

LAWSUIT — by *Stuart M Speiser*. New York. *Horizon Press*, 1980. 617 pp. Price US\$40.00 (cloth), US\$9.95 (paperback).

Mr Speiser is a prominent litigation lawyer in the United States, author of numerous legal texts and a qualified airplane pilot. His latest book is written for the general reader. It is basically a collection of materials from some of the more important personal injury and product liability cases in the United States during the last fifty years. To this Mr Speiser has added his own commentary, analysing the tactics of each case and presenting an overview of both the forms of litigation and the corps of advocates who fostered them. The book begins with an account of Ralph Nader's famous case against General Motors. In that account lies the essential ingredients of all the accounts which follow: a personal plaintiff with courage and stamina finds a lawyer with the same attributes (and large resources of money and investigative skills) who is prepared to do battle in the courts with a faceless corporate giant. In the Nader case the ensuing engagement produced a chronicle of the corruption and brutality of corporate life. It also made Ralph Nader a folk hero at home and abroad and gave him the impetus and money to establish the first public interest law firm in the United States.

Since the early days of his career Mr Speiser has been in contact with other leading trial lawyers, particularly those involved in tort cases. He describes the developments which led to the establishment of the American Trial Lawyers Association in 1955. Central to this is the figure of the "entrepreneur lawyer", the advocate who has the will, the skill and the resources to take on a case for an individual against the might of the corporate or state bureaucracy. Those David and Goliath encounters usually take place on a contingent fee basis or not at all. The entrepreneur lawyer has to undertake all the expense and risk of his client's case and will recover this and his fee (up to one-third of the damages recovered) only if the case is won. Speiser is able to show that such cases often take place in a context where the substantive law, procedure and the attitudes of the bench are disposed against the plaintiff as well.

Of particular interest is his description of the way in which the early entrepreneur lawyers overcame the constraints placed on them by the Brahmins of the legal profession who disapproved of contingent fees. Restrictions of dubious merit concerning contingent fees are still to be found enshrined in the practice rules of the British and New Zealand professions. It is extraordinary really, that lawyers who as individuals almost all espouse the rhetoric of free enterprise should, through their guild, try to ban this useful and creative form of lawyering. As Mr Speiser observes, the government of the profession has traditionally been in the hands of persons with successful practices based on large corporate clients.

Mr Speiser takes care not to go too far with speculation about this, merely recording it as if it were a fact of life, along with phenomena such as the greater protection afforded in law to property rights above personal rights. He makes no reference to modern alternatives to litigation for the protection and care of personal injury victims for example, or to other forms of social regulation. His own experience of success in litigation practice has evidently reinforced him in the belief that the struggle for power in the courtroom, although defective in many ways, is probably the best way there is. This is plausible enough. In a country where the

exercise of power is effectively in the hands of persons who cannot otherwise be held to account by the individual citizen the possibility of litigation is better than nothing.

What Mr Speiser ignores is the adverse significance of dependence on advocates and other experts (including judges), well placed in the hierarchy to intervene on behalf of the powerless individual. The existence of the hierarchy in itself implies the relative powerlessness of the masses on whom it rests. By giving a remedy to the occasional successful litigant the hierarchy does more to legitimise itself than it does to advance social justice.

To a large extent Mr Speiser's book is a celebration of the upper-class professional mode. The consequence of his criticisms, such as they are, would seem to be that we should have more entrepreneur lawyers. His political perspective is akin to that of the medics who see sickness as something best dealt with on an entrepreneurial basis, so train more doctors. If one moves outside the guild mentality one can see that realistic public health measures, like realistic measures for achieving social justice, can only be achieved by a substantial redistribution of economic and political power and the establishment of democratic forms of control.

On the other hand, tinkering with the edifice of the bourgeois state by litigation or otherwise is a lucrative and satisfying occupation for those of us who make it so. Mr Speiser's account, of his own successes in particular, is well-written, interesting and informative.

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