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Book Review [Justice Denied]

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BOOK REVIEW

JUSTICE DENIED. By Leonard Downie, Jr. Baltimore: Penguin Books, 1972. Pp. 224. $1.45.

The judicial system throughout the United States is on the verge of collapse. It is responsible for visiting wrongs daily upon millions of innocent citizens. And the major blame for this situation lies with the legal profession. At least so says the author, Leonard Downie, Jr., a thirty-year-old former investigator-reporter for the Washington Post. Between 1969 and 1971 he traveled extensively, observing big-city court operations in Cleveland, Detroit, Chicago, Los Angeles and New York City. He feels that his book has particular significance because, as a non-lawyer without ties to the judicial bureaucracy, he can tell it "like it is." Hence, his book is "aimed at piercing the veil of secrecy lawyers try to keep around their work."[1] It is a book that will enable the reader to "see what really goes on . . . so that he will, perhaps, be stirred into demanding change."[2] He does not expect lawyers to like what he says because the telling contents of the book contest the "assurances they give the rest of the citizenry that the laws and the courts still produce justice, no matter how compellingly the evidence might indicate the contrary."[3]

With that introduction the book is off and running to the Recorders Court in Detroit, otherwise referred to as the Sausage Factory, and an analysis of the defense of Mr. Sam Jackson, a black man with a prior record involving dope and gambling, who has been on bail and awaiting trial for a year on a charge of possessing a concealed weapon. Downie's description of the Recorders Court differs little from a carnival midway. Everyone is present, the judge, numerous attorneys, numerous clients, numerous policemen, attorneys shouting at clients, attorneys talking with detectives, the judge in a corner arraigning a defendant. In short pandemonium and confusion. Defendant Jackson's court-appointed attorney is a member of a shabby clique known as the Clinton Street Bar, whose members carry no brief cases and seldom consult law books. Their only income comes from court appointments. Their case preparation consists of marking trial

1. L. DOWNIE, JR., JUSTICE DENIED 8 (1972).
2. *Id.*
3. *Id.*

dates and having a hurried conversation with the arresting detective on the date set for the trial. Predictably, Jackson's case never gets to trial because it is dealt out when the prosecutor amends the charge to a misdemeanor after haggling with Jackson's attorney and the detective. Jackson, instead of facing state prison, now gets only 90 days in jail.

Our next stop is San Francisco where on a typical day in Superior Court, according to Mr. Downie, three defendants in a burglary case were supposed to plead guilty in exchange for being placed on probation. Their lawyers had made the arrangements with the judge in chambers. But when the defendants themselves came before the judge from the lockup, one insisted that he was not guilty. "This is not what I expected," his lawyer, a public defender, said sheepishly, as the judge ordered a date set for a trial. On the way out of the courtroom the public defender apologized to the lawyers for the other two defendants that their scheme had gone awry. "The best laid plans of mice and men," he muttered. "That guy doesn't know what's good for him."[4]

According to Downie, case after case is handled in this manner, not only in San Francisco and Detroit but throughout the nation. Downie finds that defense attorneys are not interested in whether or not their clients are innocent or guilty; they are interested only in sealing a bargain.[5] Hence Downie's lamenting stanza, "No trial. No jury of peers. No exhaustive search for the truth. No exacting legal rules."[6]

Not only is the criminal defendant short-changed by the sausage-factory, assembly-line manner of dispensing justice, but the police and public are getting a raw deal. According to Downie, the prosecutor, under pressure to keep the judge's calendar as light as possible, drops charges against defendants "wholesale" before the cases can reach the judge. These decisions, made by a "young assistant prosecutor, usually overworked and inexperienced, are most often based on a quick glance at police reports of arrests."[7] "Frequently, perhaps, the prosecutor is dispensing admirable justice and saving the system from needless further congestion. But nobody ever knows for sure."[8] "The prosecutor makes no investigation of his own before acting. Most often, no judge reviews his decision. Some judges, in their turn, throw out still more cases in large lots", according to Downie. "The judges,

4. *Id.* at 26-27.
5. *Id.* at 27, 146-149, 175-179.
6. *Id.* at 22.
7. *Id.* at 30.
8. *Id.*

too, base their decisions on no more than a look at a court paper or a remark from the prosecutor."[9]

Now, how does one assess this book? These remarks about the prosecutor are not only bad writing from a literary or journalistic standpoint, they are meaningless unless the author wants us to infer from them that prosecutors are dolts and robots more concerned with a judge's calendar than with convicting criminals.

Surprisingly, much of the book is filled with this sort of innuendo and meaningless observation. I say surprisingly because the author is a winner of the American Bar Association Gavel Award and the Federal Bar Association Liberty Bell Award given on the basis of several recent articles on the District of Columbia Court of General Sessions. Presumably one does not receive these awards for writings characterized by maudlin rhetoric and careless generalizations. But perhaps the book can be excused on the ground that it is written obviously for the lay public. However, despite assertions to the contrary, the book does little more than parrot and amplify the suspicions and fears of millions of Americans who already have very little faith in our judicial system. After all, contempt and mistrust plagued our legal system even in colonial times, when pamphleteers harangued the populace with tracts entitled *The Downfall of Unjust Lawyers,* and *A Rod for Lawyers Who Are Hereby Declared Robbers and Deceivers of the Nation.*[10] From a purely literary standpoint, *Justice Denied* is not unlike these tracts. All are intended to be persuasive rather than penetrating, superficial in tenor rather than acute, and presumptuous rather than analytical.

For example, Downie is incredibly naive in his discussion of plea bargaining and in his rhetoric which finds moral fault with the fact that only one in ten defendants ever receives a courtroom trial.[11] The mere statistic means nothing. Responsible defense attorneys do not usually drag their clients through a jury trial merely for the sake of exercising a constitutional right.

Without knowing more, for instance, it is hard to see how Sam Jackson could possibly have benefited from a jury trial. A charge of possessing a concealed weapon contains very few elements and usually can be proven by the testimony of a single witness. A defense attorney is usually left with nothing to argue except rhetoric inspired by the certainty of his knowledge that his client soon will be convicted on the first ballot taken in the jury room.

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9. *Id.*

10. 2 A. CHROUST, THE RISE OF THE LEGAL PROFESSION IN AMERICA 24 (1965).

11. L. DOWNIE, JR., JUSTICE DENIED 34, 44, 164 (1972).

Again, how does one conclude that the San Francisco Deputy Public Defender in the burglary case was acting in a reprehensible manner? It is common knowledge among criminal practitioners that all too often a defense attorney has a client who, despite his attorney's advice, thinks he can beat an iron-clad prosecution case by exploiting a trivial technicality or employing a perjured alibi.

It is my observation that defects in the criminal justice system work for the benefit of the accused rather than against him. It is extremely rare to find a case with significant prosecution weaknesses in which those weaknesses are not totally explored and exploited with telling effect by even the worst of defense attorneys. It is apparent that Downie does not share this view. But he gives no persuasive or concrete examples to the contrary.

The remainder of the book is devoted to generalizations and seemingly awesome observations about other aspects of the legal system. And again, although it makes very colorful and interesting reading, it is lacking in depth.

In conclusion, no responsible attorney will argue with the proposition that many things are in need of change in our judicial system. But any attempt at change requires an acute and careful delineation of the issues and conclusions having the greatest empirical validity. *Justice Denied* fails in this respect. In the end one is left with the feeling that this book, in its broadsword attempt at mayhem upon the judicial system, somehow missed completely the jugular.

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