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Lawyers and Their Work: An Analysis of the Legal Profession in the United States and England, by Quintin Johnstone and Dan Hopson

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LAWYERS AND THEIR WORK: ANALYSIS OF THE LEGAL PROFESSION IN THE UNITED STATES AND ENGLAND. By Quintin Johnstone and Dan Hopson, Jr. Indianapolis, Kansas City, New York: Bobbs-Merrill Co. 1967. Pp. x, 604. \$10.00.

The task Johnstone and Hopson set for themselves is monumental. They seek to determine the goals for the legal profession; to present a picture of its work and specializations; to offer alternatives for providing legal services; and to describe the legal profession in England, primarily as a mirror which might point up the strengths and weaknesses of the American legal system. Their primary purposes are to identify the problems of the legal profession and to suggest solutions to some of them.

Lawyers are a powerful and important group in this country. Their influence is felt in every sector of national life, from entertainment to industry, from the family to the government. What lawyers do is, therefore, important to all of us. But what they do is not easy to describe, because lawyers are involved in many different tasks and work in and with a great variety of organizations. The city solo practitioner,¹ for example, is usually, because of different origins and types of practice, isolated from the large firm lawyer.² The former takes what is often considered the leftovers of the law: criminal, divorce, and negligence work; the latter can be selective.

While there are a number of studies, mainly researched by sociologists,³ which describe the work of lawyers, none⁴ of these examinations

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1. J. CARLIN, *LAWYERS ON THEIR OWN* (1962).

2. E. SMIGEL, *THE WALL STREET LAWYER* (1964).

3. In addition to the studies cited above, sociologists have also written: J. CARLIN, *LAWYER'S ETHICS: A SURVEY OF THE NEW YORK CITY BAR* (1966) (ethics of lawyers); H. O'GORMAN, *LAWYERS AND MATRIMONIAL CASES* (1963) (matrimonial lawyer); A. WOOD, *THE CRIMINAL LAWYER* (1967) (criminal lawyer); W. Hales, *The Career Development of the Negro Lawyer, 1958* (unpublished doctoral dissertation in University of Chicago Library) (negro lawyer); D. Lartie, *The Striving Young Lawyer: A Study of Early Career Differentiation in the Chicago Bar, 1958* (unpublished doctoral dissertation in University of Chicago Library) (young lawyer); W. Thielen, *Socialization Processes Among Law Students, 1965* (unpublished doctoral dissertation in Columbia University Library) (student lawyer); Ladinsky, *Careers of Lawyers, Law Practice, and Legal Institutions*, 28 *A.M. Soc. Rev.* 47 (1963) (Detroit lawyer).

4. Although sociologists have not provided an overview of the legal profession,

provides an overview of the legal profession. Each looks at the profession mainly in terms of the segment he studied. Here we are offered a larger view, not only describing what the 250,000 practicing lawyers do, but also the conditions under which they do it. One important conclusion Johnstone and Hopson reach is that the number and proportion of lawyers employed by corporate law departments will increase, as will those working for government. Thus the number of attorneys working together will increase, and the number of solo practitioners will decrease.

This trend has many implications for the legal profession. It means that the broad tasks lawyers perform (which are discussed under the following headings: advice, negotiation, drafting, litigation, investigation of facts, legal research and analysis, lobbying, acting as broker, public relations, adjudication, emotional support, immoral and unpleasant tasks, acting as scapegoat, and business getting) will remain largely the same. However, the way these tasks are performed, under what canons of ethics they are performed, and by whom they are performed are subject to vast changes.

As law has developed into many areas of specialization and because these areas are relatively narrow, a system of standardized legal forms is evolving. Once the lawyers prepare the forms, a lay person can work with them. The result is that now the layman can perform certain legal tasks because the smaller segments are easier to understand and to handle. In fact, the authors believe that in many instances lay people can perform some legal work more efficiently, more cheaply, and faster than lawyers.

One alternative to the use of lawyers is found in mortgage review organizations. Here, according to the authors, specialized lay clerical workers are displacing lawyers. In one such company, seventy percent of all mortgages were not seen by lawyers. Ten percent were spot checked, and twenty percent were sent directly to lawyers because they were unusual. Another alternative described is the big plant title insurer.

This ancillary use of laymen in legal capacities is considered by the authors to be good for the profession rather than threatening. If lay people were employed to perform para-legal functions, this would then free the trained professional to direct his educational experience to that part of the law which he is best equipped to handle. Medicine has already recognized the need to divide its labor so that jobs which once were performed by physicians are now accomplished by a variety of lay specialists, *e.g.*, the x-ray and laboratory technicians, the nurse, the physical therapist, and so on. It may be time for the lawyers to follow suit.

One of the more interesting and provocative chapters deals with the architects as advocates and adjudicators as well as creators of standardized legal documents. Much of the legal work in the construction industry is performed by architects. Both tradition and the client seem to prefer him to the lawyer. The demands of time are given by the authors as one reason for this most interesting phenomenon. Also, the architect is there—he knows both the client and the contractor, and he understands the construction industry. He has established an historical professional role as an impartial adjudicator even though by contract he performs an advocate role for the client. The potential conflict of interest does not seem to deter his use as an adjudicator.

Out of these roles usually considered the monopoly of lawyers, the architects, through the American Institute of Architects and with an assist from lawyers and various other associations involved, have drawn up a series of standardized legal forms. These forms which can be completed by lay people tend to minimize the position of the lawyer and the courts as the appropriate agents to minimize and settle construction conflicts.

English legal practices also attract the authors' interest. But the transition to the discussion of the four chapters on the English legal profession is abrupt and traumatic. It is not until one reads the closing section on proposals for change that this material is related to the rest of the book. The sociologist, however, is able to derive valuable information (we know so little about professional associations), from the detailed material on the Law Society which was founded in 1825 and represents solicitors.

The scope of the authors' thinking about the profession is seen in the 123 specific problems which they feel should concern the legal profession today. These problems are posed in question form and are listed under the following headings: occupational entry and preparation, occupational organization, work allocation, work performance, occupational incentives and controls.

The authors, however, do more than ask questions; they also propose answers. Some do relate to the British bar; the majority, however, are concerned with the American legal system. Many of the solutions, especially those suggesting the use of lay persons for legal work, are provocative. Solutions to the variety of problems posed range from legal work to be handled on a mass volume basis to the use of unadmitted law clerks, and from eliminating governmental incompetence, especially with those agencies lawyers regularly deal with, such as the police, the courts, etc., to suggestions about continuing education, such as providing concentrated short courses in specialized areas of the law.

Lawyers and Their Work is an important, useful, and challenging book. It provides a wealth of material presented in a straightforward way. While the authors interviewed 400 people, the respondents were "informants" rather than a scientifically selected sample. These respondents are important to the book, especially as examples, because a good portion of it depends on their statements, but no claims are made that the interviews are representative. The senior author, because of his knowledge of the legal profession and his expertise in real property law, is especially qualified in two of the significant areas covered in this work. Together the authors have questioned the existing norms of the bar associations, stirred up controversy, and asked for reconsideration of legal practices in this country. This combination of pure information and stimulating speculation should be of immense value to lawyers and students of law who are seriously concerned with the legal profession.

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