

# Learning from Journalism

Samuel H. Pillsbury\*

STEVE BOGIRA, *COURTROOM 302: A YEAR BEHIND THE SCENES IN AN AMERICAN CRIMINAL COURTHOUSE* (Alfred A. Knopf ed., 2005)

The challenge of modern legal education, I think, is integration. How do we integrate all the different understandings of a subject that modern learning has developed? My particular concern is with the teaching of criminal law and procedure. How can we present all the different kinds of knowledge relevant to criminal justice? How do we prepare students for both the mental and emotional challenges of criminal practice? Most importantly, how do we help students become not just smart but wise attorneys?

These questions may seem far removed from my subject—a review of Steve Bogira’s *Courtroom 302*—but I think they are on point. This journalist’s account of a year in the life of a Chicago criminal courtroom represents an intriguing educational resource for law teachers. The author’s focus on the human experience of criminal justice rather than its larger structures, rules and concepts, offers legal educators the chance to do the same.

*Courtroom 302* provides a stark reality check on the state of criminal adjudication in a major U.S. city today. It reminds us of the many ways that contemporary criminal justice falls short of its ideals. The book’s portraits of lawyers and those caught up in the system also provide material for expanding our concept of legal education. The author’s carefully observed accounts of adjudication reveal much about the practice of criminal law that academia’s emphasis on deliberative reasoning often neglects.

## I. CONTEMPORARY CRIME REPORTING IN AMERICA

*Courtroom 302* is a journalist’s account of contemporary criminal adjudication, which means that to evaluate this work we need to appreciate the aims and methods of crime journalism. This is a challenge for academics in the criminal field, who generally take a dim view of the media.

The biggest objection many lawyers have to crime reporting today is that it is just plain bad. It fails its own low standards. More concerned with ratings than accuracy, media reports on crime and criminal justice are often superficial,

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\* Professor of Law, Loyola Law School, Los Angeles. By way of full disclosure, I should note that my first professional involvement with criminal justice was as a newspaper reporter covering first police and then state courts in Jacksonville, Florida. My thanks to colleagues Laurie Levenson, Alexandra Natapoff and Michael Shultz for their comments.

sensationalist, ill-informed, manipulative and downright misleading.<sup>1</sup> And I have to agree; some crime reporting is very bad. But this should not obscure the fact that some contemporary crime reporting is very good. Indeed, were I pressed to a one-line summary of the current state of the journalistic art, I would employ Charles Dickens' classic opening to *Tale of Two Cities*: "It was the best of times, it was the worst of times."<sup>2</sup>

Readers of this journal likely know what I mean by the worst of times. Coverage of crime in the electronic media—where most Americans get their news—in the last decade seems to have become even more sensational, more focused on the celebrity/high-profile trial, more 24/7 sports reporting (who's winning, who's losing) than before. Television seems to have added this new vice to the old vice of sensationalist fear mongering (if it bleeds, it leads). From O.J. to Michael Jackson, it's not a pretty picture. The view becomes even darker when we consider the lack of coverage of important developments in criminal procedure and sentencing practices. Nor can we dismiss crime journalism's excesses as merely an unfortunate cultural trend, like reality television or cell phone conversations in public places, because media coverage of crime issues helps shape public opinion about criminal justice and therefore helps shape law and policy.

But when we consider the number of books, documentaries and other serious treatments of criminal justice produced in the last decade, we find reason to believe these are the best of times journalistically. Recent book-length memoirs, works of in-depth reporting, and documentaries provide as detailed and insightful a view of the experience of criminal justice as perhaps we have ever had. In each, an author with first-hand knowledge of the subject eschews easy clichés and cheap moralism to explore the actual workings of criminal justice. A quick sampling illustrates the riches available.

With respect to police—a popular subject, though not necessarily a well treated one—we have a richly detailed memoir of a young officer's experience in the New York Police Department, Edward Conlon's *Blue Blood* (2004). Conlon tells of the attractions and challenges of patrol work and street drug enforcement and the most serious obstacle to effective policing in his experience: narrow-minded supervisors. Miles Corwin's work, *Homicide Special: A Year with the LAPD's Elite Detective Unit* (2003) brings us inside a Los Angeles homicide unit. It follows the research, though not the literary method, of David Simon's

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<sup>1</sup> Academics also frequently complain that journalists distort the public's view of crime by focusing on especially frightening but unrepresentative cases. *E.g.*, Susan Bandes, *Fear Factor: The Role of Media in Covering and Shaping the Death Penalty*, 1 OHIO ST. J. CRIM. L. 585 (2004). While there is merit to this critique, the basic purpose of crime journalism is to find and report the most dramatic news (i.e., unusual, and emotionally powerful events). See Steven Gorelick, *Cosmology of Fear*, in THE CULTURE OF CRIME 23 (Craig L. LaMay & Everett E. Dennis eds., 1995). Crime journalism is not criminology. For a general critique of contemporary journalism from a journalistic perspective, see BILL KOVACH & TOM ROSENSTIEL, THE ELEMENTS OF JOURNALISM (2001).

<sup>2</sup> CHARLES DICKENS, TALE OF TWO CITIES 1 (1859).

groundbreaking *Homicide: A Year on the Killing Streets* (1991).<sup>3</sup> In the field of corrections, we have journalist Ted Conover's report of his year as a prison guard in New York State, *Newjack: Guarding Sing Sing* (2000), and Joseph T. Hallinan's *Going Up River: Travels in a Prison Nation* (2001), a report on prisons and the prison industry in late twentieth century America.

Several talented journalists have studied the experiences of offenders and their families. In *All God's Children: The Bosket Family and the American Tradition of Violence* (1995), Fox Butterfield examined multigenerational violence in one African-American family and the criminal justice system's response. More recently, Jennifer Gonnerman's work, *Life on the Outside: The Prison Odyssey of Elaine Bartlett* (2004), describes the long-term effects of harsh sentencing laws for drug offenses on a woman and her family.<sup>4</sup> Edward Humes's *No Matter How Loud I Shout: A Year in the Life of Juvenile Court* (1996), focuses on juveniles in the Los Angeles delinquency system; its attention to the adjudicative process means the work has some parallels to *Courtroom 302*, though the time period and setting are quite different. The last decade has brought us several memoirs by prosecutors,<sup>5</sup> and worthwhile additions to the true crime genre.<sup>6</sup> Law professor Scott Sundby in his recent book, *A Life and Death Decision: A Jury Weighs the Death Penalty* (2005), provides a uniquely detailed view of the dynamics of jury deliberations in a capital case using the narrative techniques of journalism.

Meanwhile, the oft-criticized visual media, taking advantage of electronic access to selected courtrooms, has produced equally involving and insightful work. Among the most polished and dramatic is the 2003 Academy Award winner for the best documentary feature, *Murder on a Sunday Morning*, depicting a Jacksonville, Florida murder trial. The *Frontline* series on PBS has aired a number of important documentaries on criminal justice in recent years, including stories on the

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<sup>3</sup> DAVID SIMON, *HOMICIDE: A YEAR ON THE KILLING STREETS* (1991). Simon utilized what he calls a narrative style to write from the perspective of, and in the voice of, the Baltimore homicide detectives who were the subjects of his reporting. Simon explains and defends this technique in a later work. David Simon, *The Reporter I: Cops, Killers and Crispy Critters*, in *THE CULTURE OF CRIME*, *supra* note 1, at 35.

<sup>4</sup> See also JIMMY SANTIAGO BACA, *A PLACE TO STAND* (2001) (a poet's and prisoner's autobiography); MARK SALZMAN, *TRUE NOTEBOOKS* (2003) (a view of youth in a Los Angeles juvenile detention center by a writer in the program to teach writing to the incarcerated).

<sup>5</sup> LINDA FAIRSTEIN, *SEXUAL VIOLENCE: OUR WAR AGAINST RAPE* (1993) (a New York prosecutor's account of the prosecution of sex crimes); DAVID HEILBRONER, *ROUGH JUSTICE: DAYS AND NIGHTS OF A YOUNG DA* (1990) (first-person account of deputy district attorney in Manhattan).

<sup>6</sup> JOHN C. TUCKER, *MAY GOD HAVE MERCY: A TRUE STORY OF CRIME AND PUNISHMENT* (1997).

convictions of innocent people<sup>7</sup> and the use of informants.<sup>8</sup> The ABC news series, *NYPD 24/7*, gave viewers a realistic picture of the challenges facing officers in the New York City Police Department.<sup>9</sup>

All this is to say nothing of the most important outlets for serious crime journalism: daily, weekly and monthly reporting in newspapers, print magazines, television magazine shows.<sup>10</sup> Nor does it touch on the burgeoning literature of the online world.

In sum, I think there has been a great deal of excellent reporting on criminal justice in recent years. But what is it, exactly, that defines good reporting? I would argue that good crime reporting satisfies at least three criteria—the accounts provided must be revealing, compelling, and fair. By revealing I mean that the reporting must present something new about the world—new facts, new perspectives, new details, new understanding. Reporting is compelling when it tells of people and events in a way that touches on our own experience; these accounts have intellectual and especially emotional resonance with the audience. Reporting is fair if the reporter makes a good-faith effort to describe accurately all relevant aspects of persons and events, and is a competent gatherer and assembler of facts. All three criteria normally relate to the quality of journalistic storytelling.

According to these criteria, *Courtroom 302* is a standout even in a field of notable works. Its account of contemporary adjudication is revealing, its stories are compelling and, throughout, Bogira makes a remarkable effort to be fair.

## II. STORY REPORTING: *COURTROOM 302*

In *Courtroom 302*, author Steve Bogira attempts an apparently simple, but actually enormously complex, task: to tell the stories of a select number of cases adjudicated in a single year (1998) in a single courtroom in Chicago, from all available perspectives. A key to the book's success is the author's access to participants. As described in his Sources section, in addition to observing courtroom proceedings and reviewing court records, Bogira conducted numerous interviews with the judge, Daniel Locallo, after cases were completed. (Bogira, at 355–57.) Equally important, he managed to gain candid interviews with a wide

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<sup>7</sup> E.g., *Frontline: Requiem for Frank Lee Smith* (PBS television broadcast Apr. 11, 2002); *Frontline: The Case for Innocence* (PBS television broadcast Jan. 11, 2000); *Frontline: What Jennifer Saw* (PBS television broadcast Feb. 25, 1997). Of particular interest to legal educators are documentaries that focus on the adjudicative process. There have been numerous documentaries with this focus. E.g., *Frontline: Presumed Guilty: Tales of the Public Defenders* (PBS television broadcast Oct. 24, 2002) (profiling attorneys in the San Francisco public defender's office); *Frontline: Real Justice* (PBS television broadcast Nov. 14, 2000) (following selected cases in Boston criminal courts).

<sup>8</sup> *Frontline: Snitch* (PBS television broadcast Jan. 12, 1999).

<sup>9</sup> *ABC News: NYPD 24/7* (ABC television broadcast June 22–Aug. 3, 2004).

<sup>10</sup> E.g., Jill Leovy, *Southeast Homicide: A Son's Errand, Gunshots and the Quest for a Killer*, L.A. TIMES, June 12, 2005, at A1 (describing a homicide investigation in Los Angeles).

variety of participants, from prosecutors and defense attorneys to defendants, their families, and to the deputies who handle courthouse security.

Unlike some long form journalists, Bogira does not aim for literary eloquence.<sup>11</sup> Instead he trusts the innate drama of crime and its adjudication to carry the book. Though unassuming as a writer, he displays his own quiet brilliance in the way that he tells stories. His method is to identify persons (and occasionally places), and tell us what happens to them. His reporting takes us into a judge's chambers (and home), into the courthouse lockup and state prison, takes us back into the histories of individuals, the city and its criminal courthouse, and forward to later developments. He takes full advantage of the book writer's luxury of time and energy. Unlike virtually all other participants in this resource-pressed system, Bogira seeks the whole story about every individual and case. As a result, he sometimes comes up with highly relevant information about cases that the police or lawyers missed. (Bogira, at 333–36.) His method consistently reveals the big picture in the small incident, the strengths and weaknesses of a criminal justice system in a few unique but also typical accounts.

Each chapter has its own conceptual integrity, focusing on particular cases and aspects of cases, that relate to a larger theme. This allows the author to undertake analysis and make connections between individual experience and systemic problems. For example, a chapter entitled "Freely and Voluntarily," deals with a case involving allegations of police torture in interrogation; the chapter, "A Real Lawyer," explores the relationship between defense attorneys and their clients. Remarkably, this conceptual organization does not hinder the narrative flow. Within each chapter, Bogira tells the stories of individual cases in a way that is faithful to the dynamics of the cases and reveals the larger theme. The cases are never just illustrations for rhetorical points.

Perhaps most important to the narrative strength of the book is Bogira's ability to bring a wide range of characters alive. He sheds an unsparing light on the people of Courtroom 302. Yet for all their evident shortcomings, most are presented sympathetically. The reader is soon rooting for defendant Larry Bates in his struggles with drugs, even while realizing that his legal story is unlikely to have a happy ending.<sup>12</sup> In other instances, the reader may find herself rooting for the conviction and punishment of an accused. Bogira does not shy away from the sometimes ugly discourse of the criminal system, yet he still presents every person in the system as a potentially sympathetic figure.<sup>13</sup>

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<sup>11</sup> For a useful introduction to contemporary long form journalism, including its more self-consciously literary practitioners, see ROBERT S. BOYNTON, *THE NEW JOURNALISM* (2005).

<sup>12</sup> Bates is a man in his forties whose struggles with alcohol and then cocaine lead to repeated criminal charges, all involving drug use. (Bogira, at 23–26, 30–36, 107–15, 114–17, 121–22, 193–96, 208–09, 343–45.)

<sup>13</sup> A good example of Bogira's restraint is in his account of the interaction between deputies and prisoners in lock up. (Bogira, at 4–21.)

This brings us, finally, to the question of fairness. The author's attention to facts and his restraint from personal judgment soon win over the reader. But is this trust justified? We need to remember that we have limited resources to judge the account provided. Events depicted are not otherwise familiar to most readers; we have no independent sources of information. The book is a carefully edited version of the facts, necessarily shaped by the relative volubility, candor and articulation of those who spoke to the reporter and the reporter's own editorial choices. Yet in the end, initial impressions of fairness are, I think, borne out. Bogira appears a careful researcher and writer, who seeks out all potential sources of information, attends to detail and nuance, and gives readers sufficient data to make their own independent assessment of characters and events. As best he can, he lets the facts speak for themselves.<sup>14</sup>

### III. REALITY CHECK

Bogira reveals many disquieting aspects of Chicago criminal justice, some of which may be peculiar to that city, but most of which are common to contemporary urban adjudication in the United States. As a work of journalism, it does not aspire to, and could not meet, the methodological requirements of social science. Its account of criminal justice is literally anecdotal. Well-chosen and well-told anecdotes can tell us a great deal, however. Here are a few basic truths that might be taken from the stories told here:

1. Injustice flows as much from what is not done as what is done, and probably more from overwork and indifference than hostility or ill will. It usually comes from a lack of some sort: a lack of imagination, lack of concern, lack of energy, lack of hope, lack of time, or lack of resources.<sup>15</sup>

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<sup>14</sup> Bogira meets my personal test of fairness by trying to give each party to a case equal consideration in both space and detail. He resists the temptation to pull the reader to his own view by telling one side largely in generalizations while providing emotionally compelling details of the other side. As David Simon writes: "For journalists, the real test of integrity isn't whether you convict or acquit the subjects of your stories, but simply whether or not you present the reader with all the evidence." SIMON, *supra* note 3, at 44. Bogira's commitment to fairness is also indicated by his careful notes on sources and an unusually detailed and useful index, often the author's responsibility in today's publishing world.

<sup>15</sup> Here, I likely read the book in light of my own pre-existing views of criminal justice. Bogira's history of the Cook County Criminal Courthouse may be the best single example in the book to support these observations. (Bogira, at 3-4, 49-54.) I should also note that the line between hostility and indifference can be hard to draw. For example, the roughest words and conduct in the book occur between deputies and defendants in lockup. (Bogira, at 4-16.) At one point, a sergeant hears a prisoner complaining about how long it is taking to get released and states: "Excuse me—where did you see the sign that says we have to care about you?" (Bogira, at 7.)

2. Outcomes often depend as much on relationships as on rules. This makes especially important the often difficult relationship between appointed defense counsel and their clients. (Bogira, at 28, 94–95, 100–01.)<sup>16</sup>

3. The system runs on negotiated guilty pleas, and places a significant penalty on exercise of the right to a jury trial through the usually unstated, but universally understood, threat of a trial tax. In the taking of guilty pleas, formality is more important than substance (Bogira, at 37–48, 83), and there is normally no judicial inquiry into the guilt of the defendant beyond pro forma statements of counsel and defendant. It should not surprise that innocent defendants sometimes plead guilty. (Bogira, at 326–36.)<sup>17</sup>

4. Poverty, family dysfunction, mental health problems and child abuse have powerful correlations with criminal conduct but are systematically discounted in assessing punishment. It is as if these factors are too common to count. (Bogira, at 86–87.)

5. Race discrimination is most likely to occur because of greater sympathy for middle-class victims of violence, and a bias toward the prosecution of street dealing and drug use in the war against drugs. (Bogira, at 81, 111, 283–84.)

6. Whistle blowing may be critical to criminal justice reform, but it is almost always bad for an individual's career, especially for a police officer. (Bogira, at 155–57, 164–69.)

7. Police sometimes lie about procedural matters involving searches or interrogations, which lies (especially about the latter) may affect the accuracy of verdicts. (Bogira, at 179–84.) In general, prosecutors and judges are reluctant to investigate and punish suspected abuses of police investigative powers. (Bogira, at 199–207, 171–81, 231–35, 285–87, 341–43.)

8. Although a common feature of those accused of crime, police, prosecutors and judges have very limited understandings of mental retardation or mental illness. (Bogira, at 161–64, 199–209.)<sup>18</sup>

9. At least when they go to trial, both prosecutors and defense attorneys value winning over discovery of the truth. (Bogira, at 236–59.)<sup>19</sup>

<sup>16</sup> A classic moment occurs in a case when a defendant thanks his appointed counsel for his efforts that led to an acquittal: “Hey, you good . . . . Why ain’t you become a real lawyer?” (Bogira, at 138.)

<sup>17</sup> For other sources, see Barry Tarlow, *RICO Report, Queen for a Day—Proffer Your Life Away*, 29 CHAMPION 53, 55 (2005); Samuel H. Pillsbury, *Even the Innocent Can Be Coerced Into Pleading Guilty*, L.A. TIMES, Nov. 28, 1999, at M5.

<sup>18</sup> Judge Locallo tells Bogira that no jury in his courtroom had ever acquitted for insanity. Locallo says that such a “defense might work on the East or West Coast,” but would not succeed in Chicago “because of the ‘good common sense’ of Midwesterners.” (Bogira, at 207.)

<sup>19</sup> This will probably not surprise or offend most trial lawyers, but it appears to disturb Bogira. My guess is that as a journalist—and non-lawyer—he sees the revelation of truth as of paramount importance, especially where contested at trial. This view is certainly shared by many members of the public and by a number of critics of contemporary American adjudication. See, e.g., WILLIAM T. PIZZI, TRIALS WITHOUT TRUTH (1999); FRANKLIN STRIER, RECONSTRUCTING JUSTICE: AN AGENDA FOR TRIAL REFORM (1994).

10. Where judges are elected, highly publicized criminal cases can generate public sentiments that place extreme pressures on judicial decision-making. The point here is not that judges lack integrity, but that they are human. Judges generally work hard for their positions and wish to keep them; they generally enjoy the public's respect and wish to keep that as well. If judges can be voted out of office for controversial decisions, it only stands to reason that their rulings may be affected, consciously or unconsciously, by political considerations. (Bogira, at 292–310.)

#### IV. LEARNING FROM JOURNALISM: THE IMPORTANCE OF CHARACTER

*Courtroom 302*, like most works of crime journalism, focuses more on human relationships and conflicts than on legal doctrine. Where legal rules are discussed, the focus is on how they are applied rather than how they are conceived. This raises the question: Aside from revealing flaws in the law's administration, what can legal educators take from this kind of approach to criminal justice? This material does not seem well-suited to the task of developing legal reasoning. But if we are interested in exploring the human experience of criminal adjudication—the experiences of lawyers, judges, witnesses, parties and others—then there may be educational treasure in the stories of *Courtroom 302*.<sup>20</sup>

To state the obvious, the basic mission of the American law school is to educate for the practice of law. Law schools exist to form new lawyers. Toward this end, professors teach deliberative analysis. We try to convey doctrinal knowledge and develop thinking-like-a-lawyer skills that are then tested on written examinations. Most of us understand the limitations of this effort; we know that the practice of law requires more than deliberative reasoning, but we presume that training in other needed skills will come in the workplace. Besides, how would we ever test such skills?<sup>21</sup>

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<sup>20</sup> Here we should distinguish journalism's story method from storytelling in contemporary legal scholarship. In recent years, storytelling in legal scholarship has emphasized its forensic possibilities. Sometimes this has dealt with the story as courtroom advocacy. See Steven Lubet, *Moral Adventures in Narrative Lawyering*, 2 GREEN BAG 2D 179 (1999). More frequently storytelling has been a method of arguing for different definitions of justice, often relating to gender or race, an approach that often insists on the pluralist nature of reality. For an introduction to controversies concerning this kind of storytelling in legal scholarship, see Jane B. Baron, *Resistance to Stories*, 67 S. CAL. L. REV. 255 (1994); Kathryn Abrams, *Hearing the Call of Stories*, 79 CAL. L. REV. 971 (1991). Journalists, by contrast, generally see the telling of multiple stories as a way to approach an objective understanding of complex reality. Somewhat closer to my current concerns here is the scholarly literature on client representation and listening to client stories. See, e.g., Clark D. Cunningham, *The Lawyer as Translator, Representation as Text: Towards an Ethnography of Legal Discourse*, 77 CORNELL L. REV. 1298 (1992).

<sup>21</sup> It is interesting that this concern with testing should prove so prominent. Surely the worth of education should be measured by the value of what is learned rather than by its suitability for graded examination.

Now consider education from a different perspective, from that of the law student. In addition to the usual worries about grades and job offers, students wrestle with questions of professional identity. What kind of lawyer do I want to be? What kind of work do I want to do? Who do I want to work with? Who do I want to oppose? Who are my role models? Although these questions implicate rules and rule analysis, they focus primarily on the human dimension of law—the character of individual lawyers and the nature of their social relations. This is where the story approach of crime journalism reveals its academic possibilities. The story approach tells us about (because it *is* about) character and relationality in law practice. To illustrate, consider the portrait of Judge Daniel Locallo in *Courtroom 302*.

#### V. CHARACTER IN PRACTICE: JUDGE DANIEL LOCALLO

Bogira's portrait of Judge Locallo, who presides over Courtroom 302, is itself worth the price of the book. This young (for a judge), confident, hard-working, conscientious and candid jurist is the most fully developed character in the book, and among the most appealing. As presented here he displays many of the traits of an excellent judge; however, the account also reveals significant shortcomings. Here, I will attempt no final assessment of Locallo, but I will concentrate on the educational possibilities of this portrait and on what students might learn about practice from encountering this human being in a black robe with particular strengths and weaknesses, often interconnected.

Two preliminary notes before taking a closer look at the judge. First, it's worth observing that judges are the only lawyers in the criminal courtroom whose temperaments are regularly scrutinized. Probably this is because the judge's role requires an intellectual and emotional balance not demanded of lawyers who advocate for particular positions. Yet, surely prosecutors and defense attorneys also must balance conflicting demands, and both in their own way wield significant power.<sup>22</sup> That is why, as the discussion proceeds, I will emphasize character traits needed not just by judges but by all trial lawyers.<sup>23</sup>

Second, character study requires a different perspective than does deliberative analysis, and produces different results. Our aim is to discern the right character, not the right concepts. Although we seek to identify particular traits needed for successful practice, these traits resist precise definition. Often traits overlap with each other conceptually and, even more confusingly, may come paired with their near-opposites. Instead of making distinguishing statements whose most important

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<sup>22</sup> While defense counsel obviously have less power than prosecutors, particularly in an era of determinate sentencing, their influence over decisions by clients who are often not well educated and lack confidence in dealing with the legal system should not be discounted.

<sup>23</sup> We should also try to avoid one-note understandings of adversarial roles. For example, a good prosecutor needs compassion to make certain judgments correctly, and the defense attorney must, on occasion, be emotionally tough with clients.

conjunction is “or,” we make statements whose critical conjunction is “and.” We praise toughness *and* compassion, patience *and* decisiveness, confidence *and* humility. Finally, the analysis must be contextual. The usual effort to find a concept that can be applied universally will likely produce either generalizations so vague as to be useless, or so particular as not to be widely applicable. Contextual analysis means analysis that focuses not just on individual lawyer skills but on the lawyer’s relationships. What a lawyer does well or poorly depends not just on his or her own individual talents, but also on how he or she interacts with others. This means that success in practice may not be fully grasped by analysis of a particular decision or exchange, but must consider relationships over time.

### A. *A Passion for Justice*

To do justice in the criminal field, whether as a judge or lawyer, one must have a passion for justice. The work is too difficult emotionally and for most too poorly compensated (at least relative to other legal work) for any other motivation to suffice. Unfortunately, attempting to define the varied sources and nature of this passion lies far beyond the scope of the present effort. It must suffice to note (rather simplistically) that “justice passions” may be driven by anger at wrongdoing or unfairness, by compassion for those who suffer, by a deep-rooted need for order, or a combination of these.<sup>24</sup>

Judge Locallo talks readily of his own personal commitment to justice. He seems to have had a near conversion experience as a boy watching the movie *To Kill a Mockingbird*; his eyes still water at the memory of Atticus Finch’s heroism. The impression left with the reader after witnessing, albeit at a great remove, a number of hearings and decisions by Judge Locallo, is that he does have this critical passion. It can be seen in his work habits, his willingness to question prosecutors and police despite (or perhaps because of) his own law enforcement background, and his willingness to grant contact visits for incarcerated defendants.<sup>25</sup>

And yet there are times when the reader may question the judge’s commitment to justice. He seems to suffer occasional compassion-deficits, as in instances when he speaks about defendants in a way that sounds more like a cynical cop or prosecutor than a judge. (Locallo was a prosecutor before becoming a judge and both his father and uncle were police officers.) He definitely evidences a taste for the gallows humor common to veterans of criminal justice

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<sup>24</sup> For a look at the “justice passions” of two very different appellate judges, see Samuel H. Pillsbury, *Harlan, Holmes, and the Passions of Justice*, in *THE PASSIONS OF LAW* 330 (Susan Bandes ed., 1999).

<sup>25</sup> Locallo explains his desire to become a judge this way: “The power to influence was a great attraction. But it was never a power trip type thing, like being able to order people around. For me, what was attractive was the ability to make decisions, to do justice.” (Bogira, at 59.) He appears to have a reputation among defense counsel and defendants as a judge who follows the law and is not racially biased. (Bogira, at 126.)

work (Bogira, at 69),<sup>26</sup> and distances himself emotionally from the more gruesome aspects of criminal trials.<sup>27</sup> (Bogira, at 174.) These traits may just reflect the emotional toughness that the job requires. Then there is a distinction that Locallo offers between the important cases on his docket and the “bullshit” ones involving lesser charges.<sup>28</sup> (Bogira, at 39–41.) Although hardly an unusual view, this does suggest an uneven commitment to doing justice in all cases.

For me, the most disturbing indication of an uneven concern for justice came in several post-conviction proceedings in Locallo’s courtroom. In one such case, counsel for Dan Young Jr., a severely mentally disturbed and retarded defendant previously convicted of murder and arson, sought a new trial on grounds that Young had been incompetent to stand trial. As recounted here, a number of witnesses testified in front of Locallo regarding Young’s significant impairment at the original trial.<sup>29</sup> (Bogira, at 199–201.) Bogira also provides background information casting doubt on the voluntariness and accuracy of Young’s original confession and therefore guilt. Nevertheless, Judge Locallo denies the motion for new trial. In his ruling, the judge does not specifically address any of the evidence concerning Young’s behavior at trial but states: “This court has the highest respect for the manner in which Judge Durkin [the original trial judge] has conducted himself as a member of the judiciary . . . . He is well aware of the due process that is owed to defendants.”<sup>30</sup> (Bogira, at 207.)

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<sup>26</sup> Locallo was not, for example, offended by stories of a past contest in the local prosecutor’s office called the “Two-Ton Contest” in which rookie prosecutors strive to be the first to convict 2000 tons of defendants. Locallo was offended, however, by the title used by some prosecutors: “Niggers by the Pound.” Most defendants prosecuted by the office were African-American. (Bogira, at 69.)

<sup>27</sup> The judge explains his relative lack of reaction to gory photographs of a homicide victim as follows:

There are pictures I’ve seen, both as a prosecutor and as a judge—heads chopped off, gunshot wounds to the head where you see the brain matter, he says. When you hear about man’s inhumanity to man, twenty and thirty and forty times—it’s not like you become completely indifferent to what you hear, but you build up a mechanism to deal with it.

(Bogira, at 174.)

<sup>28</sup> Such enthusiasm for quick dispositions (usually with lenient sentences) can have disturbing implications for both the prosecution and defense interests—the prosecution because it undermines deterrence, and the defense because it may make it practically impossible to contest weak charges.

<sup>29</sup> Young’s original defense attorney testified to obviously bizarre behavior by his client during trial. (Bogira, at 199–200.) The original trial judge at the hearing maintained that he was confident about Young’s fitness to stand trial, although the defendant nodded off to sleep a number of times during the trial and also made some outbursts that the record indicates were quite bizarre. (Bogira, at 199–200.)

<sup>30</sup> Fortunately, the case does not end here. Prompted by stories in the *Chicago Tribune* and pressure from defense attorney Kathleen Zellner, physical evidence in the case was later subjected to DNA testing. When the results proved inconsistent with the guilt of the defendant and codefendant, prosecutors dropped charges against both. Young was freed after nearly thirteen years in custody. (Bogira, at 343.)

## B. *Toughness and Courage*

Trial practice is a tough business, requiring personal strength in at least two forms: emotional resilience and courage. Emotional resilience, more popularly known as having a thick skin, is required because, regardless of how one litigates, one is likely to face criticism on a regular basis. In criminal litigation, everyone is under pressure; everyone's actions are constrained and everyone is subject to searching personal and professional critique. Doing what one is legally obliged to do in an adversarial system will often provoke personal attacks from those representing rival interests. Sometimes this criticism is ritualized, as between prosecutors and defense attorneys, and can be relatively easily handled. At other times, the virulence of the critique, or the fact that it comes from an otherwise respected or friendly source, makes it difficult to slough off. Yet the lawyer or judge must be able to go forward without letting unwarranted criticism foster paralyzing self-doubt.

Emotional resilience is essentially a defensive quality needed by even the most mild-mannered and cautious litigator. It is different from the courage required to break the unwritten rules of the legal system, to do justice in a particular case. Will the public defender vigorously defend, in public and private, a client's desire for trial on minor charges, thereby incurring the long-term animosity of judge and prosecutor? Will the prosecutor dismiss a case about which she has serious factual doubts in the face of certain criticism from police or the public? Will the judge render a decision that, despite its legal merits, will produce a serious backlash from the public or the law-enforcement community? In each instance, the lawyer's professional duty seems clear, but the system's expectations may be powerfully opposite. A lawyer needs courage to thwart those expectations.

As the judicial authority in *Courtroom 302*, Judge Locallo might seem well insulated from personal critique. He would appear to have all the authority required to decide rightly without needing personal courage. Yet, it is clear that this judge, like all trial judges, needs both emotional resilience and courage to do his job well.

Judge Locallo certainly has a thick skin. There is something of the former athlete in his enthusiasm for putting himself in the line of controversy (he played football in high school). He relishes the prospect of a so-called "heater," a case likely to bring attention and controversy to his courtroom. He never seems to lose his cool in the face of public attacks from a variety of figures in one such case, and even a potential death threat. He does not lack emotional resilience.

Locallo also demonstrates judicial courage. He is willing to grant motions to suppress, even in big drug cases, based on doubts about police credibility. He initiates a field trip to resolve a disputed factual matter in a court trial and then enters an acquittal because of lack of proof. (Bogira, at 132-38.) He follows his own counsel in sentencing, including a capital case. Yet there are persistent questions about Locallo's sensitivity to political pressures. Prosecutors grumble

that he curries favor with defense attorneys with easy deals in small cases and grants of contact visits because such attorneys constitute a larger voting bloc in judicial elections than prosecutors. More troubling are the allegations of a defense attorney in a high-profile case that the judge improperly tried to ensure that a potentially controversial sentencing would occur well before retention elections. (Bogira, at 297–99.)

### C. *Listening and Patience*

Listening, I suspect, is the most undervalued of lawyerly skills. The ability to hear what others mean to say, as opposed to just gathering information for one's own forensic purposes, is all too rare. These qualities are particularly important when the lawyer deals with persons with little power or authority. It shouldn't be hard for a lawyer who needs the judge's approval to hear the judge's concerns (though it sometimes is); it is much harder for a judge or an attorney to hear what a poorly spoken defendant may have to say in a busy courtroom.

Locallo's willingness to listen appears greatly variable. On the bench there are no indications of rudeness or impatience; he sometimes surprises all observers by his efforts to get the facts right. (Bogira, at 60–61, 132–37.) But he also takes great pride in his ability to move minor cases expeditiously; this must cut against patience and close listening in these cases. Like many trial judges, when it comes to a potential guilty plea, he focuses on the formal requirements of getting a waiver on the record and seems much less interested in a defendant's actual understanding of his rights or desire to plead guilty.<sup>31</sup> (Bogira, at 41–48.) These matters are largely left in the hands of defense counsel.

Listening also means keeping an open mind. Sometimes this requires reconsidering previous decisions. Here is where Locallo fares particularly badly. He seems to resist the idea that either he or another judge might have erred. The judge is highly skeptical of torture allegations raised in a post-conviction motion by a convicted killer, never seeming to take them seriously even though they match substantiated claims of torture by Chicago police against other suspects. (Bogira, at 285–87.) The hearing on Dan Young's competence suggests that the judge has difficulty hearing facts that may put a friend in a bad light. And when he is given information indicating that a defendant in his courtroom might have pled guilty to

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<sup>31</sup> This passage describes a plea ceremony in which a defendant with a history of mental illness repeatedly says in response to whether he wants to plead guilty: "I'm just tired." Later he states: "I don't know what I'm here for or what I'm supposed to have done. I'm just up against something I don't know nothing about. . . . I'm gonna take this because I'm not gonna win. Ain't no way I'm gonna win. I can't beat the system, your honor." (Bogira, at 44–47.) Because the defendant persists in his desire to plead guilty, the plea is found to be knowing and voluntary. (Bogira, at 48.)

an offense he did not commit, Locallo displays little concern. The case is closed.<sup>32</sup> (Bogira, at 336.)

#### D. *Emotional Intelligence*

Trial lawyers are generally thought to be more street-smart than book-smart, to do better with a jury than with a judge, to be better with stories than legal arguments. Such rough generalizations will be wrong in many instances, but there is enough truth here to indicate an important distinction in legal intelligence. While law school emphasizes deliberative reasoning, what trial lawyers really need is emotional intelligence.

At least three aspects of emotional intelligence come to mind here: (1) concern for, and insight into, the thoughts and feelings of others; (2) insight into one's own thoughts and feelings; and (3) self-control, namely, the ability to act in accordance with long-term interests rather than immediate emotions. Although theoretically distinguishable, these qualities are in practice intertwined.

On first meeting, Judge Locallo displays considerable emotional intelligence. His relationships with others indicate concern for, and understanding of, their needs. He has a great rapport with jurors; he has good relations with defense attorneys, perfectly respectable relations with prosecutors and, for the most part, fellow judges. He is usually quite savvy. He draws on his personal experience as the son and nephew of police officers and his professional experience as a prosecutor and judge to independently assess the claims of lawyers, witnesses and defendants in his courtroom. He displays the basic courtroom street-smarts that any trial judge needs. But there are times when he seems emotionally blind, not realizing how his perspective is limited by his own position and experience. He can lack self insight.

Like most of us, the judge's conception of individual responsibility seems unconsciously influenced by his view of the person whose conduct is judged. He views sympathetically the past criminality of a family member because of difficult economic circumstances, but gives no indication that similar circumstances would—or should—mitigate or excuse the responsibility of a defendant in his courtroom.<sup>33</sup> The same lack of insight into personal bias seems to explain

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<sup>32</sup> Bogira recounts that shortly after taking the plea from a co-defendant in a controversial plea bargain in a highly publicized case, Bogira informed the judge of additional information indicating that the individual might have been innocent. Bogira writes that Locallo responded: "‘Interesting,’ he said, without much interest. Didn't it concern him that he might have taken a guilty plea from someone who wasn't? ‘Well, let's just say he *was* guilty,' Locallo said. Then he laughed, and added, ‘I mean, he *pled* guilty.’" (Bogira, at 336.)

<sup>33</sup> This is revealed in a general discussion of individual responsibility. Locallo expresses sympathy for the mental problems of a brother that led to suicide, but appears less concerned with respect to the mental problems of defendants. (Bogira, at 197–99.) Similarly, the judge expresses sympathy for the financial pressures that led his Uncle Vincent to work for the mob in illegal gambling, but not for the poverty that predisposes many defendants to criminality. (Bogira, at 86–88.)

Locallo's handling of the Young case. He does not see how his assessment of the testimony may be biased by his personal regard for the trial judge.<sup>34</sup> (Bogira, at 207.)

Finally, we come to self-control. On the bench, Locallo comes across as a calm, temperate man. He never displays the kind of bad temper for which some judges are notorious. He appears an affable sort off the bench as well. He does have some trouble controlling his mouth, however. He speaks his mind when he probably should not, especially to fellow judges.

Locallo's early judicial career was slowed by an incident in which, in the course of an argument, he told an elderly colleague that the other was "full of shit." As result, when the next courtroom assignments were made, Locallo received a worse assignment instead of the felony courtroom he had sought. (Bogira, at 60.) Much later in his career, Locallo's distribution of a satirical commentary on another (prominent) judge's case-disposition rate led to his exile to a suburban courtroom hearing minor civil disputes. (Bogira, at 347.)

This said, Judge Locallo's outspokenness is one of his most appealing traits and vital to the book's success. He tells it like it is, or at least as he sees it. Locallo is a talker, who appears to like nothing more than talking about himself and his work. But here again he reveals a certain deficit in emotional intelligence. He explains his cooperation with Bogira, saying: "I subscribe to the proposition that any publicity is good publicity." (Bogira, at 63.) One can only wonder: Had he never have heard of Judge Ito?<sup>35</sup>

## VI. SOCIAL ANALYSIS: THE CHICAGO COURTHOUSE

A danger of the crime journalist's reliance on story is that it may neglect the social dimensions of adjudication. Legal practice is an interactive endeavor that occurs within a particular social context. Relationships between attorneys, attorneys and judges, and attorneys and clients or witnesses, all play out within a pre-existing social framework. Because of social context, qualities that might serve a lawyer well in one setting (say, a small-town practice) may prove problematic in another (such as big-city litigation). The larger social context may also be of critical importance. The structure and history of race, ethnic and class relations in the community will influence how law is practiced in many instances.

*Courtroom 302* is not a work of social analysis, but Bogira does relate the experiences of individuals to the larger social context. His most deliberate effort at

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<sup>34</sup> On the larger question of bias, Bogira notes that the kind of personal connection that Locallo had to the original trial judge in the *Young* case would have caused the automatic recusal of a juror at trial, but that judges are deemed to be immune from such problems. (Bogira, at 200.)

Several caveats must be attached to any attempt to assess the judge's ruling, however. We have no record of testimony, nor are we given the judge's full ruling. *Courtroom 302* is a journalistic account, not a case report.

<sup>35</sup> The remark was likely made in 1998, only three years after Judge Lance Ito presided over the O.J. Simpson trial in Los Angeles.

social analysis comes in his treatment of the Cook County Criminal Courthouse, in which Courtroom 302 is found. He tells the history of its construction and the politics behind its inconvenient location. He describes how its physical features affect the atmosphere and perhaps quality of justice. Unlike some of the larger, original courtrooms upstairs, Courtroom 302 has no windows; its lighting is just harsh fluorescents. The spectators in the courtroom are separated from the actual court by a plexiglass barrier; sound is communicated by microphones and speakers controlled by the judge. The physical set up of the courtroom makes its own powerful statement about the law: that it is cold and potentially careless, that it does not concern itself primarily with people, but with processing their cases.

## VII. CONCLUSION

Except for talk about the final exam, nothing wins law students' attention like a war story. Recounting a tale from one's own practice in class, students look up from laptop screens or put down pens. Suddenly they're interested. They want to know what it's really like to be a lawyer and think we may be able to tell them. Perhaps they understand something about the value of story that we do not, hard as that may be for professors to credit.

We tend to discount the value of war stories because they do not teach doctrine or legal analysis. They do not make students smarter in the way that we normally measure smartness. But at their best, such tales of personal experience convey bits of wisdom. They provide insight into how a good lawyer works, how that lawyer relates to others. Their lessons may not be tested on the final or bar exam, but since when were exams our only measure of value? There is a great deal that we can teach about the experience of practice if we try, and surely that experience is as important to understanding the law as is the close reading of statutes or appellate cases.

The stories of *Courtroom 302* teach us much about the realities of contemporary criminal adjudication; they also represent a resource for educating about the practice of law. If we want to help our students become wise in the ways of criminal litigation, as opposed to just being smart about legal rules, we might begin by recommending, maybe even teaching, Steve Bogira's *Courtroom 302*.