

A Mockery of Justice

Ira Sadoff

I have always had a tremendous interest in the law. I believe I was the first to write the Mayor of Newark after he was indicted on charges of extortion and four separate counts of grand larceny. As soon as I heard the report on the Evening News, I typed up a letter.

Dear Mayor,

I am writing to let you know that there is at least one citizen who has not lost faith in his city government. It should be perfectly obvious to those who follow local politics carefully, that the District Attorney is placing his own career ahead of the public interest. I have studied the facts of this case, however, and am reasonably certain that there is no legal way they can intimidate you. I suggest you bring suit for defamation of character at the earliest opportunity, although admittedly no amount of money can repay the damage done to your reputation as a dedicated public servant.

Yours truly,
Aaron Bascomb

A month later I received a form letter from the Mayor's office which read:

Dear Friend,

Thank you for expressing your concern over this apparent crisis in our city government. The Mayor wishes he could thank all his friends personally, but as you know, running the city is more than a full-time job, so he has been forced to rely on this admittedly impersonal but nonetheless sincere

means of communication.

Many of you have sent prayers, words of encouragement, and offers of assistance. The Mayor is most grateful to all of you, and you'll be happy to know there is a way *you* can help. Unlike most politicians, the Mayor is not a man of great personal wealth; nor, because of his integrity, is he owed favors by any of the "bosses" who try to buy city government; so the Friends of the Mayor Association has established a legal defense fund to insure that justice is done! We enclose a business reply envelope for your convenience, and your contribution (tax-deductible) will affirm your faith in our system at a time when there are too many trying to tear it down. And in return you'll receive a handsome red, white and blue "We Want Our Mayor Back" button which you can wear on your suit lapel or blouse.

Thank you again for your interest.

Sincerely,
Walter Morgenstern
Ass't to the Mayor

I quickly sent back a reply to Mr. Morgenstern, with a second copy to the Mayor himself.

Dear Mr. Morgenstern,

Thank you for your letter of 8 November, but I am interested in the legal rather than fund-raising aspects of this case, and in that regard I would be more than glad to assist the Mayor at his request.

Best wishes,
Aaron Bascomb

I never received an answer, but continued to follow the case on TV, radio and the newspapers. Once I went to the courtroom itself and took arduous notes, and after the proceedings when I introduced myself to Mr. Morgenstern, he acted as though he had never heard of me. Even after I offered him my notes he looked at me strangely, thanked me for my help, but added that the case seemed to be coming along just fine. Three months later, though, the Mayor ended up in jail.

I have also written occasional letters to convicted burglars, rapists and mass murderers. Once I wrote to Richard Speck, convicted murderer of eight nurses, and asked whether he and his lawyers had looked into the statutes dealing with provocation. I mentioned some test cases in the field and said that at that point

there was no reason to leave any stone unturned. He never answered my letter either, but I know that security in federal prisons is very tight, and there is a good chance he never got it. The point is, though, there are so many complexities to the law that there is no real reason why a human being should ever have to go to jail.

But I suppose the Mayor's case held a special interest for me because it belonged to that shady area of experience where the law and politics intersect. And this also explains why I have never missed a demonstration in our area. I used to set up a free counseling service in some of those liberal, off-beat churches, and even had a sign made up: WELCOME ALL BLACKS, STUDENTS, CHICANOS, ITALIAN-AMERICANS. But no one ever came up to me and I spent most of my time paging through religious magazines like *Lutherans Together*, *Methodist Motive*, and the like. So I had to consider the most important of political considerations, how could I be *effective*. After much thought I bought an old police uniform in a pawn shop, and during the demonstrations I moved freely about the demonstrators, occasionally clubbing one softly to avoid suspicion. But in the meantime, with a hidden camera I took some very touching photographs of policemen brutalizing teen-agers, rowdies throwing rocks and bottles, reporters and innocent bystanders being beaten. I learned how to pickpocket badges out of policemen's pockets, I even matched the blood on patrolman number seventy-six's billy club with the type from a fifteen year-old who refused to give me her name. And when I had gathered all the evidence I needed, I went to the police station to make a citizen's arrest. But when I showed the desk sergeant my pictures, he stared at them for a while, called over another patrolman and said, "Not a bad likeness, huh?" and they both began to laugh. They called in a lieutenant who after looking at one of the pictures said to me, "Where did you get these?"

"Why I took them myself."

"Are you a reporter or something? Are you after a bribe?"

"A bribe? No, of course not. I just came to see that justice was done."

"You what?" he said and tore up the pictures.

"I can see you don't believe me, officer," I said. "But I assure you these are all untouched photos. I still have the negatives."

"Why don't you get out of here before I lose my sense of humor."

"I don't think you understand. If you'll look at those pictures carefully you'll see a number of rock-throwing students. What you might not know is that even as public servants the police have important civil rights. I'm here to protect those rights."

But even before I finished my sentence, two policemen threw me out of the stationhouse. Although I was discouraged, I did not give up. I took copies of my evidence to a congressional investigating committee, but the liberals assured me that it would never hold up in a court of law, and one conservative congressman from Oklahoma threatened to have me arrested for impersonating an officer and theft of government property. Recently I sent copies to the Department of Justice, and if and when they tear up my information, I will take it to a more

objective body, like the UN, or the Court of International Law. And in case they take my concern in the wrong way, I have had my phone number changed, and I take my mail at a Post Office Box downtown.

My perseverance in pursuit of the law can only be explained in terms of a childhood dream I could not let die. Ever since high school, when I won the Hargood Award for debate for a speech I had prepared on Peace Through Nuclear Strength, I knew I was destined to become a lawyer. I became single-minded in my dedication to jurisprudence. At college I was the kind of student who came out of his room only to eat his meals and go to classes; and if, by chance, my dorm counselor set me up on a blind date, I would spend the evening talking to her about the Mann Act, or did she know that fellatio was illegal in thirty-one states, even for married couples. I consistently argued with History Professors for A's instead of B's; I was not going to let any obstacle get in my way. And there were always obstacles. The first serious one was an insane examination called the Law Boards. When I first opened my examination booklet I spent half an hour to make certain I was taking the right exam. There were fifty vocabulary questions:

What is the meaning of propinquity?
Give an antonym for tawdriness.
What is a five-letter word meaning vestibule?

Then there was grammar. Correct this sentence:

Just as his mother asked him to, Johnny turned into a delicatessen.

And there were absurd analogies.

Chicago is to a city as:
A—ham is to eggs
B—a widow is to a stranger
C—cumin is to the spice rack
D—all of the above

But worst of all were the alleged reading comprehension questions, not about Sacco and Vanzetti, Scopes, or Topeka vs. Brown, but musical instruments in the court of Louis XIV, or a scientific discovery on the contemporary use of seaweed.

In accordance with the efflorescence of the material after it has been pulverized, it may be synthesized with other proteins to create nourishing foods, or it can be treated to form a kind of fibrous material which could be utilized as clothing or even shelter in many underdeveloped countries. Ultimately, of course, the only limitations in the uses of seaweed are the boundaries of the human imagination.

And so on. I could not believe my eyes. There was not a single question on the proper way to address a judge, when a question is out of order, or can a woman be forced to testify against her own husband. I lasted until about 2:30 in the afternoon, when I nodded off for the last time, and I didn't wake up until a monitor came by to pick up the examinations. In the last minute and a half I randomly filled out the rest of my IBM card, and this is the only way I can account for my respectable score of eighty-two per cent. And I suppose it was, after all, what got me into Brooklyn Law School at night, despite my consistent failures in Zoology, Mathematics, and Physical Education. Somehow I managed to struggle through three years of law school, until I reached the final stumbling block, the bar exam. I think I did all right on the written part, but the oral part with three of my former professors intimidated me so much I felt as though I were on trial for a serious crime. Since that time I have always had a great deal of sympathy for the defendant. They asked me nothing but obscure questions like what would I do if I spotted a violation of Section 8AIII of the Labor Relations Act, or an irregularity in a subcontracting contract from a subsidiary of a large corporation. They frightened me so much that even if I knew the answer I came out with something like "I think you'll find the answer you're looking for in Chapter fifty-four of Barron & Roberts," or "That's not really my specialty; actually I'm more interested in civil liberties." They didn't seem to know how to deal with my responses, and at the end of the three hours one of them said to me, "I don't suppose you realize that the law is a serious business." In the end, somehow they managed to have me barred from the bar before I even entered it, and I think I'm the first person ever to be refused to take the exam again. I must have set an historical precedent.

So my biggest thrill has had to be sitting on jury duty. I waited for years for my name to come up, I notified the county of every change of address, I even went down to the clerk's office to make certain my name was on the list. Finally one day in the mail I was notified that I had been selected for jury duty; it was like winning the *Reader's Digest* sweepstakes! I bought everyone in my office dinner, and promised my friends I would make good. But when I got down to the courtroom itself, I began to feel that I was the defendant, not a juror. They had to determine whether I was fit to sit on a jury. Only this time I was very careful to play the game; I knew what the stakes were here. No, I did not object to the death penalty, and in fact I encouraged it. I had never been a member of the Communist Party, and I had no immediate plans to overthrow the government. From the other side, No, I was not prejudiced against Negroes (my sister had once been engaged to one), I would not allow myself to be influenced by sensationalism, and I would uphold the constitution in the belief that a man was innocent until proven guilty. I would have agreed to almost anything to get on that jury, and perhaps because fewer than half the people summoned showed up, I made it.

And fortunately the case was an interesting one, in an area of the law with which I was not totally unfamiliar. The prosecution alleged that the defendant, a Black man, had stabbed another man (white) in front of a midtown cafe, and

then stolen his wallet and personal belongings. There were four witnesses, all white, including an off-duty policeman who made the arrest, gathered the evidence and matched fingerprints on the knife with those of the defendant. And in concluding his opening argument the prosecutor apologized to the members of the jury for taking their valuable time with such an open and shut case, but this was our system of justice and he knew of no better way. This condescending attitude did not endear me to his point of view because, as I had learned at the bar exam, the law was a serious business.

The defense counselor did not dispute the fact that his client had stabbed the man, but maintained it was a clear-cut case of self-defense. It seemed the defendant had been walking home from work, minding his own business, when a drunk (the alleged victim) came out of a bar and started pushing him around, threatening him, calling him derogatory names. The defendant tried to ignore him, as he was anxious to get home to his wife and children, but by this time a crowd had gathered around the two of them, shouting and pointing at the defendant. The drunk made continual reference to a button the defendant was wearing which said, "FREE ALL POLITICAL PRISONERS," and finally removed the button bodily, spat on it and threw it to the ground. The defendant got scared, and after the drunk punched him in the face, loosening two of his teeth, someone in the crowd handed him a knife, and without thinking, he used it on the man. Later he found out that the man who had handed him the knife was the off-duty policeman who made the arrest immediately afterwards. And as far as he, the defense, was concerned, the victim's wallet must have gotten lost in the scuffle, or perhaps he had even forgotten it in the bar. So if anything was obvious at all, it was that the defendant was being prosecuted for his political beliefs, if not his color.

He questioned the arresting officer very thoroughly, but couldn't get him to admit to anything. No, he had not given the defendant the knife (the only reason his fingerprints were on the knife was that he had to remove it from the victim's abdomen). No, he had nothing against Black people, he only knew what he read in the papers about the Black Panthers, no, he didn't think the victim was drunk, although he admitted he hadn't administered a balloon test on him. He had not seen any provocation, no he could not swear there wasn't any, he had just not seen it. The policeman answered every question thoughtfully, and he reminded me of myself when I was trying to get on the jury: he did not want to make a mistake, displease the D.A. or risk losing his job.

The defense then questioned the witnesses, who unanimously seemed very closed-mouthed, answering "yes," "no," or "I don't remember" whenever they had the chance. Several times the judge had to warn the attorney not to badger the witnesses. When it came the prosecutor's turn to question the defendant, he said he wanted it known that *he* wasn't trying a man on the color of his skin, but a crime against the People of New Jersey. He asked the defendant politely if he had had a rough childhood, if he had not been disadvantaged, if he had not thought he had a right to resent the white race. Yes, his ancestors had been slaves, he had a right to be bitter about the past. Had he ever given thought to

stabbing a white man before, or was this the first time? The defendant turned to the judge and said he would not respond to any more of these inflammatory questions, that the prosecutor was twisting his words. The judge instructed him that he had to answer the questions, although he did have the right to take the fifth amendment, which he then carefully read to the defendant. I was very impressed with the judge's knowledge of the rules, and I wondered how he had done on the Law Boards.

The most exciting part, of course, was when the jury began its deliberations; it was really the first time I had ever personally seen the inner workings of the law. The judge read a long list of instructions which I'm sure no one else understood, and I understood them only because of my training and frequent visits to the courtroom. Then he sent us into a large room by ourselves, and when they locked the doors on us I got very nervous. I had deliberately not decided on the defendant's guilt or innocence, wanting to keep an open mind until I had discussed the issues rationally with the other members of the jury so we could come to a consensus vote. For a while no one said a word, everyone just looked at everyone else waiting for someone to say something. Finally the man selected foreman of the jury cleared his throat and spoke. "Uh-hum. I don't care what color a man is, but it's like the prosecutor said: four witnesses, an open and shut case, the man has to be guilty." The only Black man on the jury, a middle-aged man who seemed to wake up just when the foreman spoke, concurred. "I agree. I don't care what color a man is. Color just shouldn't make any difference." Then a woman spoke. "I think we have an obligation to be fair, but if we poll ourselves now, I think we could all get home to our families fairly quickly. If I'm not mistaken."

"Now wait a minute," I cannot contain myself—it's the reference to getting home quickly that does it—"there's a human being on trial out there. We haven't even examined the facts. What kind of jury is this? Didn't you hear what the judge said? If there's any *reasonable doubt*, then we can't declare him guilty. Reasonable doubt, do you know what that means? And do you know anything at all about questionable testimony, mistaken witnesses? Take the case of the People of North Carolina versus Owens, 1948. Six eyewitnesses swore they saw Owens shoot another man in cold blood on the street, six, and the jury convicted him unanimously. And do you know what they discovered a year and a half later? That the victim had been shot by a sniper from a building across the street. Not only by a sniper, but an anarchist! Do you know what something like this could do to our judicial system? Do any of you?"

Absolute silence. Oh I was so proud of myself, I had astonished them all with my knowledge of the law. It would not be long, I thought, before I could turn the jury around. I had found my position, and there was nothing these laymen could do to challenge it.

But after a while a man at the opposite end of the table spoke. "But he admits stabbing him," he said meekly.

"Ah," I said, "but that's not the issue. The point-at-hand is whether this is a case of self-defense or not."

"You don't mean to tell me you believe a policeman would give a criminal a knife, do you?"

"You mean alleged criminal, don't you, sir?" I could see right away by the looks on their faces I had made a terrible mistake. They looked at me as though I were a Philadelphia lawyer, a man who played with words who was trying to trip them up on a technicality. Ironically it was my own knowledge of the law tripping me up. I tried to recover. "I'm only trying to be fair," I said, but it was too late. They took out the sheets of paper to poll the jury, and I was helpless. If I didn't do something, I would be home that very night watching the results of the trial on the Evening News. And sure enough, the count was eleven to one in favor of guilty on all counts. It was going to be a difficult case, perhaps I would have to settle for a reduced sentence, on harassment or something, but I had to work fast. All eyes were on me. People began to pressure me from all sides, I was holding up the proceedings, keeping them from their wives and children, delaying the machinery of justice. I knew I would have to be a good lawyer, because obviously the defense attorney had not done his job.

We were locked in there for hours; I began to measure time by coffee breaks, tuna fish and cream cheese sandwiches. I concentrated on one person at a time, and after three days got the Black man to believe that this was part of a plot to oppress his people. Color might really have been an issue. And nearly a week later I got to the lady who wanted to get home to her children. I used a persistent badgering technique until she broke down and said she would agree to anything if she could only get away from this stuffy room and all these people.

But working on the others was absolutely hopeless. They formed some kind of camaraderie, were noticeably hostile to any of my attempts to change their minds, and a few even accused me of having severe leftist tendencies. No matter what I said they would not see the ambiguities and unanswered questions that made this case impossible to solve. Why hadn't they given the defendant a lie detector test? Why hadn't the arresting officer removed the knife from the victim with a handkerchief? Why could he not definitely say there was no provocation involved? They must have known that the statutes on provocation were perfectly clear in this regard. Finally the foreman threw up his hands, said I was impossible and notified the judge we could not reach a decision. Well, I thought, a hung jury on my first try wasn't too bad. Perhaps because of my qualifications I could make a special plea with the judge to let me get on the next jury when it met. But the judge sent a message back to the foreman saying we would have to deliberate longer, that he could see no reason why we couldn't reach a decision.

When we got the notice, I honestly believe the others were just as disappointed as I was. We could no longer even speak to each other, no less listen to someone else's plan for compromise. And once again I felt absolutely helpless; I had learned nothing about jury tie-ups in law school; I had stretched my imagination and could think of nothing else to do but stick to my not guilty vote. When one of the other jury members almost got into a physical fight with me over whether it was better to let one hundred guilty men go free than see

one innocent man hang, we all agreed we could never reach a verdict. The judge then called us into his chambers for a conference, which I thought highly irregular. He asked what the vote had been, and then who was responsible for the delay; almost simultaneously everyone pointed to me. The Black man and the woman changed their vote right back on the spot. I was the only one in the room who could keep the defendant from facing a thirty-year prison term. Then the judge asked the others to leave; at last I was going to be alone with a real professional. It was one of the greatest thrills of my life. First he asked me what reservations I had concerning the guilt of the defendant. I sat back in my chair.

"Well, your honor, this has been a very frustrating experience, I'll tell you that. Not one other member of the jury ever examined the facts of the case, questioned the testimony of the witnesses or discredited the tactics of the prosecution."

"You mean you think the policeman handed that man the knife?"

I was too astounded to reply.

"You don't really believe the prosecution attempted to inject race as an issue, do you?"

"The law is a complicated business, your honor. There are a lot of ambiguities, shadings, that have to be taken into account."

"Shadings my ass," he said. "This is the clearest case of assault I've seen in my forty years on the bench."

"But there's no conclusive proof. You said if there were any reasonable doubt . . ."

". . . Reasonable doubt? You call that jibberish reasonable? What are you trying to do, make a mockery of justice?"

I stood up. "Your honor, you're talking to a man who's given up his life to the law. I am one of the few people left in this world who still believes in justice."

"Justice? I'll show you justice. I'll give you until five o'clock to reconsider your position or I'll have you locked in the jury room and have you detained for contempt of court."

"But your honor, you can't do that," I said, but my whole body was shaking, my whole faith was shaken in everything I had ever believed in. I seemed to lose the power to speak; all the eloquence that had won me the Hargood Award for debate seemed to fly out the window. When the jury met again, I had lost the strength to voice my not guilty vote; I could not even go back to the courtroom to hear the decision being read. I just stared out at the thick wired-glass windows of the room we had been locked in for more than a month. But even then I knew I could not give up; I would take this case to the Attorney General, and when he turned me down I would go to the Supreme Court, and even to the President if necessary. If I were going to make a mockery of justice, I was not going to do it alone.