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Book Review of Money and Justice: Who Owns the Courts? by Lois G. Forer

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Books for Lawyers

the QTIP donee spouse has made a gift or died and the donor spouse is still alive, the overlap between a charitable remainder annuity trust and a QTIP trust, and whether certain incomplete transfers made by a decedent's surviving spouse are considered as having been made by the decedent because of the transfer-within-three-years-of-death rule of Section 2035(d)(2).

In a book of this size there is no room for an exhaustive discussion of preferred types of testamentary dispositions—that is, whether the marital or the exemption equivalent should be the residuary bequest, or whether a pecuniary or a fractional clause should be used for either or both. Nonetheless, the general effects of these provisions are briefly discussed.

The book makes two points that have not always generally been recognized. The first is that the charitable remainder in a QTIP trust need not be in the form of an annuity or unitrust interest in order to have a charitable deduction at the death of the donee or surviving spouse. The second is that a spouse who receives an inter-

est in property as the result of a marital deduction donation or bequest will pass substantially more property on to its ultimate recipients if that spouse makes a complete gift more than three years before death; in such a gift, the maximum tax scheduled to be effective after 1986 is truly 50 percent of the amount received, while the effect of the estate-tax-on-the-estate-tax means that the post-1986 stated 50 percent maximum would actually be 100 percent of the smaller amount received if the property, or the gift tax thereon, is included in the spouse's gross estate.

Whether to the neophyte or to the expert, this slim volume is worth many times its cost. And, unlike many otherwise valuable reference books, it not only is extremely well indexed, but makes for enjoyable reading.

Reviewed by Edward B. Benjamin Jr. of Jones, Walker, Waechter, Poitevent, Carrere & Denegre, New Orleans, vice president of the American College of Probate Counsel, a former president of the International Academy of Estate and

Trust Law and a former member of the councils of the ABA Tax Section and the ABA Real Property, Probate and Trust Law Section.

General Interest

Money and Justice:

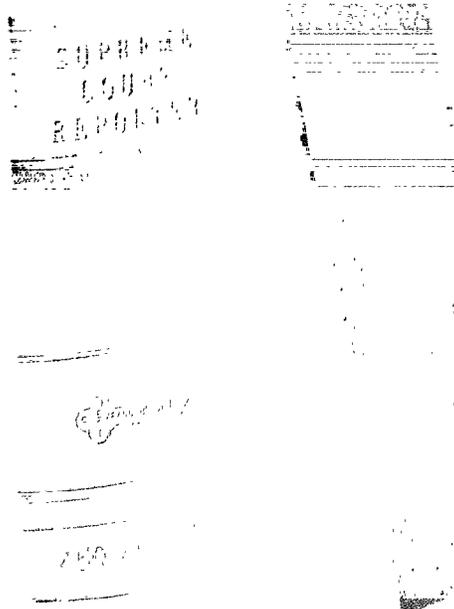
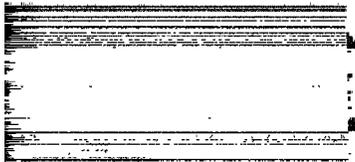
Who Owns the Courts?

By Lois G. Forer.

W.W. Norton; New York City.

\$16.95. 256 pages.

Lois Forer is a rarity: a state trial judge who writes books on law and public policy for an audience beyond the circle of lawyers who might take instruction on the niceties of practice in her court. For many years a judge of the Court of Common Pleas in Philadelphia, Forer has written in her latest book (she is the author of three others) a heartfelt and vigorously asserted brief against a muddled system that all too often fails to provide deserving litigants their time in court. (One cannot say "day"



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in court any longer, she notes; only the rich get a day in court, and then they seem to get many days. The poor are lucky to get a few minutes.)

Her book indicts the legal system as much as anything written in recent years. She presents a parade of horrors—the Bronx family court judge forced to hear 47.6 cases a day, the ability of rich criminal defendants to buy their way out of convictions by stacking and then confusing the jury, the incompetent lawyers who appear before her unable to argue a simple case. And the criticism stings.

Unfortunately, although her heart is in the right place, the book is wildly unfocused. It lurches from topic to topic without warning, signal or clue, even within a single chapter. In a chapter on family courts, for example, it skates along from haste in juvenile cases to the lack of formal rights for juveniles to private child abuse. She is trying to do too much: Hundreds of particular outrages and policy failures are catalogued in this grab bag until we become numb from the impossibility of keeping it all in mind or

seeing more than the dimmest connection between many of the examples and anecdotes and her thesis, "that American courts are not equally open and available to all who have legal claims and defenses—that there is turnstile justice for the poor and lengthy trials and appeals for those who can afford to pay for lawyers, investigation, expert witnesses, and documentary and physical evidence."

Simplistic studies

So intent is she on driving home her thesis that she falls prey to the very errors she criticizes in others. In a scathing—and I believe largely accurate—chapter on the failure of modern social science and legal research, she excoriates the many simplistic (and costly) studies that are made and the willingness of too many courts and others to adopt them without understanding how flimsy they are (often resting on scarcely credible data). But she herself relies on equally flimsy data or asserts dubious propositions without any data at all.

For example, in deriding proponents of

alternative dispute resolution as a cure for the excesses of litigiousness, she notes that proposals to teach negotiation and mediation in school miss the mark: "Since more than 90 percent of all civil cases are settled, lawyers must have learned these skills even though they were not taught them in law school." But that cases are settled says nothing about why they were settled or how well. As many of her other chapters make clear, litigants often are forced to settle because they cannot pay for their full panoply of rights in court. These settlements have nothing to do with their lawyers' skills.

Nor does the settlement rate say anything about the many cases that fail to settle because the lawyers are unaware that they could do more for their clients by exploring alternatives than by pressing the fight in court. Again, after several times denouncing surveys that fail to measure the credibility of responses, Forer blithely accepts the claim of students quoted in a student newspaper at Harvard that some members of the faculty "do not meet their commitments to students."

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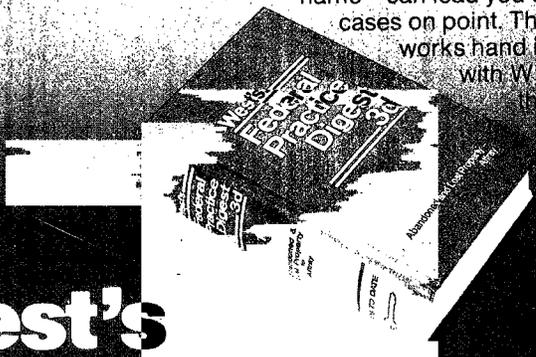
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Books for Lawyers

Perhaps the greatest failure of this book—which for all its flaws is worth some time, for the boldness of her style is refreshing after so much flabby lawyers' writing—lies in her "modest proposals." After nearly 200 pages of criticism, she devotes only 15 to reforms, and most of these are either modest to the point of invisibility or without any obvious operational means of achieving. To be sure, it is not easy to find solutions to the age-old dilemma that money causes in a legal system that is inherently biased toward fees and "important" clients. As one who has been criticized on similar grounds, I am sympathetic to her difficulty. But to suggest as one plank in the platform to cure disparities in court time a statute that establishes minimum standards of eligibility for appointment to the bench (however valuable on other grounds) is close to being silly—as is suggesting that judges need access to non-legal types of information, without saying how.

In the end, the failure of this book is the failure to regard its audience. Whom is

this book for? The general public or, more narrowly, the "intelligent lay person"? If so, then it is difficult to see how anything in it will stir them to action, because the reforms are beyond the power of a mass movement to put in place. If it is for the bar and the judiciary, then it is difficult to understand why Forer has devoted so much space to so much that should be obvious to them. One can only hope that she will devote her next book to exploring in detail real solutions to the problem she so ably propounds.

Reviewed by Jethro K. Lieberman, editor of Alternatives to the High Cost of Litigation and author of The Litigious Society.

Loyalties.

By Daniel Patrick Moynihan.

Harcourt Brace Jovanovich;

New York City.

\$9.95. 96 pages.

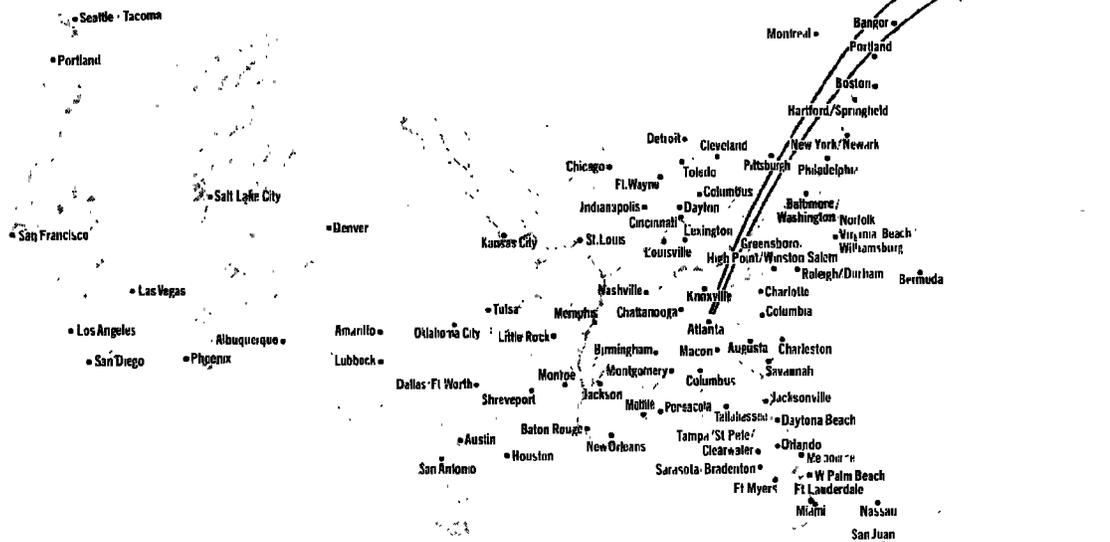
This is a small but important book by one of the ablest politicians and political writers of our times. The theme is the

need for loyalty to principle in dealing with international peace, international racism and international law. Senator Moynihan is incapable of writing a dull sentence, and he makes his points concisely, concretely and powerfully.

MX debate

The first of the three essays in the book explains Moynihan's opposition to the procurement and deployment of MX missiles under the Omnibus Defense Authorization Act. He argues that this program abandons a 20-year policy of deterrence under which we would absorb a nuclear attack before retaliating in favor of a launch on warning strategy. This, Moynihan argues, is acting in a "wildly dangerous and threatening manner" that will fail to achieve its stated aim of bringing the Soviets to their senses on arms control. In Moynihan's view the MX debate was not decided by argument but by Pentagon and congressional routine, at the sacrifice of loyalty to principle and human life.

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