 278-79.

[12] SMIGEL 18-19; WEYRAUCH 75-95; FREEMAN 235, 245 (as to psychology); Riesman, *Law and Sociology* 651, 660. Young lawyers are more tolerant. SMIGEL 19; WEYRAUCH 93-95.

[13] SMIGEL 252-54, 266; WEYRAUCH 278, 287-89; Riesman, *Law and Sociology* 648-49.

[14] SMIGEL 255; WEYRAUCH 169, 274-75, 279. See also LLEWELLYN, THE BRAMBLE BUSH—ON OUR LAW AND ITS STUDY 119 (1951) [hereinafter cited as LLEWELLYN]; Riesman, *Toward an Anthropological Science of Law and the Legal Profession*, 57 AMERICAN J. SOCIOLOGY 121, 133 (1951).

[15] SMIGEL 260-62, 333 ("good judgment"); WEYRAUCH 173-77, 184-85; FREEMAN 235-36. See also LLEWELLYN 98; Hutcheson, *The Judgment Intuitive: The Function of the 'Hunch' in Judicial Decisions*, 14 CORNELL L.Q. 274 (1929).

[16] SMIGEL 25; WEYRAUCH 66 n.1, 245, 266, 288-90; Rueschemeyer 20-21. See also LLEWELLYN 102, 143.

[17] SMIGEL 10-11; WEYRAUCH 70-72.

[18] SMIGEL 15-16 n.30, 205, 302; WEYRAUCH 127, 130-31.

[19] CARLIN 173-84; SMIGEL 63-64, 228-33, 257, 346-47; WEYRAUCH 51-53, 121-45, 278-79; Agger & Goldstein 26-27; FREEMAN 232, 234, 236-37 (authoritarian, more at ease with older people); Krastin 426-27, 437-38; Ladinsky 128-34, 142-44.

[20] CARLIN 93-97; SMIGEL 18, 303, 355 n.12; WEYRAUCH 266 (privileged communications); FREEMAN 5-16.

[21] SMIGEL 256, 259-66; WEYRAUCH 3, 139-45.

[22] CARLIN 168-72, 190-92; SMIGEL 77, 334-36; WEYRAUCH 198-210.

[23] SMIGEL 18, 26, 81, 211 ("property does not exist for us"), 246 n.8, 303-04; WEYRAUCH 187-210. On the self-contempt of lower-level practitioners for being "in business," see CARLIN 168-72, 192-95.

background, preferably white, Protestant, Anglo-Saxon, Ivy-League.[24] They favor the social and economic status quo, cautious change not being foreclosed.[25] They have misgivings toward the press and publicity.[26] Emotional involvement with clients is considered improper; yet in many respects—for instance, as to style of life and ideology—lawyers identify with them.[27] Lawyers are often discontent, dissatisfied with what they do, and subject to strains and dilemmas.[28]

Smigel points out that in recent years promising trends toward democratization have taken place. For example, there has been less emphasis on social criteria of selection and more on intelligence and professional competence. (Pp. 236-38, 352-53.) [29] Even though this is probably a correct observation, perhaps a caveat should be added. The question of intelligence and professional competence, seemingly based on measurable criteria and merit, is actually often based on submerged value preferences that may reflect older cultural predispositions. The same persons and groups that were excluded in the past because of their "improper" background, may have a hard time in the future because of purportedly insufficient competence or personality.[30] In fact it may be more difficult to refute selective factors that are seemingly based on intellectual and personal competence, especially since the persons engaged in recruitment ordinarily in good faith firmly believe in the absolute validity of their standards. There is some evidence that the emphasis of discriminatory strategies is shifting to this largely unconscious level. However, I can only sympathize with Smigel for not casting this doubt on our hopes and aspirations.

---

[24] CARLIN 3-27, 129-32, 168-81; SMIGEL 37 ("Nordic"), 39-40, 44-45, 72-74, 172-75; WEYRAUCH 44-45, 111-12, 225-30, 241-43; FREEMAN 234; Krastin 421 n.21; Ladinsky 130-32, 136-39, 143-44; Riesman, *Law and Sociology* 664-65; Rueschemeyer 23-25.

[25] SMIGEL 17-19, 253, 342; WEYRAUCH 46, 274, 277-84; Agger & Goldstein 25-26; FREEMAN 232 (conservatism); Krastin 421 n.21, 454; Riesman, *Law and Sociology* 659. See also Aubert, *Researches in the Sociology of Law*, American Behavioral Scientist, Dec. 1963, pp. 16, 20.

[26] SMIGEL 18-20, 223, 320-21; WEYRAUCH 137, 139 (publicity harms prestige), 158, 168, 228; Rueschemeyer 18-19.

[27] CARLIN 95-97, 129-32, 164; SMIGEL 265, 314-22; WEYRAUCH 268-70; FREEMAN 235, 237; Gold 84; Krastin 426-27; Ladinsky 139, 143; Riesman, *Law and Sociology* 664, 670-71 ("guilt by association"); Rueschemeyer 22-30. See also LLEWELLYN 148-51; Probert, *Law and Persuasion: The Language-Behavior of Lawyers*, 108 U. PA. L. REV. 35 (1959) (veiled appeals to emotion).

[28] CARLIN 168-205; SMIGEL 15-16 n.30, 292-310; WEYRAUCH 29-30, 115-19, 146-68, 246-84. See also LLEWELLYN 119-21; Mazor, Book Review, 8 UTAH L. REV. 283, 286-87 (1963).

[29] *But see* as to ethnic and religious discriminations, SMIGEL 44-45, 65-67, 140 n.7; Note, *The Jewish Law Student and New York Jobs—Discriminatory Effects in Law Firm Hiring Practices*, 73 YALE L.J. 625 (1964). Members of minority groups may succeed in the recruitment process if they have absorbed the styles of life and value preferences of the dominant culture, and if they are neither too aggressive nor too accommodating and especially qualified under conventional standards.

[30] The grading process, aptitude tests, and admission standards in formal education probably reflect, to some extent at least, an underlying cultural bias. They may be viewed in the context of a recruitment pattern that begins with infancy. Even after these hurdles have been overcome, a hiring partner or committee may conclude that a job applicant is "not really that good" or that "he is not the kind of person we are looking for." See also note 4 *supra*.