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—Louis Auchincloss

# AT THE BAR

The **P**assions and **P**eccadilloes  
of **A**merican  
**L**awyers



DAVID MARGOLICK  
OF THE NEW YORK TIMES



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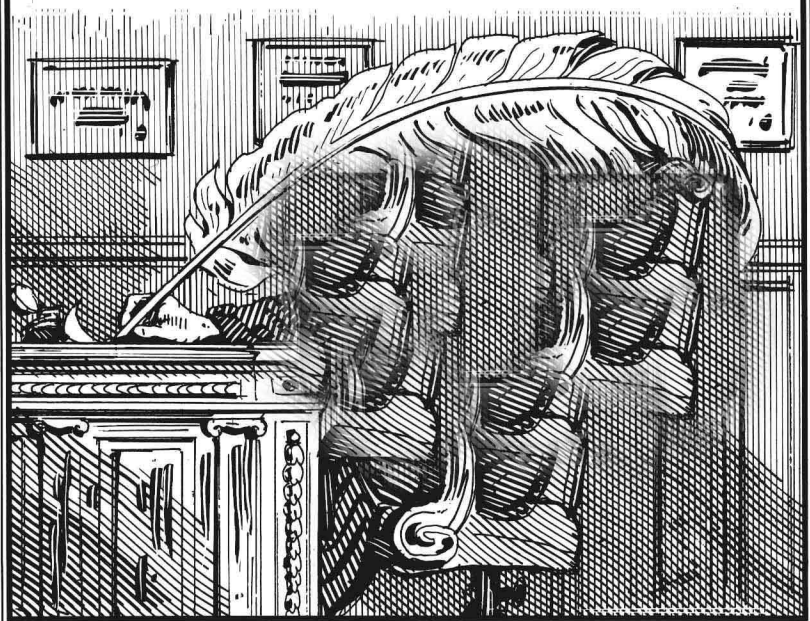
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*The Passions and Peccadilloes of American Lawyers*

DAVID MARGOLICK

*Illustrations by Elliott Banfield*





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*To*  
*Lucjan Dobroszycki,*  
*Elizabeth Cohen,*  
*and*  
*Douglas Lavine,*  
*with*  
*love and thanks.*



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—David Margolick  
Los Angeles, January 1995





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# INTRODUCTION

A RESEARCHER IN ATLANTA ASKS LAWYERS TO SPIT INTO TINY LABORATORY vials to test whether litigators really do have more testosterone. Bar-bashing has become big business: A cottage industry of “Let’s Kill All the Lawyers” items—coffee mugs, pillows, T-shirts, etc.—has sprouted up; one lawyer sends a “Let’s Kill” plate to his old buddy, Justice David Souter of the United States Supreme Court. Meantime, publishers peddle whole libraries of lawyer jokes. Despite the bar’s fat-cat image, the Republican Party concludes that attacking lawyers wins votes, prompting one lifelong G.O.P. lawyer, who practices in Dan Quayle’s birthplace and serves on “Lawyers for Bush/Quayle,” to resign from the group in a huff and vote Democratic for the first time in his life. But for all the knocks against it, the legal profession remains enticing enough for entrepreneurs to launch a summer camp for aspiring lawyers, a place where every camper is a counselor. In the canteen, alongside the sunblock and insect repellent, are legal pads and yellow highlighters.

America can’t make up its mind about lawyers. It reviles them, relies upon them, respects and ridicules them, feels overwhelmed and intimidated and intrigued and repelled by them. But most of all and now more than ever, it is fascinated by them. Lawyers, long accustomed to languishing in the shadows cast by their clients, have become personalities in their own right, appearing regularly on the front pages of leading newspapers, in *People* magazine, on *Nightline* and *Larry King Live*, as well as in publications devoted only to them. As our culture produces a seemingly endless supply of marquee defendants—William Kennedy Smith, Mike Tyson, the Menendez brothers, Lorena Bobbitt, Dr. Kevorkian, O. J. Simpson—so, too, has it made household names of the Dershowitzes doing the defending. And as if 750,000 real lawyers aren’t enough, armies of fictional ones, heirs to Bartleby, the Scrivener, and Perry Mason, saturate the movie theaters, the airwaves, and the paperback racks.

Most Fridays over the past seven years, in the “At the Bar” column of *The New York Times*, I have written about these lawyers, real and mythical, heroic and ignoble, and documented America’s varied, often contradictory reactions to them. For this volume, I have selected 120 of these 350 columns. They vary greatly in substance and tone, and may delight, outrage, depress, or move, depending on what

crossed my mind and desk in any given week. I hope, however, that collectively they chronicle a perpetually fascinating profession in the midst of its greatest upheaval ever.

When "At the Bar" made its debut in November 1987, its mission was vague and its prospects unclear. The *Times* had run columns on sports and foreign affairs, bridge and chess, stamps and coins, doctors and ad men, men and women, but never anything about lawyers. Indeed, with few exceptions, lawyers and law firms had always enjoyed a certain invisibility—and, therefore, immunity—in its pages as well as in those of every other American newspaper. Look up "Cravath, Swaine & Moore" or the names of the most successful personal injury or criminal defense lawyers in the *Times Index* for 1950 or 1960 or 1970 and you'll find almost nothing, except perhaps for a few stray wedding announcements. Only in the early 1980's, prodded by sassy new trade publications like *The American Lawyer* and *The National Law Journal* and the emergence of law graduates who preferred unremunerative careers in noisy newsrooms to more profitable work in cushy law offices, had newspapers like mine hired people like me. Together, we felt like sixteenth-century cartographers surveying uncharted areas of the New World, or perhaps Margaret Mead depicting some exotic tribe.

From the outset, I hoped "At the Bar" would appeal to two distinct constituencies. I wanted lawyers of all pin-stripes to read it, and read it respectfully, knowing that it came from someone who spoke their language and was wise to their ways. But I also sought to engage the far larger population of people interested in lawyers. This has meant many things: that the column had to be accessible, without legal language thick enough to turn off everyone else; that it needed to focus on broader human themes, like valor and venality, rather than on the nuts and bolts of law, a subject covered elsewhere in the paper's pages; that it had to be lively and irreverent, skeptical and detached, going beyond the bar's self-serving pieties and divulging trade secrets about how lawyers behave and misbehave. Above all, it had to be unpredictable. While readers have come to expect Elliott Banfield's distinctive drawings each week, I hope they have never been quite sure what came underneath.

As someone torn about law and lawyering from his first day of law school, who enjoyed cases as much for the characters and stories they contained as for the law they elucidated, who never wanted to practice law but hoped not to stray very far from it, "At the Bar" was a perfect assignment. All that remained was to encapsulate a different facet of the legal world each week, and within the officially prescribed 800

words (though, like any red-blooded reporter, I pushed out that envelope whenever my editors weren't looking). And, seven years later, what remained was to select those columns that most faithfully represent my work and have best held up over time.

It has not been easy to categorize these columns, though I have tried. The first section, a kind of prelude that includes the subjects alluded to above, concerns the ubiquitousness of lawyers and America's ambivalence toward them. Following that are columns on the folkways of the bar: its peculiar organizations, rituals, and language. Lawyers are great joiners, and there are several visits with the group that boasts of being the largest professional organization in the world, the American Bar Association. There is also a side trip to the American College of Trial Lawyers, the self-styled Skull & Bones of the courtroom set. Overall, the language these lawyers speak is pallid, as the surprisingly desiccated last wills of the rich and famous, examined in another column, attest. "Virtually all are the work of lawyers, who can do to language what steam tables do to vegetables," I wrote there. The deflavorizing machine kicks in early, with the student-edited law reviews. But lawyers can occasionally summon something more memorable—an exchange of court papers sprinkled with Yiddish, for instance, and the opinions of a federal appellate judge in Rhode Island, who has tried reintroducing words like "struthious," "neoteric," and "inconcinmate" into the English language.

For all these reflections on the bar's timeless qualities, a second and perhaps more prevailing theme of "At the Bar" has been how dramatically the practice has changed over the past decade. The third group of columns concerns the most compelling of these changes: the newly competitive legal marketplace. Once, corporate law firms were nearly as durable as Ivy League colleges; now, like the famous New York firm of Finley, Kumble et al., they go up in flames, and even onto the auction block. Once, becoming a partner at such places was like winning academic tenure; now, firms jettison unproductive colleagues, loyalties or sentimentality be damned. Once, clients stuck doggedly with firms for decades, rarely second-guessing bills or doing any comparison shopping, and when lawyers hustled business at all, it was discreetly, over tennis matches or golf games; now, newly sophisticated clients hire companies that specialize in scrutinizing legal bills, and even fancy firms must seek out marketing and public relations specialists.

Once, these same firms could sit back demurely, waiting for top graduates to seek them out; now, they compete to produce the fanciest recruitment brochures, though there is a certain sameness to the

results. Once, all but a few lawyers, whom their colleagues dismissed as loudmouths, were models of reticence; now, they trade tips on how to be quoted in the press. Once, though most had no demonstrable management skills, corporate lawyers ran their own offices; now, they farm out such tasks to gurus like Brad Hildebrandt. Once, their idea of advertising was boldface lettering in the white pages of phone books; now that some lawyers in the trenches convinced some other lawyers on the United States Supreme Court that the First Amendment protects them, they flog themselves via television, newspapers, matchbooks, Christmas cards, sympathy wreaths, vanity license plates, and even, in the case of one Honolulu maritime lawyer, condoms. ("Saving Seamen the Old-Fashioned Way," his handy, pocket-sized packets declare.) If some lawyer-wary politicians had their way, such advertisements would have to carry warnings akin to those on cigarette packages and Clorox bottles.

The fourth section is devoted to another sea change in the profession: the entry of large numbers of women, and the host of challenges this has presented to the bar's ossified institutions: everything from the need to change traditional standards for promotion to offering day-care facilities to fashioning new codes for dress, conduct with adversaries, and intra-office sexual relations. Just how quickly things changed in only the past few years is apparent from an early column, in which the news of the day—a mother making partner at a prominent Wall Street firm—now seems as quaint as the reference in that column to a "facsimile transmission machine." For the first time, a New York legal newspaper began carrying personal advertisements, with disappointing, though predictable, results. For all their successes, women lawyers have had their comeuppances: consider the tale of Jill Wine-Banks, executive director of the American Bar Association until an obsession with Dalmatians proved her downfall.

A final column in this section—on how a Chicago lawyer threatened to perform a clitoridectomy on the woman opposing him in court—neatly highlights one of several additional trends addressed in Section Five: declining standards of civility and fair play among lawyers, a phenomenon marked by frivolous motions and so-called Rambo tactics. Elsewhere, a profession famed for its paper production is feeling the first stirrings of environmentalism, making the yellow legal pad an endangered species. This concern for the quality of life also extends inward, as illustrated by examinations of the first law firm fitness center, the first law firm shrink, the first twelve-step program for lawyers desperate to break their addiction to the law, and the story of one contented dropout.

Legal ethics, a perennial source of concern to the bar, is also a steady source of material for bar columnists. Columns in Section Six examine the kinds of questions lawyers face at various stages of their work, from the way in which they defend their clients (e.g. by attacking the character of crime victims) to the padded bills some of them submit afterward. Attorneys can sometimes exploit their familiarity with an honorable system for dishonorable ends, like the workers' compensation lawyers in Kansas who collected tens of thousands of dollars for their own alleged injuries, sustained lifting heavy briefcases or reaching for statute books. Other times, lawyers discredit themselves by playing an honorable role in a dishonorable system. The accusation can be made against a historical figure, like a forgotten legal scholar in Nazi-occupied France, or a fictional character like Atticus Finch in *To Kill a Mockingbird*. The profession's efforts to police itself have at times been feeble, as the fates of one twice-victimized client and a legal whistleblower indicate.

The law is filled with subcultures, and the succeeding sections cover three of the most interesting: the plaintiffs' personal injury trial bar, the bench, and the academy.

Tort lawyers like Izzy Halpern and Harry Lipsig, colossi of the Brooklyn and Manhattan trial bars, respectively, have always been among the law's most flamboyant, even outrageous personalities, attorneys who were uninhibited long before it became fashionable. The personal injury bar has been both the birthplace and incubator of legal advertising. And, as any first-year law student quickly learns, the cases these lawyers handle—flowing from the accidents that befall mankind—are both the most bizarre and the most human. One column in Section Seven depicts the professional swap meet offered by one publication, a service through which lawyers can seek out those kindred colleagues who have previously handled lawsuits over defective straitjackets or wart removers. Another describes how a Houston lawyer saw one verdict shrink because jurors caught him driving to court in a Porsche, and were determined not to buy him another.

Learned Hand, the subject of the first of several columns concerning life on the bench in Section Eight, is nearly everyone's model of a judge. But other articles here examine the ways in which judges deviate from Hand's lofty ideal. Judges should be poker-faced, for instance, yet an Indiana judge cries from the bench during one particularly touching trial, thereby posing the question of whether shedding tears is reversible error. Or judges should be wise, but a California court must decide just how stupid some judges can plausibly be. Columns examine the peculiar way in which lawyers treat the



judges before whom they appear: obsequious in person, venomous behind their backs. There are tales of people newly arrived on the bench, one by way of the gridiron; of people who never got there, like Herschel Friday of Little Rock; and people who, like Judge Joseph Force Crater, disappeared shortly after they arrived.

Catty-corner from the bar—or, perhaps, the cattiest corner of the bar—are the nation's law schools, the subject of Section Nine. When law professors gather, the topics on the table include Burmese art, the poetry of Adrienne Rich, and Picasso's *Guernica*, but not necessarily much law. When law review editors edit, anal compulsiveness may matter as much as erudition, and the footnotes mount. A column written while the world debated whether Clarence Thomas or Anita Hill was more believable, contemplates the plight of poor Guido Calabresi, Yale Law School's dean and a man famously loyal to alumni, who said he believed them both. Legal academia is extremely competitive; hence, the attention begrudgingly paid to a much-despised poll that annually ranks the nation's law schools, and the rampant professional jealousy of Harvard's famed constitutionalist, Laurence Tribe. Another column set in Cambridge recounts how, following the brutal murder of a law professor, Harvard's best and brightest proved to be its cruelest and crudest. Legal academia has its oddities, like the Reverend Pat Robertson, guiding light at a troubled law school in Virginia. It also has its heroes, including J. Willard Hurst, the man uniformly acknowledged to have been the father of legal history.

Perhaps more than anything else, "At the Bar" has sought to capture the amazing range of America's lawyers. In Section Ten, "Personalities," I attempt to reflect that breadth. In it appear characters fresh out of *The Godfather*, *The Front Page* and, quite literally, *The Bonfire of the Vanities* and *Woodstock*. As their personalities vary, so does their expertise—e.g. a man who sues Holiday Inn on behalf of persons spied upon through peepholes in hotel mirrors—and their character, ranging from the egomania of a New York lawyer whose collected works, filling three coffee table volumes, includes his 1933 address to the National Fertilizer Association to the courage of an unlettered prison inmate who helped change constitutional law. For every celebrity-lawyer like Alan Dershowitz, there are countless others of instant but ephemeral notoriety, like Howard Diller, one of the defense counsel in the infamous Central Park jogger case. If some lawyers capitalize on events, others—like Hugh Manes, profiled in the final section, who sued brutal Los Angeles policemen long before anyone ever heard of Rodney King—anticipate them.