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BOOK REVIEW

THE EMPEROR HAS NO CLOTHES: A JOURNALIST SEES THE CRIMINAL JUSTICE SYSTEM

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STEVE BOGIRA, *COURTROOM 302* (A. Knopf 2005). 416 pp.

Journalist Steve Bogira spent a year observing the proceedings in Courtroom 302—one of the busy felony courtrooms in Chicago’s criminal courts building. Bogira’s aim, through his recounting of the events of that year, is to reveal “the story of [America’s criminal justice system].”¹ Sensitive and closely attuned to the implications of what he observes, Bogira’s book does a fair job at offering the reader a microcosm of the system as a whole. It is a bleak tale, though, of a broken, dysfunctional process.

The sheer volume of cases is the salient feature, numbing the minds and overwhelming the abilities of every participant in the system. Cook County Circuit Court Judge Daniel M. Locallo, who presided in Courtroom 302 during Bogira’s year there, has 300 cases pending on his docket on any given day, involving a total of some 350 defendants.² In a year, Locallo presides over 15 jury trials and 88 bench trials and conducts over 800 guilty pleas.³ In the Chicago criminal court as a whole, the volume of cases is staggering: In 2004 a total of only forty judges must handle in excess of 31,000 felony cases—a case volume that has remained relatively constant

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¹ STEVE BOGIRA, *COURTROOM 302*, at 21 (2005).

² *Id.* at 46.

³ *Id.* at 39.

during the past five years.⁴ This is but one city's share of a national caseload of felony filings in state courts that, as of 2002, stood at 2,300,000.⁵

The lopsided percentage of guilty plea dispositions in Courtroom 302 is a function of the overburdened docket. In Bogira's telling of it, the volume of work reduces Locallo to less an arbiter of justice than a retail discounter, offering bargain sentences in exchange for quick guilty pleas in all but the most serious cases—his primary goal being to move pending cases to dispositions and keep the process flowing.⁶ In this, Locallo only mirrors the system, locally and nationally. In Cook County, 86% of case dispositions are the result of guilty pleas,⁷ a rate roughly consistent with the national level of guilty plea dispositions.⁸

If the volume diminishes the judge's stature, it demoralizes and renders ineffectual those responsible for representing defendants who are indigent—the overwhelming majority of those charged with state court crimes.⁹ One of the public defenders assigned to Courtroom 302 during Bogira's year of observation quit in frustration, burned out with an unceasing load of more than 100 felony cases.¹⁰ "Nobody can adequately represent that many people," she tells Bogira. "If you're in court all day doing case after case, you don't have time to prepare for trials."¹¹

⁴ Telephone Interview with Peter Coolsen, Admin. Assistant to the Chief Judge of the Criminal Div. of the Circuit Court of Cook County, Ill. (August 2005).

⁵ NAT'L CTR. FOR STATE COURTS, EXAMINING THE WORK OF THE STATE COURTS 38 (2003), available at http://www.ncsconline.org/D_Research/csp/2003_Files/2003_Criminal.pdf. This figure does not include Michigan, Mississippi, South Carolina, Utah and Wyoming, for which data are unavailable. The national caseload has also stayed relatively level in recent years. Nine years earlier, in 1993, felony filings in state courts were at approximately 1.9 million nationally.

⁶ See BOGIRA, *supra* note 1, at 40-48.

⁷ Telephone Interview with Peter Coolsen, *supra* note 4.

⁸ Department of Justice data reflect the percentage of convictions achieved by guilty pleas—95% for the year 2002. See MATTHEW DUROSE & PATRICK LANGAN, U.S. DEP'T OF JUSTICE, FELONY SENTENCES IN STATE COURTS, 2002, at 8 (2004). Dispositions comprise a larger universe than convictions, since they include cases that are dismissed by the prosecution prior to trial. Telephone Interview with Peter Coolsen, *supra* note 4.

⁹ See generally DAVID COLE, NO EQUAL JUSTICE 1-13 (1999). National data for the year 1996 reflect that 82% of criminal defendants in large state courts are indigent and are represented by appointed counsel. See OFFICE OF JUSTICE PROGRAMS, U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS: DEFENSE COUNSEL IN CRIMINAL CASES 1 (2000), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/dccc.pdf>.

¹⁰ Public defenders in Cook County have been burdened with caseloads of this magnitude for many years, as Randolph N. Stone, former Cook County Public Defender, reports. Randolph N. Stone, *Crisis in the Criminal Justice System*, 8 HARV. BLACKLETTER L.J. 33, 34 (1991).

¹¹ BOGIRA, *supra* note 1, at 124.

With a daily load of over 100 felony cases, Cook County defenders are almost certainly well over the maximum workload that the American Bar Association deems consistent with the rendering of quality representation. Tacitly, the ABA sets that maximum at 150 felony cases *per year*.¹² If the maximum acceptable load seems superhuman—it would require disposing of three felony matters *each week of every year*, managing a caseload well in excess of that maximum is surely beyond the limits of competence. Pathetically, one indigent defendant tells Bogira of his surprise and gratitude at the attention he got from his public defender before the disposition of his parole violation: the defender had spoken with him through the bars of the lockup for a full ten minutes before the case was called (failing, in that hurried conversation, to learn a key piece of mitigating evidence).¹³

And yet, this is the norm nationally. In a study undertaken in 2003 to commemorate the fortieth anniversary of the *Gideon v. Wainwright* decision,¹⁴ a Standing Committee of the American Bar Association, after conducting extensive hearings and interviews in twenty-two states around the nation, concluded that “current indigent defense systems often operate at substandard levels and provide woefully inadequate representation.”¹⁵ Based on testimony at the hearings, the Committee noted that “oftentimes caseloads far exceed national standards, making it impossible for even the most industrious attorneys to deliver effective representation in all cases.”¹⁶ These findings are eerily similar to those made twenty years earlier, in a similar commemoration of the twentieth anniversary of *Gideon*.¹⁷

The volume strains the physical capacities of the system as well, a reality to which Bogira pays somewhat less heed. Behind the Cook County criminal courts building, the Cook County Jail has become a burgeoning “campus” that covers several city blocks and, nonetheless, remains

¹² See AM. BAR ASS’N STANDING COMM. ON LEGAL AID & INDIGENT DEFENDANTS, TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM 4 (2002). Principle five states that workloads of defense counsel should be “controlled to permit the rendering of quality representation” and references by footnote the numerical standards of the Task Force on Courts, *National Advisory Committee on Standards and Goals*, Standard 13.12 (1973). 2002 AM. BAR ASS’N STANDING COMM. ON LEGAL AID AND INDIGENT DEFENDANTS, *supra*. The National Advisory Commission Task Force prescribes no more than 150 felonies per year for a full time appointed counsel.

¹³ BOGIRA, *supra* note 1, at 196.

¹⁴ 372 U.S. 335 (1963).

¹⁵ AM. BAR ASS’N STANDING COMM. ON LEGAL AID & INDIGENT DEFENDANTS, *GIDEON’S BROKEN PROMISE: AMERICA’S CONTINUING QUEST FOR EQUAL JUSTICE* 7 (2004).

¹⁶ *Id.* at 18.

¹⁷ See AM. BAR ASS’N STANDING COMM. ON LEGAL AID & INDIGENT DEFENDANTS, *GIDEON UNDONE: THE CRISIS IN INDIGENT DEFENSE FUNDING* (1983).

overwhelmed beyond its capacity to hold pre-trial detainees. Perennially in violation of a federal consent decree requiring that the jail population not exceed available beds, this jail throughout the current decade has housed about 5 to 10% more inmates than it has beds to hold.¹⁸ This despite the fact that the jail's capacity has grown from around 6,100 available beds in 1989 to 9,700 beds as of 2005.¹⁹ Reflecting the inability of the system to keep up with the flow of cases, inmates awaiting trial in the Jail face average lengths of stay of about six months—and much longer (close to ten months on average) if they are maximum security inmates facing the most serious charges.²⁰

In this too, Cook County instantiates national trends. There were over 700,000 inmates in America's jails in 2004,²¹ up from slightly over 180,000 in 1980.²² The national data also suggest a system that is strained in its ability to process cases; as of 2002 the mean length of stay in the nation's jails stood at ten months.²³

Behind the sheer numbers is a darker story. Much of the increased volume in the system is the product of war on drugs policies begun in the 1980s that remain in effect today. Nationally, as of 2002, they comprised over 32% of all state criminal felony convictions.²⁴ The benefits of this "war"—in terms of achieving reductions in the availability and use of illicit drugs—are dubious at best.²⁵ Its costs are very clear. Bogira does an effective anecdotal job of exposing these costs through the story of one Larry Bates, a decent man, caught up in addiction, driven to retail drug selling to finance his addiction, ensnared in the system, and ultimately—

¹⁸ See JOHN HOWARD ASS'N, COURT MONITORING REPORT FOR *DURAN V. SHEAHAN ET AL.* 74 C 2949: CROWDING AND CONDITIONS OF CONFINEMENT AT THE COOK COUNTY DEPARTMENT OF CORRECTIONS AND COMPLIANCE WITH THE CONSENT DECREE 6 tbl.1.1 (2005).

¹⁹ *Id.*

²⁰ *Id.* at 13-14.

²¹ OFFICE OF JUSTICE PROGRAMS, U.S. DEPT. OF JUSTICE, BUREAU OF JUSTICE STATISTICS: JAIL STATISTICS (2005), available at <http://www.ojp.usdoj.gov/bjs/jails.htm> [hereinafter JAIL STATISTICS (2005)].

²² ALLEN BECK & DARRELL GILLIARD, U.S. DEP'T OF JUSTICE, PRISONERS IN 1994, at 2 (1995).

²³ OFFICE OF JUSTICE PROGRAMS, U.S. DEPT. OF JUSTICE, COMPENDIUM OF FEDERAL JUSTICE STATISTICS, 2002, at 71 (2004).

²⁴ *Id.* at 2.

²⁵ See JONATHAN P. CAULKINS ET AL., HOW GOES THE "WAR ON DRUGS"? AN ASSESSMENT OF U.S. DRUG PROBLEMS AND POLICY 7, 15 (2005) (explaining that after expenditures of billions of dollars through the decade of the 1990s, "youth drug initiation actually increased and heroin and cocaine dependence declined only modestly," while "[t]he overall trend in cocaine and heroin retail prices during most of the past two decades has been downward (after adjusting for potency)" (emphasis added).

purposelessly—sentenced to over seven years in prison for selling small quantities of drugs.²⁶

Although there is evidence that the prevalence of illicit drug use among blacks, whites, and Hispanics is roughly the same—i.e., that the number of illicit drug users who are black, white, and Hispanic roughly equals each group's share of the total population—there is no doubt that drug arrests, prosecutions and convictions fall most heavily upon African-Americans.²⁷ Nationally, African-Americans accounted for 43% of the total state defendants convicted of felony narcotics offenses in 2002, though they are only 12% of the population.²⁸ In Cook County, where African-Americans make up just over 26% of the population,²⁹ they are believed anecdotally to constitute the overwhelming majority of those charged with drug offenses.³⁰ If drug use is not proportionally greater in the black community than it is among whites, then it seems fair to infer that the differential must be accounted for by the arbitrary and undeniable reality that black offenders, whose drug selling activities take place primarily on the street, can be targeted, spotted and arrested with greater ease than white offenders, who are more likely to sell from homes or offices.³¹

Drug laws in Illinois and around the nation mandate lengthy prison terms for those convicted of distributing even small quantities of illegal drugs. Those laws have fueled the much-discussed—and phenomenal—national growth in imprisonment in America throughout the 1990s. Even with increases in the rate of incarceration moderating in recent years, there were still 2,085,620 inmates in American prisons as of 2003—44% of them African-American.³²

Each year, Bogira reports, Cook County sends nearly 20,000 prisoners to Illinois state prisons—80% of them African-American and the largest proportion of that group drug offenders.³³ The four to one disproportion of African-Americans in the nation's state prisons is no doubt partly the result

²⁶ BOGIRA, *supra* note 1, at 23-26, 30, 33-36, 193-96, 207-209, 343-45.

²⁷ COLE, *supra* note 9, at 144.

²⁸ JAIL STATISTICS (2005), *supra* note 21, at 6.

²⁹ U.S. CENSUS BUREAU, ILLINOIS QUICKFACTS (2005), available at <http://quickfacts.census.gov/qfd/states/17/17031.html>.

³⁰ The Clerk of the Cook County Circuit Court does not keep data by race and so the actual percentage of African-American defendants in narcotics prosecutions is not known. Telephone Interview with Peter Coolson, *supra* note 4.

³¹ See MICHAEL TONRY, *MALIGN NEGLECT: RACE, CRIME, AND PUNISHMENT IN AMERICA* 105-06 (1995).

³² OFFICE OF JUSTICE PROGRAMS, U.S. DEPT. OF JUSTICE, BUREAU OF JUSTICE STATISTICS: PRISONERS IN 2003 (2004), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/p03.pdf>.

³³ BOGIRA, *supra* note 1, at 345.

of disproportionately high rates of offending among African-Americans with respect to violent, non-narcotic offenses—a product, in turn, of poverty, out-of-wedlock births, unemployment, and inadequate schools and opportunities.³⁴ It is surely also, to some extent, a result of uneven policing and racial targeting by law enforcement authorities.³⁵ But, whatever the cause, the overwhelming overrepresentation of black youth among those imprisoned remains a stark and disconcerting feature of our criminal justice system. And to the extent this disproportion is a product of drug prohibition statutes that have been, at best, ineffectual in reducing the usage and supply of drugs, it is all the more alarming.³⁶

For each individual defendant, this chaotic unwieldiness of the system creates a host of arbitrary injustices. In almost every way, the criminal justice system fails to deliver on the promise that fair and judicious consideration will be given to the individual matters before the court. From the inception of an indigent defendant's criminal process (the setting of bond) to the final decision in the case (sentencing), there is a fundamental disconnect between the statutory expectations of the decision maker and the rough justice that is meted out on the ground. The Illinois statute regarding the setting of bail³⁷ mandates nuanced consideration of a variety of factors regarding the nature of the crime and the financial resources and character of the defendant. In reality, Bogira reports, bail is set in a rapid-fire, perfunctory hearing that lasts all of thirty seconds.³⁸

Similarly, the Illinois legislature has enacted an expansive set of provisions regarding the sentencing of convicted offenders—including a set of factors to be considered in mitigation³⁹ and in aggravation,⁴⁰ as well as an array of alternatives to straight imprisonment.⁴¹ In reality, though, sentences are imposed as a result of hasty conferences between lawyers and the judge, devoid of any consideration of the defendant's individual circumstances, in which the objective is only to produce a deal the defendant can't refuse. In Bogira's words: "the proper sentence is whatever

³⁴ RANDALL KENNEDY, *RACE, CRIME AND THE LAW* 22-24 (1997).

³⁵ KATHERYN K. RUSSELL, *THE COLOR OF CRIME: RACIAL HOAXES, WHITE FEAR, BLACK PROTECTIONISM, POLICE HARASSMENT, AND OTHER MACROAGGRESSIONS* 30-46 (1998).

³⁶ See TONRY, *supra* note 31, at 81.

³⁷ 725 IL. COMP. STAT. 5/110-5 (Supp. 2005).

³⁸ BOGIRA, *supra* note 1, at 17.

³⁹ 730 IL. COMP. STAT. 5/5-5-3 (2005).

⁴⁰ *Id.* 5/5-5-3.2.

⁴¹ See, e.g., *id.* 5/5-6-1 (probation and conditional discharge); *id.* 5/5-7-1 (periodic imprisonment).

both sides can agree on to belch out one defendant and make space for the next.”⁴²

In theory, no person can be penalized for the exercise of a constitutional right—including the right of a criminal defendant to have a trial by jury.⁴³ The reality in our nation’s criminal courts bears no relationship to this theory. The system depends critically on guilty pleas; without them the physical and human resources within the system would immediately become so overwhelmed that the criminal process could no longer function at all.⁴⁴ And to induce those pleas, judges ignore the constitutional imperative, imposing far heavier sentences—a “trial tax”—on any defendant found guilty after having had the temerity to insist on his constitutional right to a jury trial.⁴⁵ “The time devoted to considering whether [the defendants] actually did what they’re accused of and, if so, what should be done about it,” Bogira notes, “will be dwarfed in most instances by the time spent on procedural matters, such as determining what sentence will induce their guilty plea.”⁴⁶

The disconnect between the formal expectations we have of the criminal justice system and its reality—i.e., the system’s essential hypocrisy—is evident in countless additional ways. Bogira does a nice job of anecdotally illuminating several. For example: We imagine a system in which the poor and the rich are treated equally. In fact, the quality of justice available in America’s courts depends on whether the defendant has the ability to pay for a lawyer who has the time and the determination to battle for the defendant’s rights. Well-off defendants with money to pay for top of the line counsel in a high profile proceeding get all the attention from the judge in courtroom 302 that their counsel demand, while poor, nameless defendants shuffle in and out of the same courtroom—an unceasing stream of guilty pleas. A public defender admits to Bogira that he advises clients to plead guilty if he thinks the case is a loser after reading the police reports and the client’s rap sheet—even while acknowledging that his early appraisal of a case isn’t always correct.⁴⁷

Illinois law codifies the constitutional requirement that a defendant receive a speedy trial by requiring that the defendant be brought to trial

⁴² BOGIRA, *supra* note 1, at 41.

⁴³ See, e.g., *United States v. Derrick*, 519 F.2d 1 (6th Cir. 1975) (indicating that at sentencing, it is improper for the judge to consider the defendant’s refusal to accept a plea bargain); *United States v. Stockwell*, 472 F.2d 1186 (9th Cir. 1973) (same); *Baker v. United States*, 412 F.2d 1069 (5th Cir. 1969) (same).

⁴⁴ BOGIRA, *supra* note 1, at 38.

⁴⁵ *Id.* at 40-41, 83.

⁴⁶ *Id.* at 17.

⁴⁷ *Id.* at 125.

within 120 days of arrest.⁴⁸ In practice, as Bogira reports, a defendant's insistence on that right is thought by prosecutors to be effrontery and can result in harsher treatment for the defendant.⁴⁹

The Supreme Court has announced that the Constitution absolutely prohibits race-based exclusion of jurors from trials.⁵⁰ In practice, though, there is little to no enforcement of this principle. Bogira recounts how the judge in courtroom 302 uncritically accepts the perfunctory and blatantly pretextual justifications that counsel offer for the exclusion of jurors from a racially charged trial.⁵¹

All of this is appalling enough. But, in a way, the most distressing—certainly the most captivating—feature of Bogira's story is the moral toll that all the chaos and rampant injustice takes on the participants in the system. The central character of *Courtroom 302* is the presiding judge, Daniel M. Locallo. The judge, by all accounts, is a person of intelligence, with a strong work ethic and a deep emotional and theoretical commitment to the principles of equality and fairness—he lists the movie *To Kill a Mockingbird* among his greatest inspirations. Bar associations give him high marks for intelligence, diligence, fairness and integrity.

Fundamentally, though, Locallo is a product of the system. Over the course of five years, between 1978 and 1983, Locallo worked his way up through the ranks of the Cook County prosecutor's office, leaving the criminal courts for a short stint in private practice and becoming a judge in 1986.⁵² For all his apparent intelligence and sensitivity, Locallo is strangely indifferent to the failings of the system in which he functions. On unexamined, plea-bargained sentencing, Locallo tells Bogira: "Under ideal circumstances, you'd get a complete analysis of the defendant you were going to sentence. But you're not gonna have that. So you take the realistic approach."⁵³ This, of course, begs several questions that seem not to occur to Locallo, first among them: Why, exactly, are "ideal circumstances" not achievable? And, can "the realistic approach" be tolerated if, for example, that approach in a particular case works terrible and unnecessary hardship upon the sentenced defendant while achieving no social purpose? The failure to ask the important questions is endemic. As Locallo's boss, the

⁴⁸ 725 IL. COMP. STAT. 5/103-5 (Supp. 2005).

⁴⁹ BOGIRA, *supra* note 1, at 73-74.

⁵⁰ *Batson v. Kentucky*, 476 U.S. 79 (1986).

⁵¹ BOGIRA, *supra* note 1, at 260-62. As David Coles argues persuasively, this phenomenon exists with the connivance of the United States Supreme Court, which has chosen to leave the *Batson* rule a toothless one in practice. See COLES, *supra* note 9, at 101-126.

⁵² BOGIRA, *supra* note 1 at 32, 40, 59-60.

⁵³ *Id.* at 41.

presiding judge in the courthouse, explains: "There is not sufficient time to be introspective. Thinking time doesn't show up on a cost benefit analysis."⁵⁴

With the evidence before him every day that African-Americans are vastly overrepresented among the defendants in the system—particularly in drug cases, Locallo says that he does not believe racism is a problem in the courthouse.⁵⁵ This is because, according to Locallo, no one pushes harder to convict a defendant just because he may be black. But that, obviously, is not the tough question. The difficult question is why the stream of defendants who appear before Locallo and other judges in urban courtrooms around the country are so overwhelmingly dark skinned. It is a question on which Locallo apparently does not dwell.

Judge Locallo's entrenchment is evident in other, more concrete ways. Beginning in the early 1990s, evidence began coming to light that a Chicago Police commander named Jon Burge and Chicago Police detectives working under his supervision had systematically tortured African American citizens at a police facility on the south side of Chicago. A police investigator prepared a report identifying scores of victims and concluded that "abuse did occur and . . . was systematic."⁵⁶ City of Chicago attorneys have conceded that Burge and others tortured at least one citizen. And a number of federal and state decisions recognize a pattern of torture by Burge and those in his command.⁵⁷ The Burge torture is a scandal that casts a terrible pall over the entire criminal justice system in Cook County.

But Locallo, who worked in the prosecutor's office during some of the years Burge and his men were engaged in torture, tells Bogira that he remains unconvinced that Burge is a torturer, describing Burge as a "sacrificial lamb" and a victim of "politics."⁵⁸ Locallo is contemptuous and dismissive of allegations by a death row inmate named Leroy Orange that

⁵⁴ *Id.* at 56. The author of this comment, Thomas Fitzgerald, has since been elevated by the voters to the Illinois Supreme Court. Robert Becker, *It's Official: Nov. 7 Winners Sworn In, Begin Their Terms*, CHI. TRIB., Dec. 2, 2000, at 5.

⁵⁵ BOGIRA, *supra* note 1, at 68.

⁵⁶ CHI. POLICE OFFICE OF PROF'L STANDARDS, SPECIAL PROJECT REPORT OF INVESTIGATOR MICHAEL GOLDSTON (1990).

⁵⁷ See, e.g., *Wilson v. City of Chicago*, 120 F.3d 681 (7th Cir. 1997); *Wilson v. City of Chicago*, 6 F.3d 1233 (7th Cir. 1993); *United States ex rel. Maxwell v. Gilmore*, 37 F. Supp. 2d 1078, 1094 (N.D. Ill. 1999); *People v. Patterson*, 735 N.E.2d 616 (Ill. 2000); *People v. Cannon*, 688 N.E.2d 693 (Ill. App. Ct. 1997). In 2002 the Chief Judge of the Criminal Division of the Circuit Court of Cook County appointed a special prosecutor to investigate whether criminal charges should be brought against Burge and others involved in the torture. See *In re Special Prosecutor*, 2001 Misc. 4 (Cir. Ct. Ck. Cty.). The author was counsel for the petitioners seeking the appointment of the special prosecutor.

⁵⁸ BOGIRA, *supra* note 1, at 287.

he was abused by Burge's men. Although Locallo denied Orange a hearing on his torture allegations, former Illinois Governor George Ryan ultimately pardoned Orange on grounds of innocence, noting that his confession was the only evidence against him and finding completely credible Orange's allegation that the confession was the result of torture.⁵⁹

Working in the prosecutor's office in the 1980s, Locallo was assigned to prosecute a young defendant named George Jones. In the course of the prosecution, it was learned that Chicago Police detectives had hidden a file containing highly exculpatory memoranda—and that they had done so per standard Chicago Police practice to separately file and withhold information about an investigation that the Police deemed irrelevant. As a result the charges against Jones were dropped. And, ultimately, Jones recovered a federal civil rights award of over \$800,000 for having been wrongfully prosecuted⁶⁰ and, with federal intervention looming in the background,⁶¹ the Chicago Police eliminated the dual filing system. Dismissing the federal findings regarding Jones, Locallo tells Bogira he continues to believe that Jones is guilty. Locallo is openly derisive of Jones's evidence that he suffered from post traumatic stress disorder following his ordeal.⁶²

Locallo's myopia about the unfairness of the system in which he toils is a result, no doubt, of overexposure. He has simply been made numb to injustice because it is omnipresent. His reluctance to condemn police who overreach and grossly abuse their office is a function of his own entrenched relationships with police and prosecutors over the years. It would be wrong to single out Locallo for criticism in either regard. Bogira is right to applaud Locallo for his cooperation in Bogira's project and for his candor and openness.⁶³ Bogira fully appreciates the uncomfortable fact that Locallo's nonchalance is merely the norm for those who spend their work lives in the criminal courts. It is human nature to tolerate and rationalize that with which we are familiar. The things that we call unacceptable are those to which we have not yet become accustomed.⁶⁴

⁵⁹ In his statement explaining the pardon, Governor Ryan said: "The category of horrors was hard to believe. If I hadn't reviewed the cases myself, I wouldn't believe it. . . . They [Orange and three other men pardoned with him] are perfect examples of what is so terribly broken about our system." *Excerpts from Gov. Ryan's Speech*, CHI. TRIB., Jan. 11, 2003, at 18.

⁶⁰ See *Jones v. City of Chicago*, 856 F.2d 985 (7th Cir. 1988).

⁶¹ *Palmer v. City of Chicago*, 562 F. Supp. 1067 (N.D. Ill. 1982), *rev'd*, 755 F.2d 560 (7th Cir. 1985).

⁶² BOGIRA, *supra* note 1, at 170.

⁶³ *Id.* at 355.

⁶⁴ See, e.g., Daniel Patrick Moynihan, *Defining Deviancy Down*, 62 AM. SCHOLAR 17 (1993).

But there is no virtue in indifference—a lesson most dramatically taught by the inaction of some German citizens during the Holocaust of the last century, and one with application to the criminal justice system today. It is through the quotidian tolerance for unfairness on the part of the participants that this broken system is perpetuated.

It is not Bogira's task to propose solutions—or, for that matter, to elucidate the causes of the criminal justice problem. He makes occasional reference to some of the determinist thinking of Lyndon Johnson's Great Society⁶⁵—the solution to the crime problem lies in addressing the social ills that produce crime, but he does so less to propose a reengagement with theories of social engineering than to establish an historical point of contrast with the prevailing tough-on-crime ethos. This is a collection of anecdotes, not theory.

What emerges very clearly from Bogira's book is how much the criminal justice system needs the perspective of outsiders—fresh sets of eyes unclouded by the daily grind of case processing—if there is even to be meaningful conversation about the ills of the criminal courts, let alone reform. Bogira himself possesses such fresh eyes. His thoughtful sensitivity to the implications of what he sees makes this a worthy book.

Politics require that any searching re-examination of the work of the criminal courts be driven by powerful leaders of the bar.⁶⁶ There must be active involvement of informed, concerned outsiders in evaluating and critiquing the system, in proposing changes, and in advocating for the implementation of those reforms. To the extent that the daily reality of the criminal justice system remains in the shadows and out of public view, there is no hope of change. Sadly, though, the organized bar has largely distanced itself from the dysfunction of the criminal justice system. Bogira's thoughtful and provocative piece of journalism ought to spur bar associations and their leaders to action.

⁶⁵ BOGIRA, *supra* note 1, at 54-55.

⁶⁶ See, e.g., AM. BAR ASS'N. STANDING COMM. ON LEGAL AID & INDIGENT DEFENDANTS, *supra* note 12, at 44-45.

