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Ted Finman

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BOOK REVIEW

VERDICTS ON LAWYERS. Edited by Ralph Nader and Mark Green. New York: Thomas Y. Crowell Co., 1976. Pp. xviii, 323. $10.00.

*Reviewed by Ted Finman**

Verdicts on Lawyers consists of twenty-three essays written by twenty-five authors,[1] most of them attorneys. The purpose of this compilation is to promote reform by (1) noting and describing deficiencies in the behavior of lawyers, in the structure and organization of the legal profession, and in rules and mechanisms that affect the distribution of legal services to poor and middle-class clienteles and (2) prescribing remedies for the problems noted.

Because the editors and many of the contributors have devoted much of their time and energy to promoting social reform, a question arises concerning the evaluative framework that should be used in appraising this book. Reform-minded writers and editors can play different roles, and the criterion that should be used in appraising their work depends on what they purport to be doing.

One role is that of propagandist for a cause. Here the writer's loyalty and obligation run to the cause, not to the reader. Readers understand this, however; they expect polemical works to be one-sided, exaggerated, highly biased presentations containing statements, innuendos, and arguments that must be taken with an appropriate grain of salt. Consequently, the crusading polemicist should not be criticized for lacking objectivity unless his or her work falls below minimal standards of honesty and rationality.

Writers, of course, usually present themselves not as polemicists but as searchers after truth, social critics who, despite their own convictions, recognize that their primary obligation is to educate and inform their audience rather than to convert it. Even such writers hope to convince their readers and certainly are entitled to argue vigorously for a point of view. Nonetheless, they should present the facts fully and fairly; disclose the difficulties in their arguments; and examine not only the beneficial but also the possibly harmful consequences of proposed remedies. Although this is an ideal seldom if ever realized, it constitutes the appropriate standard

* Professor of Law, University of Wisconsin. A.B., University of Chicago, 1950; LL.B., Stanford University, 1954.

1. The volume also contains an introduction by co-editor Ralph Nader.

for appraising work that purports to be not propaganda but rational, objective social criticism.

What standard should be used to appraise *Verdicts on Lawyers*? The editors are well-known consumer advocates interested in whether producers of goods and services give fair value to their customers, in exposing those who do not, and in promoting reforms that will protect consumer interests. It would be unreasonable, therefore, to fault them or their authors for focusing on the shortcomings of lawyers and neglecting the many ways in which the bar contributes to the welfare of society. Moreover, it is reasonable and proper for the editors to present inequities in ways that will elicit a sympathetic, emotional response from the reader. This does not mean, however, that *Verdicts on Lawyers* can reasonably be viewed or evaluated as propaganda. This book, after all, is not a tract given away free on street corners or sold for a pittance at political meetings. Purchasers must pay a substantial price for the book and therefore are justified in assuming that *Verdicts on Lawyers* is designed to fill their need for reliable information and reasoned analysis rather than to serve the ideological ends of its editors. This expectation is reinforced by Nader's introduction, which refers to scholarly studies and well-known professors of law, uses phrases like "realistically appraised" and "evaluation" to characterize the essays that follow, and tells the reader that the "gathering of facts and judgments in this book can help illuminate the tangible horizons of the profession."[2] Within the essays themselves, footnote references to books, articles, judicial decisions, and other authorities suggest the exercise of a certain degree of care and objectivity.[3] In short, since *Verdicts on Lawyers* appears to be a book on which readers can rely for accurate data and balanced analyses,[4] it should be evaluated as such, not as a political polemic. Certainly its editors would agree. Do not Messrs. Nader and Green champion the view that conscientious producers should be sensitive to the needs and expectations of consumers? Do not purchasers and readers of books, no less than those who buy automobiles or hire

2. VERDICTS ON LAWYERS, at viii-ix, xviii (R. Nader & M. Green eds. 1976) [hereinafter cited as VERDICTS].

3. Rather than accompany the text of each article, the footnotes are collected in VERDICTS, *supra* note 2, at 307-23.

4. Some readers may have different expectations. Viewing lawyers and legal institutions as part of a basically evil and corrupt system and accepting co-editor Nader's reputation as a foe of the establishment, these readers may look to *Verdicts on Lawyers* not for education but for comfort and support. Although the essays do not always provide such solace, these readers may well get their money's worth.

lawyers, have interests as consumers?

In analyzing their value to readers, I have divided the essays into four categories: (1) those that make a significant contribution to the existing literature; (2) those that in the main restate information and ideas readily available elsewhere; (3) those that in my judgment are so flawed that they detract from the book; and (4) those that seem to me irrelevant to the book's purposes.[5]

I.

One essay, Jack Newfield's "The Ten Worst Judges,"[6] contributes significantly to the literature. On the assumption that publicity concerning reprehensible judicial conduct might help deter such behavior and contribute to development of a better system for dealing with unfit judges, Newfield presents sketches of "the ten worst" New York City judges. The presentation is well researched: the author read "more than one hundred court transcripts and interviewed more than fifty trial lawyers . . . [and] judges, court officers and stenographers, prosecutors, cops, members of judicial screening committees, and other journalists who cover the courts."[7] He selected his ten subjects from a list of twenty-two who had been

5. I have chosen not to devote full treatment in the text to this group of essays. Riley's "The Mystique of Lawyers," VERDICTS, *supra* note 2, at 80-93, is a disjointed series of simplistic statements about law and lawyers. Riley really seems to express dissatisfaction with society generally rather than simply with legal institutions. This impression is confirmed by his last paragraph. If, as I assume, the purpose of *Verdicts on Lawyers* is to explore not social inequities inherent in the basic structure of society or in human nature itself, but problems endemic to the legal profession and legal institutions, Riley's essay is irrelevant.

The other irrelevant essay is Judge Justice C. Ravitz's "Reflections of a Radical Judge: Beyond the Courtroom." *Id.* at 255-68. This essay is billed by co-editor Nader as a "forthright description of a municipal court." *Id.* at xi. Because most of Judge Ravitz's essay is essentially a statement of his credo as a radical judge, Nader's characterization is not quite accurate. The author begins with a rather traditional polemic against American society and its legal institutions. *Id.* at 255-59. He then describes the campaign that led to his election to the Detroit municipal bench, explains why it is not a "contradiction for a radical to be a judge," and describes how a radical judge should behave. *Id.* at 265-68. He relates two cases in which he adopted a rather unorthodox but interesting approach to corporate misconduct. *Id.* at 260-61. All of this tells us much about Judge Ravitz but little about his court. The only part of the essay that does focus on the Detroit municipal bench as such is the three-page section on the efforts of Judge Ravitz and a colleagne to reform the criminal arraignment process. Because only that brief portion relates to the stated purpose of *Verdicts on Lawyers*, the essay is irrelevant in my opinion. Considered on its own and apart from *Verdicts on Lawyers* and disregarding the hackneyed polemics, Judge Ravitz's essay is fairly interesting.

6. Newfield, *The Ten Worst Judges*, in VERDICTS, *supra* note 2, at 269-84. For substantially the same essay, see Newfield, *The Next Ten Worst Judges, or The Ten Worst Judges of 1974*, VILLAGE VOICE, Sept. 26, 1974, at 5, and Newfield, *The Ten Worst Judges*, NEW YORK, Oct. 16, 1972, at 32.

7. Newfield, in VERDICTS, *supra* note 2, at 271.

" 'recommended' by five or more people interviewed as standing for cruelty, stupidity, bias against the poor, short tempers, or total insensitivity to civil liberties."[8]

In one sense, of course, there is nothing new in what Newfield has to say. At the analytic level—as an abstraction—the meaning of "bad judge" and the fact that some members of the judiciary fall into this category are well understood. Most people, however, have not *experienced* a "bad judge," and this is an important gap in their understanding. Without experiential knowledge, they cannot really appreciate what bad judges mean to the people whose lives they directly affect, and without that appreciation they lack data that bear importantly on how much of society's resources should be allocated to solving this problem. It is one thing to understand the definition of pain, quite another to feel it. As with pain, understanding the meaning of "bad judge" at the level of feeling gives one a deeper appreciation of the need for a remedy than does analytic knowledge alone.

Newfield's vivid sketches of New York's worst promotes this appreciation. Through excerpts from transcripts of judicial proceedings he opens the door to the courtroom so that readers can see and feel what is happening inside. This will be new knowledge for most, a refresher course for some, and important for all.

Newfield deserves credit not only for saying something important but also for the responsible, careful way in which he says it. His presentation easily could have created the impression that his subjects are typical and, indeed, that their presence on the bench is part of a grand conspiracy by which one segment of society oppresses the rest. Whatever else may be said in defense of these views, Newfield's data do not support them, and therefore to imply the contrary would violate an author's obligation to his or her readers. No such violation occurs in Newfield's work. Indeed, he takes care to avoid misinterpretation of his data. Early in his essay he tells his readers that "[t]here are good judges and bad judges; the good ones approximate justice, in spite of the system's inhibitions"[9] and warns that focusing on ten individuals is "a journalistic device that simplifies and personalizes."[10] After depicting the bad judges, Newfield again notes that "there are many good judges."[11]

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8. *Id.* at 272.
9. *Id.* at 271.
10. *Id.*
11. *Id.* at 283.

II.

Fifteen of the essays in *Verdicts on Lawyers* deal with topics and present materials that would be quite familiar to persons acquainted with the literature available before the book's publication.[12] Seven are concerned with rules regulating the legal profession, the delivery of legal services to poor and middle-class clienteles, and the interrelationships between the two.[13] Two discuss the roles played by lawyers and bar associations in promoting the selection of competent judges.[14] Six are concerned with lawyers' behavior—two with what should be done to protect against misbehavior,[15] and four with what business and government lawyers should do when the desires of their clients clash with the public interest.[16]

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12. In at least seven instances, the essays in *Verdicts on Lawyers* previously had been published elsewhere in substantially the same form. These prior publications are cited in note 6 *supra* and notes 13 & 49 *infra*. Given the concern of the editors of *Verdicts on Lawyers* for consumer information, I find a bit curious their failure to mention, in all but one instance, these prior publications.

13. Conyers, *Undermining Poverty Lawyers*, in VERDICTS, *supra* note 2, at 129-43; Freedman, *Advertising and Soliciting: The Case for Ambulance Chasing*, *id.* at 94-104 (taken from M. FREEDMAN, LAWYERS' ETHICS IN AN ADVERSARY SYSTEM (1975) (prior publication acknowledged)); Halpern, *The Public Interest Bar: An Audit*, *id.* at 158-71 (for substantially the same essay, see Halpern, *Public Interest Law: Its Past and Future*, 58 JUDICATURE 118 (1974)); Hochberg, *The Drive to Specialization*, *id.* at 118-26; Lieberman, *How to Avoid Lawyers*, *id.* at 105-17; Lorenz, *State of Siege: Group Legal Services for the Middle Class*, *id.* at 144-57; Tunney & Frank, *Epilogue: A Congressional Role in Lawyer Reform?*, *id.* at 295-304 (for substantially the same piece, see Tunney & Frank, *Federal Roles in Lawyer Reform*, 27 STAN. L. REV. 333 (1975). For passages from and references to commentary on the topics covered in these essays published prior to *Verdicts on Lawyers*, see V. COUNTRYMAN, T. FINMAN, & T. SCHNEYER, THE LAWYER IN MODERN SOCIETY 51-60, 625-32 (2d ed. 1976) (public interest law practice) [hereinafter cited as COUNTRYMAN]; *id.* at 568-606 (legal services for the poor); *id.* at 606-25 (group legal services and other matters relating to legal services for the middle class); *id.* at 433-36, 442-47 (advertising, solicitation, and publicity); *id.* at 766-95 (specialization, certification, and continuing legal education); *id.* at 518-19, 625 (reducing legal costs by increasing lawyer efficiency; paraprofessionals).

14. MacKenzie, *Of Judges and the ABA*, in VERDICTS, *supra* note 2, at 33-46; Schmidt, *Lawyers on Judges: Competence and Selection*, *id.* at 285-94. For passages from and references to commentary on these subjects published prior to *Verdicts on Lawyers*, see COUNTRYMAN, *supra* note 13, at 653-95.

15. Clark, *Crisis at Justice*, in VERDICTS, *supra* note 2, at 219-30; Garbus & Seligman, *Sanctions and Disbarment: They Sit in Judgment*, *id.* at 47-60. Clark offers a long list of proposals, most of which have been discussed in a wide range of forums. For passages from and references to materials on the inadequacies of the process for disciplining lawyers, see COUNTRYMAN, *supra* note 13, at 811-20, 836-38.

16. Califano, *The Washington Lawyer: When to Say No*, in VERDICTS, *supra* note 2, at 187-69; Pertscbuk, *The Lawyer-Lobbyist*, *id.* at 197-207; Rabinowitz, *The Prosecutor: The Duty to Seek Justice*, *id.* at 231-41; Smyser, *In-House Corporate Counsel: The Erosion of Independence*, *id.* at 208-16. For passages from and references to materials on the subjects of these essays, see COUNTRYMAN, *supra* note 13, at 270-75, 293-94, 302-07 (behavior of lawyers representing large corporate clients, especially in dealing with Congress and federal agencies);

These essays are both informational and programmatic. They describe inequities and deficiencies in the legal system and in the profession, explore past reform efforts, and advocate adoption of specific new reforms. Unfortunately, they add very little to what already was available.[17]

Thus the value of these essays will depend on the audience. Those who have more than a passing interest in the legal profession and who have pursued the literature to any significant extent will find little that is new or interesting. As a primer for uninformed readers who want to obtain some elementary education with a minimum of effort, however, these fifteen essays constitute a useful collection and serve an important function. I should stress that this is my judgment of the fifteen *as a collection.* Individually, they vary substantially in quality. Some are very well done—accurate, balanced, insightful—and even readers who intend to delve more deeply will find them useful as a starting point.[18] Others, although they seem to me on balance to weigh out positively, have serious deficiencies.

One deficiency is the failure to refer readers to other material through which they might broaden and deepen their understanding. For example,[19] MacKenzie's essay on the role of the ABA in the selection of judges[20] fails to cite (a) the major work on this subject,[21] (b) helpful material on judicial appointments during the Johnson Administration,[22] a period which saw significant changes in the ABA's role (changes the author does not note), or (c) scholarly articles exploring the Haynsworth and Carswell Supreme Court nominations.[23] Lapses of this sort, of course, are significant only to read-

id. at 245-49 (responsibilities of prosecutors); *id.* at 46-51 (responsibilities of other government lawyers); *id.* at 41-46 (in-house corporate counsel).

17. For references to previously available materials, see notes 13-16 *supra.*

18. Charles Halpern's "The Public Interest Bar: An Audit," VERDICTS, *supra* note 2, at 158-71, is an exellent summary of the emergence of public interest law practice and the problems it faces in the future. *See also* Lieberman, *supra* note 13, at 105-17; Schmidt, *supra* note 14, at 285-94.

19. Another striking example is Marna Tucker's failure in her essay "*Pro Bono* ABA?," VERDICTS, *supra* note 2, at 20-33, to cite Brickman, *Legal Delivery Systems—A Bibliography,* 4 U. TOL. L. REV. 465 (1973), a detailed and comprehensive listing of materials on legal services for the poor, the OEO program and its problems, group legal services, and so on. For references to other writings on topics covered but left uncited by these essays, see notes 13-16 *supra.*

20. MacKenzie, *supra* note 14.

21. The work referred to is Joel Grossman's *Lawyers and Judges: The ABA and the Politics of Judicial Selection* (1965).

22. This material is contained in chapter 5 of Harold Chase's *Federal Judges: The Appointing Process* (1972).

23. Grossman & Wasby, *The Senate and Supreme Court Nominations: Some*

ers interested in further study. Two other flaws, however, are relevant both to such readers and to those who are likely to rely entirely on *Verdicts on Lawyers* for their understanding of the problems it addresses. Indeed, for such an audience these flaws are especially serious, since the resulting misapprehensions are not likely to be corrected.

The most serious and frequent flaw in this group of essays is the failure to identify—not *discuss*, just *identify*—issues of which readers should be aware if they are to appreciate the difficulties and complexities of the reforms advocated. Even if these essays are viewed only as a basic primer, the authors should have noted questions that bear on the validity of their arguments and should have indicated the costs that might be generated by their proposals and the problems that might arise and need to be solved if those proposals were adopted.

In his essay on advertising and soliciting,[24] Monroe Freedman reviews the familiar arguments against the sweeping prohibitions traditionally imposed on lawyers. He provides no suggestions, however, for dealing with the questions that arise once it is decided that those rules should be modified. For example, what limits if any should be imposed to protect the public against false advertising? Should advertising be limited to certain specified information (*e.g.*, information on fees), or should everything *except* "deceptive practices" be allowed? Although it may be desirable that lawyers offer their services to persons who seem to have legal problems, how far should lawyers go in seeking to convince reluctant litigants that they really ought to sue?

Two essays urge increased use of paralegal personnel to reduce the costs of handling what the authors call "routine transactions" and "mechanical tasks."[25] No note is taken, however, of the risk that paralegals, erroneously perceiving complex problems as "routine" or "mechanical," will undertake to serve clients who really need a lawyer's assistance. Are current systems by which lawyers supervise paralegals sufficient to protect against this danger, or is the supervision too perfunctory? What should be done if paralegals eventually form their own firms and serve the public directly without supervision by lawyers, a possibility that one author mentions in passing?[26]

Reflections, 1972 DUKE L.J. 557; Grossman & Wasby, *Haynsworth & Parker: History Does Live Again*, 23 S.C.L. REV. 345 (1971).

24. Freedman, *supra* note 13.

25. Lieberman, *supra* note 13, at 114-15; Tunney & Frank, *supra* note 13, at 299.

26. Lieberman, *supra* note 13, at 115.

After reviewing the lawlessness that riddled the Department of Justice during the Nixon Administration, former Attorney General Ramsey Clark proposes numerous measures to protect against future misconduct.[27] Second on his list is a proposal to prohibit the President from filling Justice Department positions, including the position of Attorney General, with persons who "participated significantly" in the President's campaign or who held "a high political party position, or managed a campaign or . . . sought high political office within two years" of a proposed appointment.[28] Several questions would have helped readers evaluate this proposal. Was the lawlessness of Nixon's appointees due primarily to their prior participation in politics? Were not their political *values* at least as important? Since active participation in politics sometimes reflects a deep and genuine concern for the public interest, might more be lost than gained by barring such persons from service in the Justice Department?

Two essays, one by Joseph Califano and one by Michael Pertschuk, discuss the responsibilities of lawyers who lobby for business clients to take account of the public interest.[29] Both argue, as many have argued before, that important interests often go unrepresented in the legislative arena; that therefore we cannot rely on the clash of adversaries to provide the legislature with the full range of information and arguments needed for intelligent legislative decision making; and that the responsibility of the lawyer-lobbyist voluntarily to disclose material adverse to a client's position therefore should be greater than that of the courtroom advocate. This analysis is useful as far as it goes, but readers would have been served far better had it been carried a few steps further. A key question is whether the duty to disclose should be legal or only ethical; that is, whether those who violate the duty should be subject to legal sanctions. If the obligation is legally binding, will clients speak freely with their lawyers? If communication is impaired, will lawyers lose opportunities to dissuade clients from antisocial courses of action? If the duty is only ethical, will it be meaningful? These and other important questions arise once the distinction between legal and ethical duties is recognized. Neither Califano nor Pertschuk makes this distinction, however. Indeed, it is not clear what position they take on whether the lawyer's duty should be legal or ethical.[30]

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27. Clark, *supra* note 15, at 226-30.
28. *Id.* at 227.
29. Califano, *supra* note 16; Pertschuk, *supra* note 16.
30. For example, in discussing one problem Califano asks whether we should "impose"

Another important question is what the *Code of Professional Responsibility* says about the lawyer-lobbyist's duty to disclose. Both Califano and Pertschuk mention the Code, but neither notes the possible bearing of certain of the Code's Disciplinary Rules. Disciplinary Rule 7-102(A)(5) provides that a lawyer "shall not knowingly make a false statement of law or fact," and rule 1-102(A)(4) prohibits "conduct involving dishonesty, fraud, deceit or misrepresentation." Presumably a lawyer who *consciously* makes a false statement to a legislator would violate these rules. Beyond this, suppose a lawyer is not certain that a statement is false, but considers it highly dubious. Do lawyer-lobbyists implicitly represent to legislators that they, the lawyers, believe their statements to be true, or at least that they have no good reason to think them false? If such representations are implicit, would the lawyer in the hypothetical case above have violated either or both of the quoted Disciplinary Rules?[31]

Another serious deficiency in this group of essays is the presence of erroneous or incomplete statements that tend to misinform readers on matters of some importance.

In his essay on group legal services, Jim Lorenz implies that the bar has behaved in a morally bankrupt manner.[32] As evidence of this, he points to the restrictive rules adopted by the ABA House of Delegates at its 1974 meeting in Houston, rules he characterizes as "sleight-of-hand" by "ABA lawyers" involving "nothing more than the exploitation of a new market at high rates unilaterally set by lawyer trade associations."[33] He fails to mention that at this very same meeting the ABA Standing Committee on Ethics and Professional Responsibility proposed a set of liberalized rules on group legal services; that the president of the ABA supported this proposal; and that the proposal lost by the relatively close vote of 117 to 144.[34] In 1975 the ABA did adopt liberalized rules. Lorenz ex-

a higher "ethical standard." Califano, *supra* note 16, at 193. If "impose" means to require by law, then the standard would be a legal one. If the standard is to be only "ethical," what does "impose" mean? At another point he says "it is incumbent upon those [lawyers] representing privileged dominant interests to *assume* a special measure of responsibility," but then speaks as if he would *require* this by law. *Id.* at 194 (emphasis supplied).

31. *See* COUNTRYMAN, *supra* note 13, at 369-70 (suggesting that *ABA Formal Opinion No. 335* (1974), which overlooks the analysis presented above, incorrectly construed the Disciplinary Rules).

32. Lorenz, *supra* note 13.

33. *Id.* at 150.

34. For the House of Delegates action, see *House of Delegates Act on Group Legal Services, Shield Legislation, Court Organization Standards, and Uniform Divorce*, 60 A.B.A.J. 446 (1974); for the text of the proposals, see A.B.A. SUMMARY AND REPORTS, 1974 MIDYEAR MEETING, Item 127.

plains this with the comment that the "bar finally saw the light because it felt the heat."[35] He overlooks the fact that much of the heat came from within the bar itself.[36] In brief, although some ABA lawyers voted out of self-interest, others, including important members of the ABA establishment, were concerned with the public welfare. Readers of *Verdict on Lawyers*, however, will see only one side of this picture.

Jethro Lieberman's essay, "How to Avoid Lawyers," contains the following passage:

> Consider . . . the great Samuel Williston's withholding of evidence from the other side on behalf of his client in a civil suit . . . . Had Williston been condemned . . . any concern we might have had over the potentially dangerous course of professional ethics would be theoretical. Yet . . . he was not condemned. Quite the reverse: His conduct was justified as the work of a skilled advocate ably aiding his client by obscuring the issues.[37]

This passage is misleading in two ways. First, some readers are likely to interpret the phrase "withholding of evidence" to mean active misconduct of some sort (*e.g.*, refusing to comply with a demand for discovery or purporting to do so but secretly concealing a crucial piece of evidence). In fact, the ethics committee opinion cited for the Williston story involved the failure of an attorney to *volunteer* information adverse to his client's case.[38] This is quite a different matter, for although attorneys expect one another to respond honestly when discovery rules require that they speak, they do not expect an adversary voluntarily to disclose material harmful to the interests of a client. Thus a lawyer's failure to volunteer information is not deceptive, although active concealment would be. Second, the ethics committee did not approve the attorney's

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35. Lorenz, *supra* note 13, at 151.

36. *See, e.g.*, Statement of F.W. McCalpin, former chairman of the ABA Committee on Prepaid Legal Services, to Senate Subcommittee on Representation of Citizens Interests, in *Justice Department and Other Views on Prepaid Legal Services Plans Get an Airing Before the Tunney Subcommittee*, 60 A.B.A.J. 791, 795 (1974).

37. Lieberman, *supra* note 13, at 110.

38. Lieberman's citation is as follows: "Opinion No. 309, in *Opinions of the Committee on Professional Ethics* (ABA, 1956)." This obviously is an error, since (a) ABA Opinion 309 has nothing whatsoever to do with the Williston story and (b) the volume containing ABA Formal Opinion No. 309 was published in 1967, not 1956. Opinion No. 309 of the New York County Bar Association is on point, and it appears in a volume published in 1956, namely *The Opinions of the Committees on Professional Ethics of the Association of the Bar of the City of New York and the New York County Lawyers' Association.* New York County Opinion 309 considers whether a defense attorney acted improperly when he failed to disclose voluntarily that he knew of an eyewitness who could have provided vital testimony on plaintiff's behalf. My discussion in text is based upon the assumption that Lieberman meant to cite New York County Opinion 309.

"aiding his client by obscuring the issues." It said that "[i]n the opinion of the Committee the conduct of the defendant's attorney is not professionally improper."[39]

In at least two respects, Monroe Freedman misdescribes the rules and decisions concerning solicitation in his essay on this topic.[40] Disciplinary Rule 2-104 generally bars lawyers who volunteer advice to lay persons from accepting employment prompted by that advice. Freedman claims that this rule is

> practically meaningless—at least for a particular class of lawyers and clients—because . . . Rule 2-104 provides further: "A lawyer [who has volunteered advice] may accept employment by a close friend, relative, [or a] former client. . . ." This refinement means that those who are accustomed to retain lawyers, say for their tax or estates work . . . are the kind of people who can be solicited despite the rule.[41]

He seems to reason as follows: (a) well-to-do people are likely to have retained lawyers at some time in their lives; (b) thus they will be within the former-client exception of rule 2-104; (c) therefore lawyers are completely free to solicit the well-to-do. This ignores other language in rule 2-104 that allows lawyers to accept employment resulting from advice given former clients *only* "if the advice is germane to the former employment."[42] Instead of a blanket indulgence for rich clients, rule 2-104 actually provides for an exception of rather limited scope. Freedman later cites a provision of the *Code of Professional Responsibility* and an ABA ethics committee opinion for the proposition that when a lawyer's motives for soliciting a client "are mixed . . . that is, when the attorney acts with both a proper motive (to provide needed advice) and an 'improper' motive (to obtain a fee)—it is the proper motive that is determinative,"[43] and the solicitation, therefore, is proper. The authorities on which he relies do not support this position. Ethical Consideration 2-3, he says, "does suggest that an attorney should not solicit a

39. THE OPINIONS OF THE COMMITTEES ON PROFESSIONAL ETHICS OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK AND THE NEW YORK COUNTY LAWYERS' ASSOCIATION, No. 309 (1956).

40. Freedman, *supra* note 13.

41. *Id.* at 97.

42. Disciplinary Rule 2-104(A) reads as follows:

A lawyer who has given unsolicited advice to a layman that he should obtain counsel or take legal action shall not accept employment resulting from the advice, except that: (1) A lawyer may accept employment by a close friend, relative, former client (if the advice is germane to the former employment), or one whom tbe lawyer reasonably believes to be a client.

43. Freedman, *supra* note 13, at 100.

client *solely* for the purpose of obtaining a fee."[44] The implication is that if the attorney has other worthy purposes, the solicitation would be proper. In fact, the word "solely" does not appear in Ethical Consideration 2-3, which states without qualification that "a lawyer should not contact a non-client . . . for the purpose of being retained to represent him for compensation." The ethics committee opinion Freedman quotes[45] dealt with a situation in which attorneys advertised both their opposition to certain legislation and their willingness to represent *without compensation* persons who believed their constitutional rights were being violated by this legislation, but who lacked the means to pay for legal services. In the passage Freedman quotes, the committee held that lawyers, like other citizens, are entitled under the Constitution to express their views on political issues and, to that end, may proclaim their views through newspaper ads, even though such ads may promote the interests of existing clients.[46] In this portion of its opinion, the committee said nothing about solicitation of clients. Consequently, to conclude from the quoted passage, as the author does, that "even though an attorney may receive compensation, the solicitation of a client is not unethical if the client might otherwise have failed to vindicate his or her legal rights"[47] is dubious at best. Freedman's error is especially surprising when one reads the second part of the committee's opinion. It is there that the committee considers the portion of the ad in which the lawyers offered their services to members of the public. The committee held that because the lawyers were not seeking "remunerative business" but were offering only to represent "indigent persons" without compensation, their advertisements did not violate the Canons of Ethics.[48] The committee made not the slightest suggestion, however, that the Canons cited would be inapplicable to the solicitation of *paying* clients.

III.

Five essays in *Verdicts on Lawyers* are filled with deficiencies that go not to peripheral matters but to the authors' principal

44. *Id.* at 100 (emphasis supplied).

45. ABA COMM. ON PROFESSIONAL ETHICS, OPINIONS, No. 148 (1935).

46. *Id.* at 417-18.

47. Freedman, *supra* note 13, at 100.

48. This language appears in the body of the ABA Opinion. The headnote preceding the Opinion states: "It is not unethical for an attorney to broadcast . . . an offer, on behalf of an organization of attorneys, to represent without charge any indigent person whose constitutional rights have been violated." ABA COMM. ON PROFESSIONAL ETHICS, OPINIONS, No. 148, at 417 (1935).

points.[49] These essays are not simply marginally deficient; they are fundamentally flawed. They are permeated by (1) erroneous statements of fact and miscitation of cases, (2) presentation of highly debatable conclusions as if they were self-evident truths, and (3) failure to alert readers to fundamental weaknesses in the conclusions advanced and in the arguments and premises on which those conclusions rest. Consequently, uninformed or unsuspecting readers are likely to accept without question centrally important points that are at least highly debatable.

One theme common to these essays is that lawyers, bar associations, and in some respects the legal system itself behave on the whole in an antisocial manner. Three essays accompany this criticism with proposals for reform. My critique of these essays should not be construed as a blanket endorsement of the bar or the legal system. Quite the contrary, I see many flaws and support many reforms. My concern here, however, is not with the failings of lawyers but with whether the critics writing in *Verdicts on Lawyers* present those failings to their readers in a fair and responsible manner.

Marna Tucker's thesis in *"Pro Bono* ABA?"[50] is that lawyers, individually and collectively, have failed miserably to fulfill their obligation to provide legal services for those who need but are unable to afford them. On the whole, she tells us, when the welfare of the poor has conflicted with the interests of the bar, lawyers have protected themselves and neglected the needy. Moreover, when the bar has taken steps to make legal services more available, its actions have been prompted by selfish, ignoble motives. Two questions arise: Does the author correctly state the *facts* concerning the bar's behavior? If so, is it responsible to present the *judgment* that such behavior is reprehensible as if it were a self-evident truth?

Tucker's criticism is directed in part at the bar's reaction to the legal aid movement and later to the legal services program of the Office of Economic Opportunity (OEO). Although she commends a

49. Green, *The ABA as Trade Association*, in VERDICTS, *supra* note 2, at 3-19 (for substantially the same piece, see Green, *The ABA: The Rhetoric Has Changed but the Morality Lingers On*, WASHINGTON MONTHLY, Jan. 1974, at 21) [hereinafter cited as Green, *Trade Association*]; Green, *The Gross Legal Product: "How Much Justice Can You Afford?," id.* at 63-79 (for substantially the same piece, see M. Green, *The High Cost of Lawyers*, New York Times, Aug. 10, 1975, § 8 (Magazine) at 8) [hereinafter cited as Green, *Legal Product*]; Moore & Harris, *Class Actions: Let the People In, id.* at 172-84; Morrison, *Defending the Government: How Vigorous is Too Vigorous?, id.* at 242-52; Tucker, *Pro Bono ABA?, id.* at 20-32 (for substantially the same piece, see Tucker, *Pro Bono ABA*?, 60 A.B.A.J. 916 (1974)).

50. Tucker, *supra* note 49, at 20-32.

few lawyers for their contributions, she disparages the behavior of the bar in general. She says, for example, that the bar maintained a "continual watch over legal aid lawyers. Client income limits and eligibilty standards discouraged the commercial practice of law . . . . Charity was one thing, competition quite another."[51] Certainly legal aid limited its clientele to persons whose income fell below a certain level. These limits, however, are inherent in the very idea of a program for the *poor*. Without such rules, the resources of legal aid would have been available to anyone rather than only to the client group least able to pay for legal services. Thus to attribute legal aid's income-limitation rules to lawyer selfishness is to ignore the primary reason for the creation and maintenance of those rules.

Tucker describes the reaction of lawyers to the federally funded OEO legal service program as one of

> relief that someone was assuming the burden of the profession's responsibility to provide representation for the poor. . . . From the bar's perspective, the major difference between legal aid of the 1920s and legal services of the 1960s is that the latter shifted the financial obligation of legal representation of the poor from the shoulders of the profession to the shoulders of the general taxpayer.[52]

Is it accurate to describe the feelings of lawyers in such uncomplimentary terms? Did OEO shift the financial burden, as Tucker claims, so that lawyers *might* have had the feelings she ascribes to them? The facts are revealing. First, in the years preceding the OEO program about fifteen percent of the budget for legal aid came from lawyers and bar associations.[53] Thus the burden to be shifted was a relatively small one. Second, after OEO had started to fund legal services, lawyers and bar associations contributed *more* dollars to this effort, not less.[54] It would be strange indeed if the bar felt relieved of a burden which in fact was actually increasing.

Tucker's primary criticism is that the bar has failed to accept the principle that each and every lawyer should provide free legal

51. *Id.* at 22.

52. *Id.* at 25.

53. The contrihution was 15.32% in 1960, 14.49% in 1962, and 16.59% in 1965, the year immediately prior to the influx of OEO funds. *See* NATIONAL LEGAL AID AND DEFENDER ASSOCIATION, 1961 SUMMARY OF CONFERENCE PROCEEDINGS 14; NLADA, 1963 SUMMARY OF CONFERENCE PROCEEDINGS 27; NLADA, 1966 SUMMARY OF CONFERENCE PROCEEDINGS 46.

54. The contribution rose from $891,823 in 1965 to $967,419 in 1966. *See* NLADA, 1966 SUMMARY OF CONFERENCE PROCEEDINGS 46; NLADA, 1967 SUMMARY OF CONFERENCE PROCEEDINGS 275. I have been unable to locate information on subsequent years. From what I know of the OEO programs, however, my guess is that the value of lawyer contributions continued to grow. Many private practitioners previously uninterested in the work of pre-OEO legal aid offices were stimulated by the stress placed upon legal reform by various OEO offices and as a result contributed their services.

services to those unable to afford them. Most lawyers probably do not contribute their services to the poor. Tucker does more than state this as a fact, however. She presents it as a moral indictment.[55] She proclaims, for example, that "only a handful of exceptional attorneys are attempting to meet the vast needs of the public and to *atone* for the general failure of the bar to service the non-rich public."[56] Is the immorality of the bar's behavior self-evident, as Tucker's presentation implies? Tucker's position rests on the assumption that lawyers have a moral obligation to pay the costs of providing legal services for the poor. This assumption needs to be examined.

Insofar as the general public is morally bound to make charitable contributions toward the welfare of the poor, lawyers, too, should be considered bound. Lawyers, then, would be subject to criticism if they had failed to contribute their proportionate share. Tucker makes no such claim, and the available evidence suggests the contrary.[57] Since *legal services* are involved, however, is it arguable that the moral responsibility of the bar for charitable works is *greater* than the obligation of the general public? This argument would be valid if producers generally were considered to have a special moral obligation to pay the costs of making their goods and services available to the poor. However, no such principle has been adopted by our society. Grocery store owners and home builders, for example, have no greater duty than the rest of us to see that food and shelter are made available to the poor. Why should lawyers be judged by a special moral standard? Tucker does not answer this question; indeed, she does not even make the reader aware of it.

Whether lawyers are blameworthy for not *voluntarily* taking care of the poor is a different question from whether society by law ought to *impose* some special obligation on the bar. Tucker advocates such a law.[58] Her main argument—that we should enforce the *moral* obligation of lawyers—has already been discussed. She alludes to a second rationale in the following sentence: "[G]iven the fact that only lawyers can practice law, the public, at whose suffer-

55. Were Tucker simply asserting that lawyers are not extraordinarily noble, I would agree. Although this absence of special virtue might be reason for lament, it hardly is a basis for condemning the bar. Tucker does condemn; she depicts the bar as ignoble, venal, and base rather than as having no greater nobility than people generally.

56. Tucker, *supra* note 49, at 26-27 (emphasis added).

57. *See* notes 53 & 54 *supra* and accompanying text.

58. Tucker, *supra* note 49, at 28. Tucker does not use the word "law," but this is clearly what she means.

ance this monopoly exists, can demand its quid pro quo."[59] This quick reference to "monopoly" with all that term implies is hardly a responsible way to present a difficult, complex matter. Here, in brief, are some of the questions involved. Rules allowing only lawyers to perform certain tasks probably prevent nonlawyers from providing *seemingly comparable* services at a price that would be lower than lawyers' fees. It may be that these rules are maintained by lawyers for the purpose of enhancing their income; if so, it would be reasonable to say that lawyers are realizing monopoly profits, and it might be appropriate for society to demand that the bar provide free services for the poor. However, if the rules in question exist *at the sufferance of the public*, as Tucker says, it is unlikely that this sufferance is extended in order to provide economic benefits for lawyers. The more likely explanation is that the public wants and is willing to pay for the assurance of quality that it associates with having lawyers rather than laypersons perform certain tasks. If this is true, the impact of licensing rules on legal fees would not be unfair and, therefore, would not provide a rationale for requiring lawyers to bear the costs of legal services for the poor.

In two essays Mark Green, the co-editor of *Verdicts on Lawyers*, attacks both the ABA[60] and the "economic excesses" of lawyers.[61] Viewed in isolation and stated with appropriate qualifications, some of Green's points would be well taken. These specific points, however, are only details in the picture he draws of the bar and lawyers, a picture that in its overall effect is deceptive and misleading. For example, he evaluates the ABA by implicitly asking whether its actions are in the public interest and then proceeds to show that they are not.[62] Although the bar sometimes exaggerates its dedica-

59. *Id.* at 27.

60. Green, *Trade Association, supra* note 49, at 3-19.

61. Green, *Legal Product, supra* note 49, at 63-79.

62. One aspect of Green's criticism is that ABA sections in various areas of the law—antitrust, taxation, and the like—are self-serving because their legislative proposals are biased in favor of the interests of large business clients represented by the lawyers who belong to these Sections. If the legislative proposals really had been untenable from a disinterested viewpoint, then the Sections would be subject to criticism. If the difficulty is only that the proposals of the ABA Sections appear objectionable to Green and others with strong convictions on the issues in question, then the Sections ought not be criticized for making those proposals. The proposals themselves, of course, would be the proper subjects of the criticism. I know too little about issues and proposals that Green discusses to form a judgment about this matter. Another reviewer of *Verdicts on Lawyers*, who is quite knowledgeable in the area of patent law, says the following of Green's comments on the work of the ABA Section on Patents, Trademark and Copyright Law: "It is indeed unfortunate that facts and reason take a back seat to unsupported allegation." Davidson, Book Review, 6 U. BALT. L. REV. 195, 198 (1976).

tion to the public interest, I do not think it pretends to be unconcerned with its own interests, and such altruism should not be expected. Thus the standard by which Green appraises the bar is inappropriate. In addition, whether the ABA conduct Green cites as narrowly self-interested ought to be so characterized is at least questionable. For example, he attributes the ABA's position on no-fault liability insurance proposals solely to the bar's pursuit of economic self-interest.[63] I do not doubt that self-interest was a factor, but the picture Green draws distorts the truth. He treats the ABA's 1969 position—that, in principle, liability should fall on the person whose conduct was wrongful—as if it were absurd,[64] but neglects to mention that many people with no economic stake in the matter agreed with that view.[65] In 1972, he notes, the ABA "declared itself 'opposed to any federal no-fault' insurance legislation."[66] As ABA reports show, this opposition was directed at *federal* action, *not at state legislation.*[67] The rationale for this distinction, of course, is that society will benefit from experimentation at the state level.[68] Lay readers, however, are unlikely to see or to understand the shift in the ABA's position, and Green does nothing to help them.

Over the years the ABA has taken many positions on national and international issues, positions with which many persons, myself included, have disagreed. Green recites a long list of these positions, including: opposition to the Sherman Antitrust Act, the income tax amendment, Roosevelt's New Deal legislation, and to United States ratification of the Genocide Convention; its militant anticommunism during the 1950's; its failure to adopt a resolution calling for United States withdrawal from Vietnam.[69] Presumably these are

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63. Green, *Trade Association, supra* note 49, at 7-8.

64. *Id.* at 8.

65. *See, e.g.*, W. BLUM & H. KALVEN, PUBLIC LAW PERSPECTIVES ON A PRIVATE LAW PROBLEM: AUTO COMPENSATION PLANS 8-15 (1965); Kalven, *Plan's Philosophy Strikes at Heart of Tort Concept*, 3 TRIAL 35, 36 (Oct./Nov. 1967).

66. Green, *Trade Association, supra* note 49, at 8.

67. The proposal adopted by the ABA House of Delegates reads as follows: "That the American Bar Association is opposed to any federal 'no fault' insurance legislation and believes that any changes which may be made in the so-called automobile accident reparations system should be by state action." 97 ANNUAL REPORT OF THE ABA 542 (1972).

68. We are unalterably opposed to legislation now pending in the United States Congress which would pre-empt state motor vehicle accident reparation reform by the establishment of a federal law . . . . Rather, we are in accord with the Department of Transportation that state experimentation with diverse motor vehicle reparation plans offers the best solution to the development of meaningful reform in the public interest.

Report of Special Committee on Automobile Insurance Legislation, in 97 ANNUAL REPORT OF THE ABA 725, 727 (1972).

69. Green, *Trade Association, supra* note 49, at 4-5, 15-17.

cited to illustrate the ABA's lack of concern for the public interest. All that really is demonstrated, however, is that the ABA's conception of the public interest differs from Green's (and mine). This hardly constitutes a valid ground for implying that the ABA has disregarded its responsibility to the public.

The basic theme of Green's second essay[70] seems to be that lawyers, especially business lawyers, charge excessive fees and earn exorbitant incomes. Early in this essay, after noting that "the top lawyer's income in Connecticut in 1789 was only $2000," that less than a third of Philadelphia's lawyers were self-supporting in the 1880's, and so on, Green states that the "last decade . . . has seen an explosion in the earnings of lawyers."[71] The apparent implication of this comparison is that the incomes lawyers earn today are too high. Without other information, however, there is no basis for this conclusion. Moreover, his characterization of recent developments as an "explosion" in the income of lawyers is dubious. The term "explosion" suggests that lawyers have done especially well. In fact, though Green does not mention this, the income of lawyers during the period in question increased only a bit more rapidly than the gross national product; compared with other professionals, lawyers did worse than some but better than others.[72] As further evidence

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70. Green, *Legal Product, supra* note 49, at 63-79.

71. *Id.* at 64. In the same passage, Green notes that

> [i]n the Bible Aaron spoke on behalf of Moses, yet there is no record of receipt of even a minimum fee. Under the Teachings of Confucius . . . people in government gave legal advice but were prohibited from taking money for doing so. The Cincian law of ancient Rome in 200 B.C. forbade advocates to charge any fees . . . .

Id. at 63-64. The innuendo of this history summary is that contemporary lawyers are at fault because they charge substantial fees. In this manner Green conveys an idea without explicitly stating and defending it. This technique occurs throughout his two essays in *Verdicts on Lawyers*.

72. Although Green speaks of an "explosion" during the "last decade," he gives no figures for that period. The most recent figures are for 1966 and 1972, the last year for which he cites data. Green's figure for the gross income of lawyers in 1966 is mistaken. The reference he cites is "Internal Revenue Service, *Business Income Tax Returns* (1973), at 13, 25," but his 1966 figure is not found there. I have checked various other possible sources but can find no source for his figure. Indeed, the Treasury publication to which he refers contains quite a different figure. Fortunately, his figure for 1972 is correct.

Comparison of lawyers' incomes with those of other professionals is not simple. Income data are reported in two sections in *Business Income Tax Returns*, one for proprietorships and one for partnerships, and these must be summed to determine total income. If one sums the figures in the "net profit" columns, the comparison of one profession's total "net profit" with another's is dubious because (a) the meaning of "net profit" in the proprietorship section is significantly different than in the section on partnerships and (b) the proportions of practitioners doing business as proprietorships and partnerships differ greatly from one profession to another. Fortunately, the fignres for "business receipts" are computed in the same way for proprietorships and partnerships and thus provide a valid basis for comparing professions.

that lawyers make too much money, Green recites the hourly rates charged by large corporate law firms, the incomes of some top partners, and some of the fees paid by clients.[73] Readers might conclude that because these figures are large, they therefore are excessive. Green encourages this conclusion by ignoring the possibility that fees are reasonably related to the cost and value of the services rendered. He suggests instead that fees are high because large corporations are unconcerned with their legal costs.[74] As proof of this thesis, he offers only this statement by an unnamed District of Columbia lawyer: " 'There are so many zeros on the ends of the problems clients have,' . . . that 'when they're dealing in a $50 million business, what do they care about the fee?' "[75] The quotation, as he notes, is from a feature story in the *Washington Post*.[76] In the same story, just a few lines above the passage quoted, is the following observation, which Green ignores: "What does the Washington lawyer do to earn this kind of money? Even Ralph Nader admits they work hard and long hours."[77]

A third fundamentally deficient essay is Alan Morrison's attack on government attorneys, "Defending the Government: How Vigorous is Too Vigorous?"[78] The author's thesis is simple: (a) there are "limits on the behavior of a government attorney defending federal officials in a civil lawsuit. Here a lawyer is not merely a client instrument but a public servant . . . . When the government attorney raises a defense which in effect tells the citizen, "the agency

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"Business receipts" refers to gross income. In any particular profession, however, the relationship between gross and net earnings presumably is much the same from year to year. Using "business receipts," therefore, should result in an accurate picture of how growth in the net earnings in one profession compares with growth in others.

In the period 1966 to 1972, the income (business receipts) of lawyers grew by 61%. The gross national product went up 55%. The increase in income in other professions was as follows: accounting, 94%; education, 81%; dentistry, 61%; physicians and surgeons, architects, and engineers, approximately 25%. These percentage increases in business receipts were calculated from data in the United States Treasury Department's annual publication, *Statistics of Income—U.S. Business Tax Returns. See* U.S. TREASURY DEPT. (IRS), 1966 BUSINESS TAX RETURNS 30, 124 (1969); U.S. TREASURY DEPT. (IRS), 1972 BUSINESS TAX RETURNS 9, 86 (1976). For figures on gross national product, see U.S. CENSUS BUREAU, 1974 STATISTICAL ABSTRACT 373 (GNP for 1972); U.S. CENSUS BUREAU, 1968 STATISTICAL ABSTRACT 312 (GNP for 1966).

73. Green, *Legal Product, supra* note 49, at 72-75.

74. Green's assumption is revealed by the following: "Why are billings so high? A lawyer doesn't have to be told in law school that you can charge a client worth $400 million more than one earning $400,000 a year." *Id.* at 74.

75. *Id.*

76. Washington Post, Dec. 26, 1973, § A, at 1, 6.

77. *Id.*

78. Morrison, *Defending the Government: How Vigorous Is Too Vigorous?*, in VERDICTS, *supra* note 2, at 242-52.

may be breaking the law, but the court can't do anything about it," it is difficult to understand how the oath to "uphold and defend the Constitution and laws of the United States" is being fulfilled[;]"[79] (b) government lawyers frequently assert the defenses of lack of standing to sue, lack of subject matter jurisdiction, and sovereign immunity, which, if successful, prevent adjudication on the merits; (c) therefore government attorneys frequently have violated their ethical and moral responsibilities.

It is generally agreed that lawyers ought not raise frivolous defenses[80] and equally well understood that lawyers, including those who defend the government, sometimes do. If Morrison were making only this point, his essay would be unobjectionable. He goes further, however. He claims that it is morally wrong to "assert defenses that preclude or delay important questions from being decided on the merits."[81] Since he says that the defenses in question ought not be raised even if they would preclude adjudication on the merits and since preclusion would usually occur only if the defense asserted were *valid*, Morrison's position is that even valid claims of sovereign immunity, lack of standing, and lack of subject matter jurisdiction should not be made. The central assumption underlying this view is that these defenses involve little or nothing of importance. That position may or may not be defensible. It is indefensible, however, to present this assumption to an untutored lay audience as a self-evident truth without even a hint that significant social policies underlie these defenses. That, however, is exactly what Morrison does. He completely ignores the policies involved and by direct statement and innuendo characterizes these defenses as legal technicalities, mere lawyers' tricks with no substance behind them. In a passage on sovereign immunity, he implies that the United States Supreme Court has held this defense invalid,[82] which, of course, is contrary to fact. The objection that a plaintiff lacks standing, he says, "is deployed to avoid deciding troubling cases, and becomes

79. *Id.* at 242.

80. *See* COUNTRYMAN, *supra* note 13, at 255-67.

81. Morrison, *supra* note 78, at 251.

82. After quoting from a case in which a specific claim of sovereign immunity was rejected, Morrison proceeds as follows:

> Government attorneys nonetheless continue to raise the defense of sovereign immunity, ignoring the counsel of Henry Friendly, another former chief judge of the second circuit, that "law officers of the Government ought not to take the time of busy judges or of opposing parties by advancing an argument so plainly foreclosed by Supreme Court decisions."

Id. at 245.

the defense of 'go mind your own business,' "[83] while subject matter jurisdiction is a "legal rubric . . . with its English translation of 'go someplace else.' "[84]

I have no doubt that government lawyers, no less than others, sometimes harass their opponents by defending on dubious grounds. These tactics are dishonest, violate both ethical and legal norms, and should be exposed to public view. Nothing I have said should be taken as condoning or defending them. The failings of government lawyers, however, are no excuse for irresponsibility on the part of their critics.

IV.

There are many more examples of the shortcomings I find in *Verdicts on Lawyers*. At this point, however, I would like to move to a different though kindred matter.

For me, the most pervasive characteristic of *Verdicts on Lawyers* is its antipathy toward lawyers and legal institutions. Why is this so? Perhaps the answer is that those who produced this book see lawyers and the law as part of a society they consider to be fundamentally corrupt and indecent. This would be ironic, however, since the editors and most of the authors are lawyers themselves. Surely they would not have chosen this calling had they always held it in such low regard. Indeed, it seems likely that at some point in their lives they looked up to lawyers. Is this the key? Are their present attitudes a reaction to an earlier idealization of the legal profession? Perhaps these writer-lawyers came to the law expecting the bar to be superhuman, especially selfless, public spirited, reform-minded, and otherwise more noble than humankind in general. If so, they surely have been disappointed and frustrated, and this may account for their apparent anger. Lawyers, after all, are neither better nor worse than other human beings, and it is time we accept and acknowledge this. Until we do, we will neither understand the shortcomings of our profession nor be able to think intelligently about how to improve it.

This suggests a final thought. In one respect, this review of *Verdicts on Lawyers* may be too harsh. Not that the essays are any better than I have indicated. Insofar as I have cast blame on the editors and authors, however, perhaps that is unfair. For what I have said about lawyers is no less true of individuals devoted to

83. *Id.* at 243.
84. *Id.* at 244.

social reform. They, too, are only human and when matters close to their hearts are involved, it may be too much to expect them to live by the principles they espouse.