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Book Review

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BOOK REVIEW

No One Will Lissen: How Our Legal System Brutalizes the Youthful Poor. By Lois G. Forer. New York: The Universal Library, Grosset & Dunlap. 1970. Pp. 352. $2.95.

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When certain topics become the object of broad national concern it is usual for the bookstands to explode with volumes on the subject, each claiming to be more profound than the others. It is observed, however, that quite often the potentially most effective and perceptive writings do not appear until well after the initial swell of public concern has ebbed. This fairly reasonable pattern is not disturbed by the book here being reviewed. For as the War On Poverty fades into the institutional weave of government—with little having changed—we are given a rational, perceptive look at how our juvenile justice system works against the poor, and some strong suggestion as to why lawyers and judges are significantly responsible for this. For this reason this book should not pass out of print without broad notice by lawyers.

The book does not promise anything unusual at first glance for it undertakes to write again what so many have written about during the last decade. That is, an experienced, competent and trusting professional through some quirk of circumstance, becomes involved with the wretched and unpropertied of our society. The reaction of course is one of shock and shame that the conditions revealed could ever exist in the land of the free, etc., etc. If all could but experience what the writer has experienced, such works uniformly state, we would no longer allow misery, poverty and discrimination to reside in this land. The particular book is written to let everyone in on the Truth so that the results will be good, and so that the impact of the writer's experiences will not be lost but instead will bring us closer to the necessary changes in society. The story is a familiar one. Books of this type get written every day and reviewed constantly. On its surface Mrs. Forer's book threatens more of the same, and the reader begins it with the assurance that somehow he has already

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read it, under a different title—perhaps inspired by a different ghetto, migrant worker's camp or prison.

But this book, if it is part of the genre so loosely described above, must stand out insofar as it addresses itself to the bench and bar. Somehow, in describing her experiences as a defense attorney in the Juvenile Courts of Philadelphia, Mrs. Forer gets close to an understanding of where the system breaks down and why. She is somehow able to avoid the usual reaction of horror that is justified, but useless, in bringing about change. Instead, like the competent lawyer that she is, she marshalls her facts and lays them carefully before the reader. She proves her case. Based on the facts she then compels a decision on the merits—not on the gut response of a middle-class value system—but on the basis of thoughtful consideration of what has been placed before us. Perhaps what I mean to say is that although this book is at first glance a part of a genre of modern nonfiction that in spite of steady sales has failed to distinguish itself as a social force *at the level where decisions are made*, it appears to have the potential to convince lawyers, politicians and judges that no matter the grace of Law Day platitudes, we are in fact and in every detail operating two systems of civil and criminal justice—one for the propertied and another for the unpropertied.

In the days when the first OEO Legal Services programs were being funded Lois Forer was involved with several cases in the Juvenile Courts of Philadelphia County, Pennsylvania. A series of coincidences, including the *Gault*[1] decision, resulted in the appointment of Mrs. Forer as director of the OEO funded Office of Juveniles in Philadelphia. She continued in this position until the City of Philadelphia extended to Juvenile Court the Public Defender system which was the source of representation for indigents in the City's criminal courts. This book describes and comments upon the work which Mrs. Forer and her staff performed while in the Office of Juveniles.

The choice of Mrs. Forer for the position at the Office of Juveniles was in a way unusual. She was a middle-aged, white attorney who by her own admission was convinced that with energy and good counsel, all societal wrongs could be remedied by resort to our legal system. Based on this belief Mrs. Forer had made a distinguished record for herself as a legal scholar[2] and as a practitioner in numerous famous civil liberties

[1] In the Matter of Gault, 387 U.S. 1 (1967).

[2] *See* e.g., Forer, "Preservation of America's Parklands: The Inadequacy of Present Law," 41 N.Y.U.L. Rev. 1093 (1966) and Forer, "Relief of the Public

cases. It is fair to conclude, however, after reading this book, that she no longer has the same faith in our judicial system. In fact, she now is of the opinion that we have failed grievously in our ability and willingness to share the system of justice with the unpropertied. This is an important change of view in a person who heretofore was a staunch supporter of the established judicial system's ability to protect the poor, the underrepresented and the unpopular.

The method employed by Mrs. Forer to describe her experiences is reasonably careful considering the emotional character of the subject matter—the destruction of the lives of children who have made only the mistake of being poor in a society which despises those who are unable to care for themselves. In the order of events in the usual Juvenile Court proceedings she describes what occurs: How one is classified a juvenile, the relationship of the police and the poor, the first contact with the courts, the important weight given intelligence and psychological tests in the decision-making process, the effects of the "detention system" (which Mrs. Forer insists upon referring to as jail), the types of charges filed, and the people who are responsible for influencing the process. Certainly a recurring theme is the frequency with which children are removed from their homes with an ambivalence which shows no respect for the question of actual guilt or the question of whether the child's better interest would be served by remaining at home. Importantly, all of the criticism which is leveled against the courts and the judicial system is carefully documented and based upon some idea of what the law and the practicalities demand of judges and lawyers in difficult situations. Criticism is further supported (and brought home with direct emotional impact) by the use of many case histories. These histories show us the guts of the Philadelphia Juvenile Court system and let us know once and forever how it operates.

So the book is important in my view. Or at least it should be important. It should be important because it narrates a story which very clearly makes the case that in fact there is one system of law for the propertied and another for the unpropertied; one system for the white-skinned and another for the dark-skinned. It should be important and shocking for the leadership of the law system of a pluralistic democracy to learn that the principle of equality before the law is in reality a vulgar sham. But in most respects such a narrative is neither important nor

Burden: The Function and Enforcement of Charities in Pennsylvania," 27 U. PITT. L. REV. 751 (1966).

shocking, for we have been informed all along that our law does not serve the poor, or the poor Black, or the poor Chicano, or the poor American Indian. It is an undisputed fact. Scholars have indicated this trait many times. The most admirable example of such scholarship was that of Jacobus tenBroek who, in comparing the family law of California made available to the wealthy with that available to the poor, concluded that until the laws were administered with full equality, ". . . California's separate, different, and unequal system of family law of the poor will continue in force basically in the form in which Henry VIII and Elizabeth I gave it to England and the English-speaking world."[3] Data analysts and other similar types have let their computers hum in order to produce the statistics which verify this. It should, therefore, be no surprise that here Mrs. Forer narrates experiences which reaffirm the fact.

But one reads this book and wants to overturn tables, take our leadership by its collective collar and place its collective face before the facts—make it see! Perhaps the fact that this book creates such a response makes it unique; makes it *useful.* If we read scholarly proof of a dual system of laws, or if we discern it from statistics, we are not made *angry.* But if we view the dual system across the millions of human lives it regularly destroys, perhaps we can generate the anger which will be necessary to compel change. This book carries the burden of proof that there does exist a dual system of law. In this it is not unique. But, although written by a respected attorney, it also *demands* response of the most calm reader, and in this sense it is a contribution.

Suggesting that the book creates feelings of hostility is not to suggest that this is simply a polemic. What Forer has done is describe her experiences as a legal services defender in the Juvenile Court of Philadelphia. The method employed is case description. The experiences of child after child are related from the transcripts or notes of trial: On the basis of rumors of trouble in school a youth is removed from his home and placed in jail for more than two years; A normal child is taken from school after a summary and non-professional determination of his "mentally retarded" status; teenagers handcuffed and beaten by police; child after child taken out of its home on the basis of evidence which could not possibly stand up in criminal court, and incarcerated for periods far longer than the maximum periods for adult criminals convicted of the same crimes; or a child who because of political pressure on the court is

[3] tenBroek, "California's Dual System of Family Law: Its Origins, Development and Present Status," 17 STAN. L. REV. 612, 682 (1965).

convicted of a crime he could not have committed. And always it is the poor who face this treatment. When the son or daughter of a propertied person is arrested the matter is handled informally and sympathetically in the judge's chambers. But the poor go to jail. These stories will be an anguished reminder of reality for the conscientious lawyers who have served in juvenile courts. Hopefully it will awaken the others who have, with society, ignored the juvenile justice system.

As emotionally charged as these tales of life in the Philadelphia Juvenile Court are, Forer brings a reasonably honest view to her description, although it cannot be suggested that the book does not intend a clear editorial message. That a person with roots so deeply set in the established legal system could so rapidly become dismayed with our system of justice is in itself a damning statement. She did, and the reader of this work will have no trouble seeing why.

The experiences of Mrs. Forer and the Office of Juveniles also present critical material for the ongoing discussion of how legal services can best be delivered to the poor in such a way as to do justice equally while alleviating the conditions which contribute to poverty. Her experiences reinforce the view that poverty is not only a problem of unequally distributed legal services; it is a problem of the misallocation of power in our society as a whole. As Dean Pye has said:

> We have to appreciate that reallocation of economic and political power depends upon more than winning test cases. If we accomplish the reallocation of economic and political power, the law is going to conform to these changes. But the converse is not true. If we simply attempt to change particular aspects in our legal process we will find that basic inequalities continue; they will just express themselves differently than they previously did.
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> When we talk about the problems of the poor we are basically talking about inequality in our economic, social and political system. To reduce that inequality, we will have to deal with matters considerably more important than the details of our consumer law, our welfare law, our education law, our housing law, or the criminal process.[4]

The persons and institutions in power will go along with well-intentioned acts on behalf of the poor and, if pressured, will even provide a "War On Poverty" in order to calm those who suffer from the misallocation of power. What they will not abide is potentially effective efforts to aid

[4] *Proceedings of the National Conference on the Teaching of Anti-Poverty Law*, 9 (1970).

the poor by reordering society's power allocation. But this reordering is exactly what must be sought by the lawyer who would effectively represent the poor. The lawyer who would take this course will face opposition all along the way. Because Mrs. Forer and her staff took the course which potentially most benefited their poor clients they were constantly opposed and finally replaced by the Public Defender who had, to the satisfaction of the power structure, met the strict requirement of the law without threatening to bring about effective representation of the poor clientele it (to use the Law Day language) so dutifully and unselfishly served (while building up a private practice). Under the system of power as it exists today it was inevitable that Mrs. Forer's office was replaced. Good lawyers for the poor threaten to bring about the changes which could reallocate power. And only the poor can gain from that. The wealthy would lose from such changes, and so they will prevent them.

How does a lawyer for the poor who legitimately attempts to give his clients the best representation threaten the power system? For one thing, it is done by suing the government. Or it is done, as was one case with Mrs. Forer, by asking the Federal District Court to replace the leadership of the local police force. Or it may come about as a result of demanding that every juvenile tried be treated as the court would treat a wealthy child. If every poor child were so treated, of course, the backlog of the court would become stupendous and bring discredit to the judges whose political security depends upon no waves originating in their corner of the judicial world. Such treatment would mean more work for court personnel. It would mean that the police must appear in court and produce legal evidence prior to a finding of delinquency. All of these demands would upset the precarious balance by which those in power stay there. And we thus realize that when the Congress authorized a legal services program, and when the local bar associations ever so reluctantly granted their multi-conditioned approvals, they did not mean that the lawyers were to represent their clients with the same zeal the private bar extends to paying customers. They meant that the "legal aid" approach, often called band-aid law, would be extended a bit farther to meet the increase in recognized poverty. That this is the case is borne out by the well-known drama of the California Rural Legal Assistance project. CRLA, funded by OEO, specifically set out to represent their client's interests so effectively that important changes would necessarily occur. To do so they refused to become mired in the impossible caseload common to legal services projects. Instead, they took on only the clients they could repre-

sent with the same energy and skill that a conscientious private attorney brings to a case. The result, of course, threatened the power structure, and the reins were put upon CRLA by the representatives of the power structure—the private bar. The means employed were the usual political ones along with allegations of "unethical" conduct.

As with CRLA, Mrs. Forer undertook to give the maximum representation to each client. She had to go. For to give full representation to a client in a juvenile court demands that the defects of the proceedings be excepted and attacked, and that what a wealthy child would get must be demanded for the poor client. If all the defects were duly noted, there would be public notice, and a threat to the way things are.

The problem presented by these situations are the most important in the area of poverty law today. As Mrs. Forer notes in the final paragraph of her book:

> In 1965 the O.E.O., with the best of motives, engaged in a headlong rush to set up law offices for the poor all over the country and to move in with the techniques of litigation to cure the problems of the ghetto. The establishment agencies for the poor were eager to receive this federal largess. Only one cautionary voice was heard, and it was disregarded. William Pincus of the Ford Foundation *warned lest the expenditure of all this money institutionalize a separate system of law for the poor.* But no one listened.

The allegation is a sound one and is borne out by experience. Most legal services are slowly becoming institutionalized and developing a fatal resignation to the fact that the caseload is so large that, like their legal aid predecessors, they are not providing effective representation for their poor clientele in the sense that a private lawyer thinks of effective representation. They are simply doing what they can for each client, as time permits, but never doing all that they know they should. In fact, the caseloads of most legal services lawyers are so heavy that were they assigned to private lawyers it might be considered an unethical practice. But that type of unethical practice is just what keeps the legal services program from being the threat to the power structure it could be, and thus the bar does not concern itself with this bit of ethical difficulty; it instead continues to cry about the fact that some legal services programs "solicit" the business that the private bar rejects. The present system of delivery of legal services has been effectively controlled by the private bar which represents the power structure of society today. On the other side, resources available to legal services programs have been so scanty

in relation to the number of clients and legal problems that the lawyers are made legally impotent. They are buried, and thus do not represent the threat they would be if they could. Like many of the young institutional turks of our society, the legal services program is in danger of being co-opted and institutionalized so that it can no longer carry with it the potential of threatening the power structure. And so long as it does not so threaten, then young law school graduates can grow their hair just as long as they please. The present order will feel safe.

How can we overcome this difficulty which appears to be inherent in the efforts to deal with the ineffectiveness of our legal system? Certainly an independent bar comprised of lawyers dedicated to an understanding of the needs of the poor is the most desirable route. The recent crop of private public-interest lawyers could initiate the job, but all indications are that they are more interested in the test case approach rather than the mundane and ego-deflating routine of day-to-day legal problems. Judicare would carry with it great potential, but discussions of such programs seem to indicate an intent that there exist a limit on the dollar business that each lawyer could receive each year. This would have the effect of excluding lawyers who would otherwise use the program to provide the financial freedom to represent the poor on a full-time basis. Since these lawyers would be the ones most likely to understand the special needs of poor clients and be most likely to represent them effectively, the Judicare program has built into it the reins with which the private bar would insure that it not be used as a threat to the existing power relationships.

Because the poor seem to respond well to lawyers who are willing to make the commitment to a neighborhood and the poor residents of it, the best method for legal services delivery would seem to be a neighborhood legal services program *adequate* to deal effectively and immediately with the legal problems of each client. This would bring together dedicated lawyers who would specialize in the special problems of the poor. In theory this is what we have. But the Forer book makes clear that the theory is a bad joke on those who would seek to bring society's relationship with the poor to a more favorable balance. In fact, it can be argued that the legal services program, with well-known exceptions, is a bone thrown by the established bar to the poor. It is nothing more than a bone because on the one hand its effectiveness is throttled by refusal to create the size program necessary to allow quality representation, and on the other hand the established bar has maintained decision-making

power within each legal services program. As long as legal services programs are so encumbered the poor will receive second-class representation and, necessarily, second-class justice. Viewed in this way, perhaps present efforts to alleviate the fact of a dual system of justice are mere Christmas food-baskets, charity which will keep the poor impoverished.