



4-1-1973

Book Reviews

Francis X. Beytagh

Follow this and additional works at: <http://scholarship.law.nd.edu/ndlr>



Part of the [Law Commons](#)

Recommended Citation

Francis X. Beytagh, *Book Reviews*, 48 Notre Dame L. Rev. 1006 (1973).

Available at: <http://scholarship.law.nd.edu/ndlr/vol48/iss4/13>

This Book Review is brought to you for free and open access by NDLScholarship. It has been accepted for inclusion in Notre Dame Law Review by an authorized administrator of NDLScholarship. For more information, please contact lawdr@nd.edu.

BOOK REVIEW

BOOK REVIEW—THE SUPERLAWYERS. By Joseph C. Goulden. New York: Weybright and Talley. 1972. Pp. 408. \$8.95.

Lawyers have generally been thought of as less than “super” by the societies in which they have lived. A consistent theme over the centuries, from the works of Plato through Chaucer, Shakespeare and Dickens, and an attitude certainly prevalent today, at least in this country, is that lawyers are something other than the noblest of human beings. Many of the reasons why lawyers are held in low esteem are well illustrated by Mr. Goulden’s interesting study of how law is practiced in our nation’s capital.

Three of the book’s ten chapters focus specifically on three of Washington’s leading law firms—Covington and Burling, Arnold and Porter, Mudge, Rose, Guthrie and Alexander (the latter of course is primarily a New York firm with an increasingly large Washington practice). Goulden seeks to analyze these several firms, largely on the basis of personal interviews with some of their lawyers, in terms of their style, attitudes, effectiveness, and methods. Covington and Burling comes off rather well, all things considered. Among Washington law firms it is the largest and most prestigious—“the pinnacle of power” in Goulden’s words, and a firm with nothing to sell but exceptionally good legal talent. One of the firm’s partners made that perfectly clear when he told Goulden: “Hell, . . . I’m a lawyer, not a reformer. *We* are lawyers. We act as counsel. . . . [S]ome of these younger people don’t seem to understand the proper role of a lawyer. We’re not here to save the world, or to force our own ideas on someone else, but to represent clients.”¹ In other words, fight on for C and B (and its clients), and let the public eat cake.

Goulden’s chapter on Arnold and Porter starts out with the statement that it “is money-jangling proof that doing a little good can enable a Washington law firm to do extremely well,” but also “a classic case of New Dealism gone sour. . . .”² After that introduction the author proceeds in a somewhat less complimentary fashion to talk about the ins and outs, the “image problem,” and the distinctly aggressive approach of A and P. He discusses the “Fortas matter” and the firm’s political background in an incisive, albeit cynical, fashion. Like Covington and Burling, Arnold and Porter prospered with a practice that perceptively accepted the presence of big government and sought to turn it to its and its clients’ advantage. Goulden quotes one of its partners as stating unabashedly, in regard to a firm’s responsibility to effect change in law or policy where necessary to serve a client’s interests, that “one function of a law firm is to find logical reasons for government to do something.”³ Right on, A and P; keep government at work for you and those clients of yours.

Mudge Rose is a New York firm with a Washington office that has prospered greatly since the accession of one of its former partners to a position of considerable importance in government. Is this development simply coinci-

1 GOULDEN, *THE SUPERLAWYERS* 52-53 (1972).

2 *Id.* at 110.

3 *Id.* at 138.

dental, Goulden asks, or is there something nefarious going on? That question is never effectively answered, probably because it cannot be. One clear message, however, is that the appearance of "influence" in the halls of government may be as or more important than its actual presence—at least on a short-term basis. As a brash newcomer to the Washington legal scene, the jury is still out on whether Mudge Rose will have the staying power of the two firms previously discussed. And, with "four more years" in hand for the present occupant of the White House, the firm shouldn't be seriously tested until after 1977. By that time its contacts with middle-level decision-makers in the departments and agencies may be so well developed that it can prosper on the basis of political sympathies much like Arnold and Porter did during the days of the Johnson administration. Goulden's discussion of how the firm came about and the events that projected it into its present situation is as interesting as the treatment of whether it has avoided all improprieties or slipped a few times in this regard. In any event, Goulden's quote from one of the firm's name partners—that for it Washington is "just another office" and "we don't give a damn about the politics of things, we're lawyers"⁴—rings a bit hollow against the background of some of the firm's activities on behalf of its increasing number of clients. Grow and blossom, Mudge Rose.

Three chapters of the book deal with three of those individuals who typify, in somewhat different ways, the archetype of the Washington lawyer. Clark Clifford—smooth, confident and devastatingly effective—is pictured, and probably with reasonable accuracy, as the one lawyer that someone in trouble with the federal government would most like to have on his side. Respected presidential adviser, congressional "fixer" for major corporations, less a lawyer than a manipulator of power—Superclark, as Goulden aptly refers to him, casts a large shadow over the Washington legal scene. Larger surely than Tommy the Cork (Corcoran), whose persistent struggle to remain an influential figure in the Washington legal community enlivens one of the better chapters in Goulden's book. The consummate New Dealer turned lawyer-lobbyist, Corcoran's career is haunted, in Goulden's eyes, by the growing irrelevance of his Washington contacts. And yet he has hung on gamely, a living testimony to the enduring value of a reputation largely earned several decades ago. One lawyer whose reputation hardly dates back at all and who is the heir apparent to the throne on which the Washington superlawyer sits—Lloyd Cutler—is discussed by Goulden in an intriguing chapter that centers around Cutler's skirmishes with consumer protectionist Ralph Nader—an un-Washington lawyer if there ever was one. For reasons that appear more accidental than anything else, Cutler and his fast-growing law firm represent a number of clients who do things that Nader detests—such as making automobiles, selling cigarettes and manufacturing and marketing drugs. A series of confrontations was thus inevitable between the two individuals, and Goulden's description of the various sides of the story, principally from the mouths of the two protagonists, is a fascinating juxtaposition of attitudes and viewpoints. About all the two seem to agree upon is that they disagree—about everything else. Cutler is just doing his job and Nader misstates

4 *Id.* at 252.

and oversimplifies the problems; contrariwise, Cutler and the Washington lawyers are out for nothing but their clients' interests, and the public be damned. Goulden's quotation from Brandeis perhaps summarizes it all quite well. "The leaders of the bar," he said, "have erroneously assumed that the rule of ethics to be applied to a lawyer's advocacy is the same where he acts for private interests against the public, as it is in litigation between private individuals."⁵ Chew on that one awhile, Lloyd; and you too, Clark and Tommy—and all the other Lloyds and Clarks and Tommys who keep saying, like a broken record, that all they are doing is representing their clients to the best of their abilities. In retrospect, however, the last several pages of the chapter on Cutler are probably the finest in Goulden's book, for they recognize that in the Cutler-Nader conflict, as with most such situations in Washington practice (and in life), neither side has a monopoly on truth or wisdom.

The remaining four chapters of the book are worthy of attention as well. Two deal with what might loosely be called the lawyer and Capitol Hill. One focuses on the lawyer-lobbyist and the other on the lawyer-legislator. Each has, in its own way, telling and valuable messages to convey, although they are hardly the high points of the book. Another chapter, entitled "Ruling the Regulators," is one of the best that Goulden has written. Developing the familiar theme of how skillful lawyers have been able to turn the administrative process to the advantage of their clients, it contains a number of specific illustrations of how egregious this phenomenon can become. Goulden does not mince words in discussing "the Washington Lawyers who practice before the Federal regulatory agencies, and their part in making the agencies one of the more miserable failures of American government."⁶ The ICC, FDA, FTC, FCC, CAB and SEC—all these major agencies and others are shown, rather persuasively, to be largely the ineffective handmaidens of those they are supposed to be regulating. And the consummate manipulator, in Goulden's view, is none other than Covington and Burling's Tommy Austern, who was able, for example, to prolong a proceeding before the FDA to determine what constituted peanut butter for a period of over twelve years. If the Washington lawyer cannot obtain the desired result for this client, he can at least delay the agency's decision so long that substantial economic benefits have been achieved in the interim. It is a sad and sorry, but regrettably true, story. Book after book has made the same points about agency ineffectiveness and industry orientation. And yet, the beat goes on, thanks mostly to the Washington lawyer.

The final chapter of the book is a distinct departure from those that precede it. It deals not with the existing Washington legal establishment, as do the others, but with the rather new development in the Washington legal picture—so-called "public interest" law firms. The idea of course has spread to other major metropolitan areas, but it had its start and has its greatest potential in Washington, since that is where most important decisions on issues of public policy are made. Goulden capsulizes the development effectively in stating that "[t]he New Washington Lawyers, instead of trying to destroy the adversary

5 *Id.* at 326-27.

6 *Id.* at 177.

system, are out to make it work. And, collectively, they are the most exciting bunch of people unleashed in and on the Federal bureaucracy since the New Deal.⁷⁷ Perhaps Goulden is a bit rhapsodic about the public interest law firms, for in large measure their arrival on the scene is too recent to draw any meaningful conclusions about their likely long-run impact. How well they succeed in trying to make the federal government's decision-makers more responsive to concerns of the otherwise unrepresented public would seem to depend on the adequacy of their funding by foundations and like institutions, on sustained interest in their efforts and goals on the part of competent, dedicated and unselfish lawyers, and on the continuing attractiveness of them as employment opportunities for a new generation of law students who seem rather noticeably to be returning to the more traditional values of an earlier time.

Along with his discussion of the public interest law firms, Goulden includes some information about the *pro bono* activities of some of the larger private firms. He is perceptive in noting that "*pro bono* programs have inherent defects,"⁷⁸ such as conflict-of-interest problems and internal firm pressures. Goulden also speaks of Ralph Nader, John Banzhaf and Phil Elman, each of whom has played a significant role in the developing revolution on the Washington legal scene. Yet he too realizes that the future of this development remains uncertain, subject to the vagaries of funds, interest and dedication. The Congress that in 1972 refused to create a Consumer Protection Agency to represent the public interest in matters before federal agencies might be differently minded when it reconsiders the matter, and then again it might not. Even if such an agency is created it will hardly be a panacea. Its need for federal funding will render it subject to some of the same difficulties that have plagued the Corporation for Public Broadcasting. There are no simple answers to a very complex set of problems, although the public interest lawyers have surely caused a stir in Washington legal circles. As Goulden concludes, "the Washington Lawyer is running scared. He is being discussed publicly; he is being held accountable for what he does on behalf of clients; he is feeling the same sting of 'responsibility' as are corporate executives; he is learning to live with the awesome awareness that his self-proscribed (sic) privacy no longer insulates him from the rest of the world."⁷⁹ And, parenthetically, he is being written about, and hardly in a laudatory or benign way, by people like Goulden in books like *The Superlawyers*.

Mention of the title of the book brings me to a final point. Frankly, I am less than persuaded that the Washington lawyers Goulden writes about are "super" in any legitimate sense in which that catchy phrase might be used. They wield a good deal of power and influence and they make a lot of money. But, as Goulden shows, many of them have acted less than responsibly insofar as the public interest is concerned. It is simply too late in the day to hide behind the facade of saying that one is only doing his best for his client, as a justification for what amounts to the prostituting of the processes of government. Large law firms must be recognized for what they are—repositories of talent, influence and

7 *Id.* at 352.

8 *Id.* at 360.

9 *Id.* at 388.

power. As such, they are no more private than the massive corporate entities they so faithfully and dutifully serve. Of course General Motors deserves legal representation. But it is not entitled to the sort of representation that does substantial harm to the public interest. There are, needless to say, a host of difficult value judgments that enter into a decision as to where the line should be drawn. But it seems nonetheless clear that law firms have been drawing it too far on the side of the corporate client. It is they, in a real sense, who have produced the public interest law firms, the concerns about environmental matters, and the rapid growth of consumerism. If for no reason other than their own self-interest and that of their clients, one would think that the law firms would anticipate public attitudes and reactions better than they have and advise their clients accordingly. And, beyond that, one would hope that at least a few firms would start telling their big corporate clients simply to go to hell when what they sought to do was against the public interest. It takes a little guts and might cut into the firm's profits for a time, but in the long run I cannot help but think that such firms would be better off for having done so.

Liked or disliked, lawyers are leaders in our society. With a system committed to the rule of law, that is likely to remain the case for the indefinite future. But public confidence in lawyers and the legal system can come only as the result of their increased sense of responsibility to that public. There are some "super-lawyers" out there, but they are not in the big Washington firms. They work in legal services offices, they serve as judges in obscure county courts, they provide human (not make-believe) clients with the various legal services they need, they hold insignificant positions in federal, state and local governments. And yes, some of them probably even teach in a few of our law schools. Most of them will never be rich or exercise the power that the Wall Street or Washington lawyer does. But the impact they make on society, on the people they touch as they go about their everyday tasks, is likely to have a far more fundamental effect than all the endeavors of a Clifford or Cutler or Austern. They are not all "super" or even exceptional in any sense of the word; most of them are rather ordinary people who are simply doing their jobs. But a few of them rise above the rest; they not only do those jobs well but with compassion and concern for the people whose lives they touch. It seems unlikely that anyone will write a book about them, but if he does Mr. Goulden has already provided the author with a fitting title.

*Francis X. Beytagh**

* Professor of Law, Notre Dame Law School.

Pages 1011-1012 are Intentionally Blank.

