
Our World According to Arthur *

On his way to an unlawful detainer hearing in the Hennepin County Government Center, attorney Dillon Love takes a detour through the Old Courthouse. Practicing law in the intimate courtrooms of that old building, he muses, must have been “a friendly and civil occupation” because it brought people together in a “collegial and venerable atmosphere.” The new Government Center, in contrast, stands “as a stark and impersonal set of barriers that effectively isolates everyone involved in the judicial process.” “Beginning in 1975,” Love thinks, “the quality of justice in Minneapolis underwent a dramatic change.”

For Lindsay Arthur, Jr., a Minneapolis lawyer, the quality of justice that results from civil trials today is bad if not awful. What Upton Sinclair did to the meatpacking industry in his muckraking classic, *The Jungle*, Arthur aims to do to the civil trial bar in *The Litigators*, his first novel—expose its vaunted pursuit of truth and justice through the adversarial system as nothing more than a selfish, win-at-all-costs contest that hurts nearly everyone involved. Arthur is aware of what trial lawyers sometimes forget: they are the recipients of an extraordinary grant of societal trust. They have nearly unbridled power to disrupt the lives of others in the way they prosecute and defend a lawsuit. To Arthur, they have squandered that trust and misused that power. Lawyers on both sides of the aisle take a possessive view of a case — it’s theirs and it must be won. Like Dillon Love’s vision of the Government Center,

* Book review of *The Litigators*, a novel, by Lindsay G. Arthur, Jr., published by Scarletta Press in 2005. This review by Douglas A. Hedin appeared first on pages 12-14 of the October 2005 issue of *The Hennepin Lawyer*. Though reformatted, it is complete. It is posted on the MLHP with the permission of the Hennepin County Bar Association.

Arthur's litigators act as barriers to comity by isolating their clients from direct contact with one another.

This is the theme of Arthur's story of the lawsuit Ruth Bergstrom brings against EnviroClean, a small biotech company that grows micro-organisms to degrade toxic substances in the soil. Ruth becomes incapacitated shortly after EnviroClean starts to test its products on the grounds of an abandoned gasoline station across a creek from her home in Minneapolis. When she writes the company for information about its activities, Henry Holten, a senior partner in the litigation section of Darby & Witherspoon, Minnesota's largest law firm, responds with a blistering salvo. She gives Holten's letter to Dillon Love to read. Recognizing the author, Love immediately suspects a cover-up. Even before filing suit on Ruth's behalf, he tells himself, "This is my case. I'll never see another one like it the rest of my life."

Dillon Love may be a composite of many plaintiffs' lawyers Arthur has had to endure in almost forty years of practice. Love is obnoxious and unprepared; he takes a *res ipsa loquitur* view of Ruth Bergstrom's complex case. He shoots first and when he does ask questions, they usually are answered by Joe Clapp, a gumshoe who helps him by digging through EnviroClean's garbage for evidence.

Meanwhile, downtown, Holten has turned the reins of the defense over to his protégé, Allison Forbes, a law school classmate of Love, who is torn between her need to please her mentor and her recognition that her client wants to talk settlement. When she suggests early mediation, Holten explodes, "Mediation is nothing but an infantile concession of principle to expediency. This firm is not built on a foundation of compromise but on a foundation of fortitude and perseverance." Later, Holten exhorts his five member multi-discipline litigation team, "Cost is not a factor. There'll be no settlement. There'll be no compromise. The client deserves to win this case. The people of this state deserve to win this case. For them, for the environment, for our client, we must succeed. I simply must insist on a total victory."

The case is assigned to Pamela Cleveland, a former legal aid lawyer who has been on the bench only three months. Judge Cleveland either is

Arthur's ideal jurist or, we suspect, she is modeled after someone who once served or is now on the Hennepin County District Court. In any event, she quickly grasps the impending wreckage in her courtroom, even if the litigators do not. After hearing several defense motions, Judge Cleveland wonders aloud about the price of war. "The cost of winning may be more than the company can afford. And, my God, how in the world will the plaintiffs finance their case? Neither party can afford to lose, but I wonder whether either party can afford to win." She orders mediation. But, improbably, EnviroClean appeals and gets her reversed.

In the middle of the case, Dillon's wife sues for divorce. When he telephones her to win her back, she refuses to speak to him on orders of her attorney. Dillon is furious. This is ironic because time and again Ruth Bergstrom and her husband Arne have told him that they want to speak to the president of EnviroClean to clear matters up. But Dillon dissuades them. Their requests are echoed down at Darby & Witherspoon, where Boyd Campbell, the president of EnviroClean, just as often tells his lawyers that he wants to talk to the Bergstroms. But Holten bars the door. Without his lawyers' knowledge, Boyd even sends flowers to Ruth, an act of kindness Love clumsily exposes at trial as an admission of liability. The parties finally stage a mutiny. After the jury recesses for the weekend, Boyd and his wife treat Ruth and her children to a home-cooked dinner. Boyd sadly remarks, "Stupid lawyers getting their backs up and opting to fight before diplomacy has been fully exhausted." From her wheelchair, Ruth, now a widow, sweetly replies, "At least now we've become friends, and maybe that makes it worthwhile."

Maybe, Ruth, but in real life almost certainly not. Few trial lawyers have had clients as passive as these two. Boyd is a brilliant scientist and entrepreneur who shelves EnviroClean's IPO, lays off staff, and closes shop because of Ruth's suit. Yet his anger is directed only against lawyers who did not pursue "diplomacy." Ruth has no hard feelings at all. She never even presses Dillon for a prediction of her recovery.

Arthur isn't a realist. He's an idealist. In his perfect world, litigation will be curtailed, disputes amicably and swiftly resolved, and friendships

perhaps made if only the trial bar changes its mentality. As Allison Forbes puts it, the cause of Ruth's and Boyd's mutual ruin is the "adversarial system...the gladiator mentality that drives the legal profession to create endless battles in search of some self-defined illusive victory." But, in real life, few civil cases are jury-tried, most are settled or dismissed. And "the system" actually provided Boyd and Ruth with clear alternatives to trial they chose not to take. Mediation was ordered but both parties meekly acquiesced in their lawyers' recommendations to forgo the process. The judge orders settlement talks while she considers a defense motion for summary judgment, but they fail. And, it turns out, Henry Holten is really driven by an ethically-dubious instinct for self-preservation, deviously disguised as a "gladiator mentality."

If Arthur the legal critic fails his mark, there remains Arthur the novelist. And here there are some surprises. He is a serious story-teller. He generally avoids satirizing the culture and billing practices of big firms that so many lawyer-novelists cannot resist lampooning. He wearily chronicles the tough talk, posturing, and colorful clichés of trial lawyers (after a hearing, Holten warns Dillon, "This is not some little game we're playing here. The fun's over, sonny. Our guns are drawn and the battle's only begun." Love replies in kind, "It appears your gun's pointed at your foot. As far as I'm concerned, you can fire at will."). He paints a sensitive portrait of Arne and Ruth Bergstrom, based no doubt on hundreds of depositions of personal injury claimants he has taken over the years. The science behind EnviroClean's biotech process is understandable (Arthur, we learn from his bio, started a genetic engineering enterprise similar to Boyd Campbell's twenty years ago).

One of the great challenges for every novelist, especially a freshman such as Arthur, is to end the story in a believable fashion. Some situations in life are inherently suspenseful — a card game, a duel, a jury trial. The ending flows naturally from the conflict — there is a loser and there is a winner. Arthur, however, concludes his courtroom drama in a different way, one that supports his systemic critique, yet one that took considerable self-discipline, even courage. He pulls it off.

If this novel was submitted to Judge Pamela Cleveland, still sitting in the

sterile Government Center, for a ruling on the merits, she likely would issue the following: “The motion of Mr. Lindsay Arthur, Jr., for sanctions against the trial bar is denied; however, because of the commendable critical and literary aspirations of his narrative, the court urges him to prepare and publish, at his earliest convenience, a new work of fiction, which, it is hoped, will explore other issues facing not only the legal profession but the courts as well. So ordered.” □

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POST SCRIPT

After this review appeared, the novelist wrote the reviewer the following letter, which is posted with his permission:

October 11, 2005

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Dear Doug,

Thank you very much for your thoughtful and perceptive review of my novel, *The Litigators*, in the October issue of *The Hennepin Lawyer*. You were undeservedly generous in your assessment of its literary merit, and I am very grateful to you for your remarks.

I can't tell you how satisfying it is see a review that confirms my book is impacting my readers in precisely the manner I intended. Whether my thesis about the state of our legal system is right or wrong, whether I am an idealist or a realist, it is indispensable that lawyers engage in reflective thought about the perceived vitality of the legal system. Its health is entrusted to our care, and the future of American society is largely dependent on its continued well-being. One thing is certain -- it will not remain healthy if it does not change to meet the changing world around us. And I do not believe it will change unless there are lawyers who publicly criticize it, perhaps even harshly.

As for your comments about my sharpshooting skills, you may be

interested to know that not a single non lawyer has suggested I “missed the mark.” To the contrary, many readers have related personal experiences that they feel closely parallel those of my protagonists. If the recipients of our modern justice believe there is a problem, then there is a problem, despite the contrary views of lawyers. In the case of our justice system, perceptions are actually more important than reality.

As for the charge that I am an idealist, I happily plead guilty. Isn’t that the most important role of literature in American society? As a lawyer I live as a realist 10 - 12 hours a day. In the midst of this healthy dose of realism, I have been very fortunate to have found the time to step back and think about our beloved legal system as an idealist, and to write about it as an idealist. It’s so easy to become totally engrossed in the demands of our vigorous practices that we lawyers tend simply accept the status quo, if only because we have learned how to manipulate it to the advantage of our clients, and of ourselves individually. But we forsake our collective fiduciary duties to society if we just keep blindly patting ourselves on the back.

Hopefully we can all find time once in a while to engage in reflective thought about the system to which we have devoted our lives. Your review is one good first step forward in achieving that objective, the very objective that drove me on to complete *The Litigators* when it so often appeared to be an unachievable dream. For that I am particularly thankful to you for your comments.

Sincerely,

/s/

Lindsay G. Arthur, Jr.



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