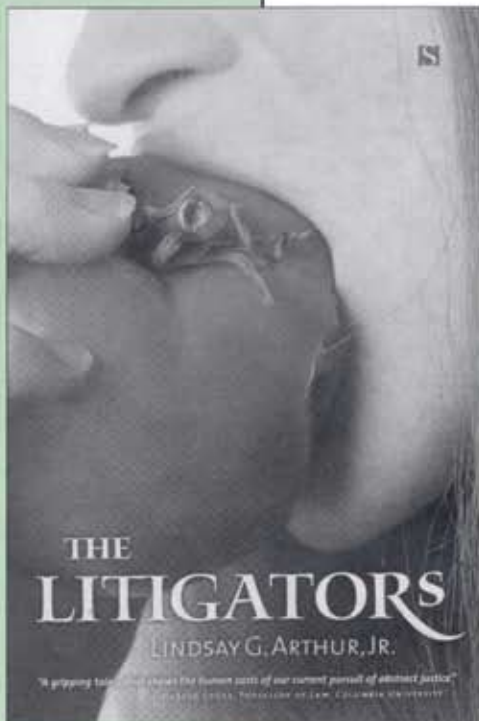


BOOK REVIEW

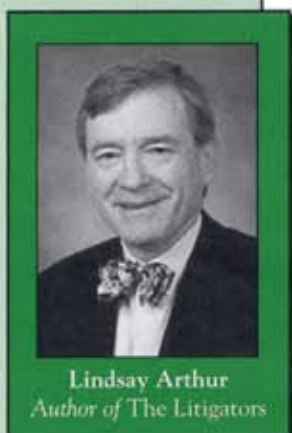
OUR WORLD ACCORDING
TO ARTHUR

The Litigators
by Lindsay G. Arthur, Jr.
Scarletta Press (2005)
282 pages

Reviewed by Douglas A. Hedin, a Minneapolis lawyer who has critiqued a number of books for The Hennepin Lawyer.

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,” Dillon 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, Arthur’s litigators act as barriers to comity by isolating their clients from direct contact with one another.



Lindsay Arthur
Author of *The Litigators*

This is the theme of Arthur’s story of the lawsuit Ruth Bergstrom brings against EnviroClean, a small biotech company that grows microorganisms 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 Henry’s letter to Dillon Love to read. Recognizing the author, Dillon 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. Dillon 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, Henry has turned the reins of the defense over to his protégé, Allison Forbes, a law school classmate of Dillon, 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, Henry 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, Henry 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

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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 the Honorable 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 decision 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 Henry bars the door. Without his lawyers' knowledge, Boyd even sends flowers to Ruth, an act of kindness Dillon 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 storyteller. 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, Henry 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." Dillon 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." 