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Criminal Lawyer. By Arthur Lewis Wood

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BOOK REVIEW

CRIMINAL LAWYER. By ARTHUR LEWIS WOOD. New Haven, Connecticut: College & University Press. 1967. Pp. 277. \$6.50.

The recently published Report by the President's Commission on Law Enforcement and Administration of Justice¹ has been criticized by Professor Herbert L. Packer of Stanford for failing to recognize that crime is not a natural phenomenon, like the weather or a plague, but rather what society chooses to treat as criminal.² Contributing to this failure, he believes, was the absence from the Commission of philosophers, economists, sociologists, and defense lawyers. The Report does talk *about* defense lawyers under the euphonious heading "Officers of Justice"; it makes sensible recommendations for state-financed systems for providing accused persons with lawyers;³ it speculates about where the needed defense lawyers will come from and, noting that meagre economic rewards contribute to their scarcity,⁴ makes the following judgmental comment about criminal lawyers:

Furthermore, in nearly every large city a private defense bar of low legal and dubious ethical quality can be found. Few in number, these lawyers typically carry large case loads and in many cities dominate the practice in routine cases. They frequent court house corridors, bondsmen's offices, and police stations for clients and rely not on legal knowledge but on their capacity to manipulate the system. Their low repute often accurately reflects the quality of the services they render.⁵

Arthur Lewis Wood's book, *Criminal Lawyer*, performs the impor-

¹ THE CHALLENGE OF CRIME IN A FREE SOCIETY: A REPORT BY THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE (1967) [hereinafter cited as REPORT].

² Packer, Book Review, THE NEW YORK REVIEW OF BOOKS, Vol. 14, No. 6, Oct. 12, 1967, at 17, 18. "It was the conservative President Taft, later Chief Justice of the Supreme Court, who characterized our criminal law as a disgrace to civilization." Cohen, *Moral Aspects of the Criminal Law*, 49 YALE L.J. 987, 1007 (1940).

³ REPORT at 149-53; see also THE COURTS: A TASK FORCE REPORT BY THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE 52-64 (1967) [hereinafter cited as The Courts].

⁴ Of the 229 respondents to a survey of the 1951 graduating class from the University of Michigan Law School, two admitted to being specialists in criminal law. *Supplement, Class of 1951*, 65 MICH. L. REV. 1685, 1690 (1967). Of the about 200,000 lawyers in private practice in the United States, between 2,500 and 5,000 accept criminal representation more than occasionally. THE COURTS at 57.

⁵ REPORT at 152.

tant service of revealing—and, to a degree, correcting—the superficiality of this statement and of the Report's general treatment of the private defense bar, treatment which may be characterized as largely unanalyzed disparagement.

In *Criminal Lawyer*, Professor Wood, a sociologist,⁶ examines the characteristics and attitudes of criminal lawyers "in the perspective of the social system in which they function" (p. 15), and his findings show the extent to which criminal lawyers are the victims rather than the artificers of the maladministration of criminal justice. His method is to compare an ideal type, *i.e.*, how criminal justice is supposed to function, with a picture of reality which emerges when lawyers speak for themselves. He describes his ideal type as follows:

A constructed typology of criminal justice in a democratic society has as its guiding ideals individual rights and efficiency, but its form of organization is that of a bureaucratic structure. That is to say that its personnel are expertly trained, their functions are strictly defined, and their authority is rigidly enforced by a system of norms which have been internalized by the actors to constitute what is commonly designated a professional service. The main actors in this typology are the police, the prosecutor, the defense attorney, and the judge (p. 20).

Against this model he projects the results of interviews with about 200 lawyers in five cities, approximately evenly divided between criminal and civil lawyers, about their career patterns, professional behavior, informal relationships, and attitudes.⁷

⁶ Professor Wood received his Ph.D. from the University of Wisconsin. He is chairman of the Department of Sociology and Anthropology at the University of Connecticut.

The ingenuity of sociologists in finding types of lawyers to investigate seems boundless. A recent tabulation lists other studies, published or in progress, on the solo lawyer, the matrimonial lawyer, the Negro lawyer, the Detroit lawyer, the Wall Street lawyer, the corporate lawyer, and the female lawyer. Smigel (author of *THE WALL STREET LAWYER* (1964)), Book Review, 76 *YALE L.J.* 1252 (1967). It would be disappointing if someone is not at work on the hippie lawyer.

⁷ The interviewing was done in the summer of 1951, *i.e.*, as a part of the survey of the Legal Profession of the American Bar Association. The five cities and their approximate total populations in 1951 were: New London, Connecticut (31,000); the Borough of Brooklyn, New York (3,000,000); Jersey City, New Jersey (300,000); Birmingham, Alabama (330,000); and Madison, Wisconsin (100,000). The interviews covered virtually all lawyers doing appreciable criminal work in three locations and over 40% of such lawyers in two locations. Approximately equal numbers of civil lawyers from each location, selected at random, were also interviewed to provide a basis for comparison with criminal lawyers as to careers and characteristics. The totals were 101 criminal lawyers and 104 civil lawyers (pp. 28-29).

Both groups were asked a series of 53 questions about their education, family background and religion; the general nature of their legal practice, why they became lawyers, and their difficulties getting established; their satisfaction with their profession and

The inquiries on career patterns of criminal lawyers deal with their social origins (lowly), how they chose (most did not) and prepared for (minimally) their work, and how well adjusted they are to their roles (not very). Two quite distinct groups of criminal lawyers emerge:

The one who has failed to establish a really successful practice and therefore accepts criminal cases as a way of enlarging his practice; and second, the more successful attorney who relishes the excitement of criminal work and who feels that it secures justice for those accused of crime (p. 66).

Profiles are presented of three types of criminal lawyers: a general practitioner who does some criminal work, a politician, and a criminal law specialist. The general practitioner seems prone to recommend guilty pleas. The politician admits that "to be a successful criminal lawyer you have to participate in a number of activities which would not bear the light of day" (p. 81). The specialist, a breed which can be found mainly in large cities, handles over 200 run-of-the-mill cases a year, does no appellate work, and is referred to by some as a shyster (p. 89).

The responses on professional behavior reveal that most criminal lawyers practice alone; that their client relationships are generally unsatisfactory; and that they are thought by civil lawyers to be unethical and are not welcomed in organized bar activities. The following observations are of particular interest to educators:

It is possibly significant for a system of criminal justice that we find those attorneys who are without a college degree less likely to refuse a case because he [*sic*] is morally objectionable; more likely to be counsel for guilty persons in trial court; and more likely to take hardship cases without collection of a fee (p. 101).

* * *

Rather than proving that the criminal law practice is more unethical than the practice of civil law, the accumulated evidence . . . raises questions of standards in both fields. . . . Several types of evidence indicate that many attorneys have a laissez-faire regard for questions of professional ethics, and relatively few persons of this profession appear to have thought much about why unethical practices exist (p. 127).

Some of the most interesting and significant material in the book

income; their political, bar association and other group activities; friends; clients, how they got them, and how they collect fees; and their attitude about correctional procedures (Appendix, pp. 278-92).

is Professor Wood's treatment of responses concerning the informal relationships of criminal lawyers: community and political activities; relations with administration officers; and systems of informal relations. He notes that these informal relations tend to develop "where the cultural norms for behavior place a strain on the participants occupying the socially defined roles" (p. 135). He emphasizes the pivotal position of the prosecutor's office in the criminal lawyer's work and the pressures on the lawyer to become a member of the clique that is "in" with the administration. In this regard he states:

Clique membership tends to stabilize a practice and to bring greater certainty to registration. For the solo practitioner, a strong clique relationship takes the place of security derived from membership in a law firm (p. 164).

Professor Wood concludes:

All forms of informal relationship in criminal practice—whether they emphasize political activity, contacts with officials, or cliques among themselves—are a response to the strains imposed upon a competitive practice in which the rewards are limited in professional prestige and financial success as measured by the standards of the legal profession. These informal systems can also be considered a partial substitute for associations with the business community in which the criminal lawyer fails to participate. Where the civil lawyer often finds his social and recreational contacts as well as his clients in various civic organizations, the criminal lawyer associates for the same reasons with local government officers and politicians.

It would be much too facile and partly erroneous to attribute informal relationships or violations of professional codes to manifestations of individual deviates and inadequacies of law school training. . . . [T]he system becomes a defensive organization in response to the minority status of the criminal practice . . . the subculture of a professional group (pp. 179-80).

It is possible, of course, that the criminal lawyer's relative disassociation from the business community is not unhealthy; it may leave him freer and better able to perform his functions than he would be if he had the business relationships characteristic of civil practitioners.⁸

Responses on criminal procedure and penology confirm Professor Wood's other findings that criminal lawyers, particularly those *with-*

⁸ Dean Pound noted that judges have "the prejudices which . . . the dogmas learned in a college course in economics, and habitual association with the business and professional class, must inevitably produce." Pound, *Common Law and Legislation*, 21 HARV. L. REV. 383, 404 (1908).

out college degrees, tend to be relatively sensitive to and interested in the professional needs of the indigent and the desirability of treatment, rather than segregation of offenders. Thus, a hopeful finding of the study is that criminal lawyer selection has provided defense counsel who tend to be more aware of human needs than are the general run of lawyers:

There would seem to be an inherent affinity between the low social class origins of criminal lawyers and their sympathetic understanding of the criminal. Conversely, these social origins are incompatible with the symbols of prestige in the profession of law as well as the larger community, and consequently these avenues to professional recognition are frequently denied (p. 258).

In his concluding chapter, Professor Wood indicates what he thinks are major strains in the part of the system of criminal justice he has examined: the criminal lawyer's problem of procuring clients; the circumstance that most of his clients are guilty of *some* offense; the "bargain system of justice" resulting from the prosecutor's wide discretion; and lawyer attitudes, which seem, as we have noted, to increase in callousness with education and financial success. He makes three suggestions for easing these strains (pp. 273-74): (1) "establish government officials with whom the criminal lawyer must work—police, prosecutors, clerks and judges—on a nonpolitical professional basis of appointment and careers"; (2) create "a strong, competent agency for serving indigents accused of crime"; and (3) increase the number of large criminal law firms. While admitting that the bar's present attitudes toward these suggestions "are of indifference or active antagonism," he sees some hope that "[a]s public funds are used more generously for providing counsel to arrestees, greater attention will be paid to the quality of this practice" (p. 276).

There are, however, formidable obstacles to change. Notwithstanding its variance with professed ideals, the maladministration of criminal justice has itself become institutionalized, creating self-interested aversion to change among judges, prosecutors, and defense lawyers. This aversion is unlikely to be significantly disturbed by legislatures, bar associations and law schools preoccupied with more respectable, better paying concerns.

To this reviewer two points come through strongly from Professor Wood's study. First, it would appear that the condition of criminal lawyers can neither be explained nor improved by calling them in-

ferior people; in fact, in some lights many of them are relatively superior people when compared with other lawyers. Second, it would seem that their condition can be better understood and perhaps improved by also examining and improving the way police, prosecutors, judges, and clerks function. And, returning to Professor Packer's point with which we began, it is possible that much of the malfunction of these officials is due less to character and training defects than to the condition of our substantive criminal law. By purporting to regulate more human conduct than can or should be regulated by criminal sanction, our substantive criminal law has given those who administer it (including criminal lawyers) more discretion than is good for them or for society.

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