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Book Notes

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“HOW CAN YOU DEFEND THOSE PEOPLE?” THE MAKING OF A CRIMINAL LAWYER. By *James S. Kunen*. New York: Random House. 1983. Pp. xii, 270. \$15.95.

The accused lives in a part of Washington, D.C., that tourists never visit. He is black and poor and charged with a crime that, more often than not, he did commit. The sixth amendment of the Constitution guarantees him, whether guilty or not guilty, the right to assistance of counsel.¹ American criminal law presumes the accused innocent. The American public generally presumes the opposite. It is not surprising that the public often perceives the defense attorney, particularly the public defender, as an obstructor of justice, a master of constitutional technicalities who springs the jailhouse lock and releases the criminal on an unsuspecting public. Thus, the term “public defender” seems a misnomer; the public defender defends criminals and undoes the efforts of police and prosecution. Indirectly, at least, the public defender creates new victims. “How can you defend those people?” the outraged public may ask.

James S. Kunen² answers that question in his episodic account of his public defender experience. In “*How Can You Defend Those People?*” *The Making of a Criminal Lawyer*,³ we see his initial idealism and naiveté sobered by the realities of the criminal justice system. We also witness Kunen’s pride in his work and in the system as a whole.

Kunen began his criminal law practice as a third-year law student at New York University’s Criminal Law Clinic. He represented misdemeanants in New York criminal court.

If criminals are losers, misdemeanants are losers’ losers. A lawbreaker with any initiative at all will commit felonies, like burglary, robbery, or the sale of substantial quantities of valuable

1 The sixth amendment provides that:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

U.S. CONST. amend. VI.

2 Kunen, a graduate of New York University Law School, worked as a staff attorney in the Washington, D.C., Public Defender Service for two and a half years. He resigned from his position to write this book.

3 J. KUNEN, “HOW CAN YOU DEFEND THOSE PEOPLE?” THE MAKING OF A CRIMINAL LAWYER (1983).

drugs—crimes that are worth years and years in prison. Misdemeanants steal sums rendered inconsequential by inflation, or possess barely enough drugs for themselves, or just *bother* people. Many don't really *commit* crimes so much as stumble over the law. Helpless and hapless, they are easy arrests for the police (p. 8).

His vignettes sketch his clinical experiences defending such misdemeanants as Charles Pinckney,⁴ charged with exposing himself to a teen-aged girl (pp. 8-9), and Abdul Dhabour, charged with disturbing the peace as he distributed religious literature on a sidewalk (pp. 16-19). Real-life criminal law, as Kunen quickly discovered, was not "bright lights and tinsel" (p. 11). It included untrusting clients (p. 9), uncooperative police officers (pp. 11-12), and lots of waiting on the courtroom bench for cases to be called and clients to arrive (p. 11). But criminal law offered the tantalizing opportunity "to visit the underworld, [to] know intimately the secrets of life invoked by that magic three-word incantation, sex-and-violence . . . and return to tell about it" (p. 14).

Most of the book sketches scenes from Kunen's career as a public defender representing accused felons, first juveniles whose childhood ended early, then adults whose foothold in crime is firmly entrenched. Kunen realistically draws a legal world that corporate and tax attorneys never see. His clients confer in jail cells, not board rooms. Lives and futures are on the line. When Kunen helps free a man unjustly entangled in the system, we feel his joy.

For example, Kunen recounts the story of William Buie (pp. 173-75, 197-200). One evening about seven o'clock, two young black men were arguing on a bus. One shot the other in the face. The victim died. At about 7:20 p.m., William Buie, a young black man, was walking toward his girlfriend's house. A policeman noticed that Buie's clothing and appearance generally conformed to the gunman's description and drove him to the scene of the shooting. Three witnesses identified him as the gunman. Buie was behind bars wearing ill-fitting clothes (his own jeans and shirt were seized as evidence) when he met Kunen. Kunen discredited the identification of a twelve-year-old witness who recognized Buie from her neighborhood but did not see the shooting. That misidentification, coupled with Buie's favorable lie detector results, did not sway the prosecutor. A few weeks before the trial, Kunen heard about a snitch who claimed to know the gunman. The snitch would not talk without a deal with

4 To protect his clients' anonymity, Kunen changed their names and the exact circumstances of their arrests.

the government. An older colleague's information network led Kunen to the man who had bragged to the snitch about the shooting. Kunen's new ammunition convinced the prosecutor to continue the case and investigate the lead. The deal was struck, the snitch spilled all, and the prosecutor dropped the charges against Buie (p. 262). Buie's nightmare lasted eleven months.

One of Kunen's continuing concerns is the appropriateness of his actions and advice, and he frequently refers to passages in the American Bar Association's *Model Code of Professional Responsibility* to support his ethical discussions. When Kunen leaves the semi-academic law school clinic and walks through those public defender's doors, when he graduates from misdemeanors to felonies, he also crosses a few ethical boundaries. Overzealous advocacy of his client's position combined with his own desire to win the case for himself sometimes overwhelms him. For example, in preparing his client Peter Croft for direct examination in his murder trial, Kunen, instead of solely asking the questions, or reminding his client of his previous statements, provides answers to account for blocks of his client's time on the day of the shooting (pp. 243-45). Kunen candidly assesses his actions:

Warren Burger might quibble, but few other lawyers would, if I . . . tried to jog my client's memory: "Maybe you spent some time alone, and went for a walk or something?" But I definitely went too far when I said, "Isn't this what happened? Didn't you go for a walk?" I guess under the pressure of the moment, I just couldn't see the difference.

I do think it's better to be overzealous than underzealous. Overzealousness can be corrected by the prosecution. . . . Underzealousness cannot be corrected by anyone (p. 256).

In another example, Kunen received the unfavorable lie detector results from his client Wyatt Clayton, accused of robbery. Kunen presumed him guilty, which helped him scrutinize the defendant's story. Kunen was motivated by and embraced the challenge. "Winning an 'impossible' case is a real feather in your cap. On the other hand, you feel less personal pressure: if you lose, at least justice wins. It's like walking a tightrope with a net. With an innocent client, there's no net. You *must* win" (p. 84).

If Kunen errs, he errs on the side of protecting his clients' rights. Throughout the book, he exhibits his aptitude as a lawyer working within the constraints of an imperfect system. In sentencing, for example, one of the most unjust, arbitrary parts of the system (pp. 105-06), lighter sentences come to those defendants who know their cate-

chism and espouse the Golden Rule (p. 180). "The big favorite with judges is 'I thought a lot about it, and I realize *I wouldn't want somebody to do it to me*'" (pp. 179-80). So Kunen instructs his clients accordingly. Lawyers can appreciate his pointed and honest commentary on such topics as jury instructions. "[I]t generally doesn't make much difference which instructions are read to the jury, for the simple reason that jurors *usually* pay no attention to them" (pp. 247-48). Kunen also exhibits his skill as a writer. He interweaves technical legal concepts with explanations a non-lawyer can understand. His moralizing, for the most part, does not impair the flow of the stories he is trying to tell. His parade of characters creates a fast-paced, colorful book that informs both lawyer and non-lawyer.

Andrea M. Vargo

