Before* Roe v. Wade*: Voices That Shaped the Abortion Debate Before the Supreme Court's Ruling

By Linda Greenhouse and Reva B. Siegel

Kaplan Publishing, New York, NY, 2010. 335 pages, $26.00.

Reviewed by Christopher C. Faille

Linda Greenhouse reported news for *The New York Times* for 40 years, for 29 of those years covering the U.S. Supreme Court, and she won the Pulitzer Prize in 1998 for "her consistently illuminating coverage" on that beat. For this book, she co-pilots with Reva Siegel, a professor at Yale Law School.

The subject of the book is aptly set out in its title and subtitle, which need no clumsy paraphrasing here. Although Greenhouse and Siegel are credited as authors, not as editors, the bulk of their book consists of primary documents, and the two of them deserve credit for having selected and organized those materials with a minimum of commentary.

The foreword tells us that Greenhouse and Siegel are especially interested in the processes by which the issue of abortion became an issue of women's rights—indeed an issue that many considered to be on "the top of the women's rights agenda" by 1972. Before then, abortion had been about public health, about the deregulation of the medical profession, and even about environmentalists' concerns over a population explosion.

The book takes up a lot of space with documentation of the abortion struggle in New York state. That is not surprising, because Greenhouse was there for it. Before she started working at the Supreme Court, her beat for *The New York Times* was the state government in Albany.

In the days when Greenhouse was a journalistic greenhorn, New York had a statute that dated back to 1828 and rendered abortion a crime. Serious legislative efforts to liberalize New York's abortion laws were under way as early as 1965. As Greenhouse and Siegel note, these initiatives stalled until a breakthrough came in 1970. The authors have a rather one-sided view of why these efforts stalled, though, writing that "the New York Catholic Conference was successful in ensuring its defeat for several years."

One has to say that the Catholic Conference wasn't quite as alone in such efforts as these authors make it sound. As Laurence Tribe noted in his book on the politics of abortion, one of the difficulties encountered by the earlier reform drafts came about because they retained a background ban on abortion, while trying to liberalize the effects of the reform by expanding the exceptional circumstances to which the ban would not apply. Prohibition would not apply in cases of rape, incest, a threat to the mother's life, or in cases of serious fetal deformity.

That last case proved to be a sticking point. Tribe quotes Assemblyman Martin Ginsberg, who helped block an effort to expand the exceptions to the ban, expressing concern about what such reform would say to those "already in this world … malformed or abnormal." What level of hubris, he asked, is required for a state to decide which fetal deformities exclude one from legal protection? When the matter was put in these terms, several of Ginsberg's colleagues agreed with him that reform was misguided. As a result, reformists' energies were redirected toward an outright repeal of the ban on abortions that required such exceptions. The repeal passed, and Gov. Nelson Rockefeller signed it into law on April 12, 1970.

Two years later, another abortion bill found itself on Rockefeller's desk. This one would have repealed the repeal—that is, the bill would have restored the prohibition of abortion. Rockefeller vetoed the bill, stating in his veto message many of the key points that pro-choice advocates have been making ever since.

Rockefeller said that returning to prohibition of abortion would discriminate "against women of modest means who could not afford an abortion haven" and would promote hypocrisy "and, ultimately, human tragedy"—that is, the deaths caused by black-market or self-help procedures.

He noted briefly that constitutional litigation was under way. Finally, he made what one may loosely call the argument calling for the separation of church and state. He said that he did not "believe it right for one group to impose its vision of morality on an entire society."

Greenhouse and Siegel include an essay that appeared in *New York* magazine in May 1972 by activist Hope Spencer. She wrote in some disgust that women who believed in abortion rights had not mobilized and so had allowed themselves to be outhustled by the antiabortion lobbyists in the events leading to the passage of the revocation bill by New York's state legislature. "We have almost no lobbyists. We nearly lost the right to choose whether or not we shall bear children. Only the grace of a Rockefeller veto prevented the repeal of legal abortion in New York," she wrote.

Spencer also mentions, quite in passing, that, during the 1972 deliberations, she had heard a state legislator say wearily "If I hear one more person talk about mongoloids. ..." Apparently, the subordinate issue passionately framed by Assemblyman Ginsberg still resonated.

These documents will persuade us or remind us, if persuasion or reminder is needed, that moderate Republicans—who used to be known, after all, as Rockefeller Republicans—were once a powerful political force in the United States. Indeed, Justice Harry Blackmun, the author of the *Roe v. Wade* decision the following year, might be counted among their number.

What happened to Rockefeller Republicans? Colin Powell used that term when referring to himself as recently as in the mid-1990s. But maybe career military officers don't get the memo as quickly as civilians do when such nomenclature goes out of style. Since the moment in 1995 when Powell announced he would not be competing in the Republican

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primaries for the presidential nomination the following year, the term has been a historical curiosity. Semantics aside, one could say that the reality for which it stands—the very existence of a significant bloc of moderate-to-liberal Republicans—has also become a historical curiosity.

But I digress … what about the book? I find it a well-considered collection of primary sources, and readers with an interest in this part of recent American history will be grateful for it, although they might want to skip the authors' commentaries and stick to the primary documents that they have collected. These are far more intriguing. **TFL**

Christopher Faille, a member of the Connecticut bar since 1982, writes on a variety of financial issues, and is the co-author, with David O'Connor, of a user-friendly guide to Basic Economic Principles *(2000).*

Representing Justice: Invention, Controversy, and Rights in City-States and Democratic Courtrooms

By Judith Resnik and Dennis E. Curtis

Yale University Press, New Haven, CT, 2011. 720 pages, $75.00.

Reviewed by Henry S. Cohn

Representing Justice is a prodigious work by Yale Law School professors Judith Resnik and Dennis Curtis. It has close to 300 illustrations and more than 200 pages of endnotes. The book intends to isolate and define "justice" in Western civilization and demonstrate how the concept of justice has been represented in painting, sculpture, and architecture.

Representing Justice begins by rooting "justice" historically in Babylonia and Egypt. It then progresses to the Mosaic codes and the Roman *jus*. By the Middle Ages, under Christian doctrine, justice was one of four virtues, the other three being prudence, temperance, and fortitude. Justice was characterized by such principles as hearing both sides, allowing access and openness, following precedent, and rendering fair decisions.

In Babylonia, between 2350 and 2100 B.C.E., justice was drawn as a figure carrying weighing scales. Egypt's *Book of the Dead*, circa 1300 B.C.E., pictured a woman with similar scales. These motifs joined others in the art depicting the four Christian virtues. Each virtue was a female: prudence examining herself in a mirror, temperance holding a bridle, fortitude sitting near a strong pillar, and, drawing on early history, one of justice's hands holding the scales and the other hand grasping the top of a fully visible sword.

There were other sources for the traditional justice figure. Murals in Siena, circa 1339, show "good government" presided over by a woman holding scales supported by wisdom, while an accompanying mural shows "bad government" with an evil-looking tyrant surrounded by cruelty, treason, and fraud. Paintings of St. Andrew, a brother of the Apostle Matthew, and of the last judgment of Jesus also show likenesses to the standard view of justice.

This traditional representation of justice was sometimes altered in the 20th century. The William Mitchell College of Law in St. Paul, as a joke, has a sculpture of Lucy from "Peanuts" holding the scales and a sword. More seriously, updated murals based on Siena's "good government" and "bad government" were placed in a Seattle courthouse in 1985.

The justice figure has been drawn into political controversies. In 1956, in *Facts Forum News*, a cartoon showed Earl Warren as justice gleefully ripping the Constitution in half. In a cartoon by Paul Conrad suggesting the consequences of opposition to *Roe* v. *Wade*, a woman holds up a coat hanger instead of scales. Administrators of court buildings have also faced thorny issues arising from attempts to portray justice. In 1938, a model for a statue of justice was unveiled in the federal courthouse in Newark, N.J., and a judge of the court erupted, saying that lady justice looked like a "woman with biceps like a heavyweight prizefighter and a neck like a wrestler," and that it smacked "blatantly of communism." For several years, his criticisms forced the court administration to shelve completion of the statue. In the 1950s, a statue of Mohammed (one of 10 statues representing lawgivers) was removed from the roof of the Manhattan Appellate Courthouse when, on religious grounds, Muslims objected to displaying an image of their spiritual leader. Resnik and Curtis discuss two courthouse murals that have been covered by curtains because they were found offensive. One mural, located in Idaho, is a Works Progress Administration project, circa 1939, and shows an Indian about to be hanged by two white settlers; it was covered in the 1990s. Another, painted in 1938 for a court in Mississippi, depicts life on a rural plantation and has racist overtones; it was draped in the 1960s. Resnik and Curtis do not mention an incident that occurred in 2002, when the U.S. Department of Justice spent $8,000 on blue drapes to hide two aluminum art deco statutes—one of which had an exposed female breast—in the Great Hall of the Department of Justice, because Attorney General John Ashcroft did not want to be photographed in front of the statutes.

In examining architecture, *Representing Justice* relies in part upon photographs and information from *Court House: A Photographic Document*, an excellent study from 1978 edited by Richard Pare. Resnik and Curtis also include numerous photographs from elsewhere, such as one of the sweeping Eagleton Federal Building in St. Louis that towers over the old courthouse where Dred Scott sued for his freedom. There are also views of unique courthouses in France and Israel as well as the U.S. courtroom at "Camp Justice" in Guantánamo Bay.

An impartial arbiter is an essential ingredient of justice, as the Supreme Court held in *Tumey* v. *Ohio*, 273 U.S. 510, 523 (1927). Art through the centuries has emphasized this principle; for example, the story of Solomon's hearing two women each claim a baby as

her own and his forcing a settlement appears on many courthouse walls. In 1498, a legend from Herodotus of a corrupt judge who was removed from office and ordered flayed was made the subject of two striking paintings in the Town Hall of Bruges.

One amusing section of *Representing Justice* discusses the frequently repeated statement that justice is blind. The authors search for the origins of justice as a woman with a blindfold. They find a candidate in a 1230 sculpture found at the Strasbourg Cathedral in France portraying a Jewish woman named Synagoga, who was blindfolded because she could not see the truth of Christianity. Synagoga looks exactly like the justice figure with her blindfold. In 1494, Albrecht Dürer created woodcuts of a fool blindfolding justice. A Dutch work of 1644 declared that justice is blindfolded so that she might not see anything that would cause her to act in a manner that is "against reason."

Justice is not always blindfolded, however. Statues from the 17th through the 19th centuries in both England and the United States stare straight ahead without blindfolds. At Oxford University is a painting that Sir Joshua Reynolds did in 1778 of a young woman with her hand raised, lifting measuring scales that cast a shadow across her eyes. Some political groups have made removing the blindfold a cause. In 1971, the National Bar Association—an organization founded in the 1920s for the advancement of African-American lawyers—issued a flyer picturing a woman discarding her blindfold with the comment: "Let us remove the blindfold from the eyes of American Justice." In *Cassell v. Texas*, 339 U.S. 282, 293 (1950), Justice Frankfurter said that the law should have the blindness of impartiality, not the blindness of indifference.

One flaw in this otherwise "picture-perfect" book is the authors' unnecessary attack on arbitration, mediation, and other forms of alternative dispute resolution (ADR). They revere the standard form of court process, drawn from the principles of Western civilization and manifested in painting, sculpture, and architecture. The authors are concerned that diversionary programs will eventually undercut litigants' normal due process rights, leaving most parties to settle their cases outside the courtroom and in the hallway. But they fail to take into account that ADR has its place, and, so long as it is not forced on the parties, it can lead to just and complete resolutions of disputes. In fact, after a mass catastrophe, ADR often produces more successful outcomes than would result by merely leaving each party to common law remedies. The September 11th Victim Compensation Fund of 2001 is an example.

The authors' unwarranted criticism of ADR does not, however, diminish in any great measure the tour de force that Resnik and Curtis have achieved with *Representing Justice*. It is a book both to study and to enjoy. **TFL**

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Defending the Guilty: Truth and Lies in the Criminal Courtroom

By Alex McBride

Viking Books, London, England. 272 pages, £9.99.

Reviewed by Jon M. Sands

"As a criminal barrister," writes Alex McBride, "you have to work with the material you get: a junkie shoplifter with thirty-five previous convictions and four packs of Lidl's frozen chicken stuffed down his trousers is heading only one way." This early sentence sets the irreverent, irrepressible tone of this highly entertaining account of a young barrister making his way in London's criminal courts. If the late John Mortimer, creator of Horace Rumpole, had penned an heir for the irascible, indigent, and idealistic Old Bailey hack, I imagine that he would resemble McBride.

Nearly every day, McBride stands up in one of London's criminal courts—whether it be the venerable Old Bailey or one of the modern suburban soulless boxes. Wearing the black robe and white wig of a barrister, he proceeds to defend the rights of indigent criminal defendants. In this he is not much different from his American counterparts. His clients are pretty much the same sort: "On the average day Greenwich Mags [Magistrate Court] had crack heads, schizophrenics, heroin addicts, petty thieves, blaggers, dippers (pickpockets), drunks, wife-beaters, knife wielders, prostitutes, harassers, weed peddlers, thumpers, kickers, gobbers, flashers, shoplifters, knock-off merchants, benefit cheats, fare dodgers, fine dodgers, junior burglars, community service breachers, and bail jumpers all up for their five minutes (or less) in the full glare of British justice." As indicated by the book's title, most of McBride's clients are guilty, but this does not matter to McBride.

He is there for the defendants. Sure, his representation rests on certain bedrock beliefs: presumption of innocence, right to a jury, proof beyond a reasonable doubt—if he were asked to name a few between hurried sips of tea in chambers and on the way to the next brief (case). Sure, there have been quite a few miscarriages of justice over the centuries, but, by fits and starts, the principles of the Magna Carta, laid down in 1215 at Runnymede, have led to the Criminal Procedural Rules, sitting on his bookshelf, which states its purpose to be to acquit the innocent and convict the guilty. But there is something else, as McBride stresses, that few mention but that is every bit as essential for defending indigent defendants: "You want to get defendants off because winning feels good—in fact, winning feels great." Truth and justice are fine, but a barrister wants to hear the "not guilty."

McBride became a criminal barrister because of "the shouts from the gallery, the telling silences, the violent outbursts, and the resigned dumbfoundment as the evidence, with its jaw-dropping twists and turns, plays out. The criminal courts are beguiling because their currency is the human condition. They pick through the half-truths, the tragedies, the awful luck, hapless lies, grinding stupidity, bottomless greed and zero self-control with a gimlet eye fixed on the revealing detail." A jury trial is high

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theater, with structure, character, and plot, together with foreshadowings, climaxes, and resolutions—satisfactory or not. "Jury trials are real-life drama played for the highest stakes before a randomly selected audience which owes you and your client exactly nothing." To be successful, writes McBride, a barrister "must have a repertoire and a style but also must be able to improvise: turn on a sixpence, tell a joke, conjure a gasp, extort a tear and, if his back is really against the wall, argue the law with dazzling persuasiveness." To be in trial, "[y]ou have to enjoy the sticky, unwholesome fear that commands the pit of your stomach when you stand up to address the jury. Love the allure of the unforeseen piece of evidence. Want to obey the insistent voice in your head coolly suggesting you ask that last question which could either seize victory or consign your client to defeat."

McBride's stories of trials and of his law practice in general are engaging and funny (read the book). He tells of snatching defeat from the jaws of victory with one question too many, of cross-examination that reveals a lie, and of the vagaries of trial itself. Such vagaries include the time that McBride's cross-examination revealed a lie: McBride eviscerated a witness by demonstrating that the witness had lied about having seen the defendant, but the jury convicted anyway. Or, in the other direction, there was the time that McBride was sure that he had "potted" his client (got him convicted) because, on cross-examining a victim, McBride inadvertently referred to the victim's out-of-court statement identifying his client, when that statement, because of the prosecutor's slip-up, had not come up in the direct examination of the victim. Yet McBride got an acquittal.

McBride puts ethical issues into real-life contexts, such as when a client, in the dock, whispers that he will slash the guard if the motion McBride is about to argue is denied. Reveal the threat? Assume it is an idle one? Win the motion?

The practice of "pupils" (young barristers) being apprenticed to "chambers" (collections of barristers) with the hope of finally being invited to become a "tenant" (take up residence in an office, akin to a partnership) is every bit as competitive in the Inns of Court as it is in a Wall Street or K Street firm, but a lot less lucrative (solicitors can make much more). McBride and his fellow pupils vie for the few coveted "tenants" that the chambers dole out each year. Indeed, some of the tenancies open as a result of older experienced barristers being asked to vacate. It is a cutthroat world, with the focus on how much business the barrister is bringing in. How does it end up for our cheeky barrister? The Joint Tenancy Committee meets and all the candidates go off alone to await their fates. McBride's cell phone rings. The result might not be quite what the reader expects.

McBride manages to cover a lot of subjects in a breezy manner. Along with historical accounts—such as of the rise of the jury and the formation of Inns of Courts and the bar—he delves into contemporary issues. His descriptions of DNA and what statistics can and cannot prove are among the clearest I have come across. He discusses the unreliability of eyewitness identification, illustrating the discussion with the story of a barrister who was also an expert on eyewitness identification. Upon going to the police station to see a client, the barrister was arrested for a crime, based on a victim's precise identification. Subsequently, the victim even picked him out of a lineup. It was a good thing that the barrister had an iron-clad alibi: he was on television with the police commissioner, debating eyewitness identification and miscarriages of justice, at the time that the offense was committed. The victim had been watching the program when she was attacked.

It is also disheartening to read about England's sentencing policy, which seems to strive for retribution rather than rehabilitation. Although prison sentences in England are not nearly as long as they are in the United States, nor are nearly as many people per capita incarcerated, prison sentences in England have been getting longer and more people are being imprisoned. McBride does not see rehabilitation necessarily as a magic bullet, and he recognizes that it takes time, is expensive, and requires the commitment of various social agencies. However, he mocks the idea that high sentencing guidelines for offenses deter crime. Criminals, he assures us, do not look up guidelines prior to committing offenses.

The life of a criminal barrister is also mundane, filled with a lot of waiting and a lot of complaining. McBride captures this. He also liberally dispenses practical tips, which can be applied to lockups in the United States. When going to see a client in lockup, McBride advises criminal barristers to follow three simple rules. First, assess the cell carefully. Can you see and hear the client, is there a ledge or desk to write on, and can you avoid any vomit from an addict who is in withdrawal? Second, present yourself correctly. Step in confidently but not arrogantly, do not show fear or revulsion, even if the client is a modern-day Hannibal Lecter. He is sizing you up even as you are sizing him up. And third, you must knock. It is important to show the client courtesy and respect. The client does not have much to call his own, but this space, and whom he shares it with, is his. Be polite.

What about judges? Of course, the common law assumes judges to be omnipotent and turns them into near gods. The reality, muses McBride, is that judging is a lonely job, with no respite at the watering holes after cases. Barristers congratulate or commiserate with one another, laugh at a clever gambit, or grouse at unfairness. Judges can do none of that. Moreover, judging, at the trial level, is scary, with an appellate court ready to humiliate the trial judge by laying out his or her judicial failings in its opinions. It is embarrassing, as well as bad for a trial judge's morale, when he is exposed as having been confused at best and unfathomably wrong at worst. With appellate courts looking over their shoulders, and idiot barristers who appear in their courts making a mess of things, it is no wonder, McBride concludes, that "judge-itis" sets in. The

symptoms of this disease, he explains, include irascibility and bad temper, including flaring into a rage. McBride provides examples, including a funny Rumpole-like yelling match, complete with profanity, between a judge and a defendant. McBride surmises, at the end, that the purple silk (a judgeship) is attractive only because of the pension.

Defending the Guilty is also a veritable Rosetta Stone for London legal English, criminal edition. McBride reveals a lexicon that will be new to American lawyers: "to carve" a case is to agree to a plea deal; "getting bird" is being sentenced to a term of incarceration; "a silk" is a Queen's counsel (high up the ladder); a "pupilmaster" is a senior associate; "the legal" refers to counsel; "diaries" are solicitors' briefing papers; "to punt" is to take a risk; and "tenancy committee" means the firm's partners. Cricket, anyone?

McBride poses some interesting questions. Suppose that you, or someone you are close to, is accused of wrongdoing. There's enough for an indictment. Would you want a judge or a jury to decide? The jury wins hands down, every time. And as long as that is true, there will be a place for barristers, or public defenders, like McBride, on both sides of the pond. **TFL**

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The Uniform Commercial Code Made Easy: The Story of Stephen's Boats

By Robert M. LeVine

Empowerment Publications Inc., Cincinnati, OH, 2011. 504 pages, $59.95.

Reviewed by Thomas R. Schuck

Yes, Virginia, there is a Santa Claus! In this case, he comes in the form of Robert M. LeVine, a former University of Miami School of Law professor, who has made one of the most complicated bodies of law in the United States—the Uniform Commercial Code (UCC)—not only comprehensible but also entertaining.

In his book, LeVine teaches the UCC through a narrative that involves common commercial events and explains how the UCC deals with them. In the narrative, Stephen Seller is a beach bum in Key Biscayne, Fla., who receives a significant inheritance and decides to enter the boat business. He retains Alan Lawyer to assist him in forming a corporation, entering into a distributorship agreement with a boat manufacturer, and obtaining financing from a bank. Alan enlists the help of Doug Hawkins, a young associate at his firm who specializes in the UCC. The trio then engages in a myriad of transactions involving the boat business and other commercial enterprises as well as some of Stephen's personal purchases—all of which raise UCC issues. Stephen expands into other ventures, including citrus farming and oil wells, until he becomes overwhelmed and returns to the beach. Alan takes over Stephen's boat business only to face bankruptcy when the market for pleasure boats collapses because of the recent economic downturn. After the enterprises run their course—enabling LeVine to illustrate the scope of the UCC—Doug and Stephen become close friends and supporters of the South Florida Children's Academy, with assistance from the law firm at which Doug works.

The scenarios that Stephen, Alan, and Doug encounter along the way are realistic and engaging. They make the Uniform Commercial Code understandable and interesting, because the reader can see how the statute contemplates the structure of commercial transactions so that outcomes are predictable, and how it provides for the resolution of disputes concerning security interests, the priority of claims, the performance of contracts, and similar matters. The book is broad in scope, covering UCC Articles 1 (general provisions), 2 (contracts), 2A (leases), 3 (negotiable instruments), 4 (bank deposits and collections), 4A (funds transfers), 5 (letters of credit), 7 (documents of title), and 9 (secured transactions), and touching on bankruptcy issues that affect commercial transactions, such as secured claims, preferences, the function of bankruptcy trustees, and other basic aspects of the Bankruptcy Code.

LeVine's book is also engaging, because it teaches the UCC in an unconventional way: by parable rather than by the case method. The use of a parable may be particularly effective in dealing with the UCC, because so much UCC law is not court-derived and therefore lends itself to an overarching narrative approach rather than an approach of simply studying individual cases. Although the book may be used as a text to teach the UCC, it will also be of interest to practitioners seeking an accessible refresher of basic UCC principles. LeVine recommends that the reader absorb the book in stages, first through an initial read to provide a foundation and then through study of its more-detailed and complex provisions. He likens the process to building a house: "The first read creates a basic foundation, and each future read places more bricks on the structure." The beauty of the presentation lies in its simplicity, making the construction of the "house" much more pleasant than many lawyers found their law school study of the UCC to be.

The Uniform Commercial Code Made Easy is not a substitute for the UCC or for authoritative interpretations of it, but it is not intended to be. It is intended to be a teaching tool that instructs and entertains, and it succeeds on both counts. **TFL**

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On Both Sides of the River

By Alberto Ramon

iUniverse, Bloomington, IN, 2011. 355 pages, $33.09 (cloth), $23.09 (paper).

The Mystery of Lawlessness: A Tale by A Fisher of Men

By Alberto Ramon

iUniverse, Bloomington, IN, 2010. 271 pages, $33.09 (cloth), $23.09 (paper).

Reviewed by JoAnn Baca

Time to read for pleasure is often stolen and precious. So, when selecting fiction to read, we usually stick to writers we know and to genres with which we are familiar. The temptation is to pass by books that are self-published, having heard of such books' reputation for being poorly written and poorly edited. Although, in large part, this reputation may be deserved, self-publishing also is a platform for voices that might not rise to notice otherwise. If occasionally we dip our toes into unfamiliar waters, we might enter an unusual new sea, from which vantage we can gain fresh perspectives; alternatively, we might enter a restless ocean of seething opinion that repels us. In the case of O*n Both Sides of the River* and *The Mystery of Lawlessness: A Tale by A Fisher of Men*, the outcome of your experiment may depend upon which one you read.

Alberto Ramon, a former social worker, is now a criminal defense lawyer. His two self-published novels are based in his Mexican-border hometown of Eagle Pass, Texas. The protagonist in *On Both Sides of the River* is Joe González, who, like Ramon, is a criminal defense lawyer, although, as a solo practitioner, González handles many types of legal matters for his clients. For instance, he is the lawyer for the Balbuenas, a major land-owning family that has run a large ranch in Eagle Pass for hundreds of years. González' family has long been close friends with the Balbuenas, and he is saddened by the Balbuenas' recent business difficulties that resulted in the sale of the family's ranch property. When a member of the younger generation, Mark Balbuena, becomes involved in international drug-trafficking in a misguided attempt to reverse the family's fortunes, González inadvertently becomes embroiled in a dispute between Mark and a shadowy drug lord who operates across the Rio Grande from Eagle Pass, in the Mexican town of Piedras Negras. In the course of his work, González must weigh old friendships against new relationships—primarily one with the new owners of the Balbuenas' spread. In addition, González finds himself in transition between the solitary life of a widower and the possibilities he glimpses upon the appearance of an intriguing woman from his past.

Ostensibly a crime novel, the book's real strength is in its evocation of the life, politics, and culture of a small town in southern Texas. Even though the main plot involves drug trafficking, it drives the novel in fits and starts. It is the weakest part of the novel, as some events strain credulity even as they appear necessary to move the story along. One wonders, for instance, why anyone would venture into Piedras Negras for a night out at a restaurant with friends when, during a prior visit to the restaurant, he had been kidnapped from, and witnessed violent murders in, the restaurant's parking lot. Yet González does so, seemingly determined not to let the drug-trafficking heavies disrupt his life. The possibility of brutal retaliation by the drug cartel would give most intelligent people second thoughts about taking such a risk, yet Ramon seems to expect the reader to accept this as good judgment on González' part.

If one puts aside a few such incidents and, in fact, views the main plot as of secondary importance, the true heart and most interesting aspects of the novel emerge. Eagle Pass, with the culture of its heavily Mexican-American population and its formidably beautiful countryside, serves almost as a character in *On Both Sides of the River*. Ramon wears his heart on his sleeve when he describes life in the town he so obviously loves. He provides a context for González' desire to find his place in a changing world and to know his role in society; he describes the importance of generational ties of friendship, and how culture informs one's view of the world. The bicultural nature of Eagle Pass enriches the narrative. In fact, Spanish is used throughout the novel, so it helps to know some basic Spanish words. If one does not, one may lose some of the flavor of the book, but the gist of the Spanish words can be discerned from the context.

Ramon also uses his novel to express what are apparently his—not just his protagonist's—political, religious, and philosophical views, such as the issues he sees as haunting Mexico. González articulates his opinions on the state of the political will to fight the drug trade in Mexico and on what he sees as the noxious atmosphere of a government out of touch with its people:

> Mexico unfortunately has a past and continuing obsession and mania with centrist and one-man rule. Santa Anna, Porfirio Diaz, and a series of six-year superpresidential benign ... dictatorships represent a system that cannot long endure. A nation that does not understand its past mistakes or which is not firmly anchored ... will suffer greatly in the inexorable transition into *real* democratic processes which the beginning of the 21st Century will demand. The information revolution and the realization other people have a better life will force change and it will be dramatic, even cataclysmic.

Ramon makes little mention in the novel of the increasing violence of the drug cartels as they terrorize the population and destabilize the tourist trade in Mexico, in addition to corrupting police forces and politicians. For a novel in which the Mexican drug trade figures prominently, the omission of what exists in real-life—headline-producing mass murder—is surprising. The omission makes sense, however, if the reader supposes that, because this novel was first written in 1996, it represents a snapshot of its time;

despite its re-release in 2011 and the statement on the back cover that the novel was "modified," one surmises that the novel was not updated to reflect current realities, which Ramon's other novel does.

As Ramon's protagonist, Joe González expounds Ramon's apparent philosophy of life, using his quest as a hunter of the king of whitetail buck, El Cacaistón, as a metaphor for the search for one's place, one's meaning, and one's worth within the world, as well as for the predator/prey relationship that pervades the novel's main plot. In fact, the lure and lore of hunting permeate the novel. For González, the hunt is a quasi-religious experience that allows him to feel a part of the moving river of history. He imagines hunters across the ages engaging in the same actions, tying him into a timeless consciousness. The photograph on the back cover of *On Both Sides of the River* is a picture of Ramon with a trophy buck, so it is clear that González's captivation with hunting reflects Ramon's.

Although the novel has much to recommend it, primarily in evoking the rich cultural heritage, the beautiful topography, and the extensive local history of Eagle Pass and Piedras Negras, it suffers from some of the faults one unfortunately finds in many self-published novels. The editing could have been better; there are typos and punctuation errors that a professional editor might have eliminated, and the author overused the thesaurus. There is awkward phrasing and odd word usage, and sometimes sentences are unfathomable. For instance, "He appeared aloof at times, callously daring, but not quite so. Was it pretense or some darker schism?" Or "Saenz's voice was condescending, but expressing reasonable tribulation about Mark's safety." The reader is left unsure as to the meaning of sentences such as the following: "González couldn't tell anyone … about that yearning that was burning in his heart like rhapsodic extravasation." To be sure, there are also lyrical descriptions—such as "Canuto's eyes were twin lakes painted with jade green despondency, " and Joe's recollection when reminiscing about his godfather's connection to the land: "The chaparral, he had said, taking pleasure in savoring words, is as gentle as a nesting whitewing dove, as fierce as a hungry cougar, as cunning as a coyote, as menacing as a coiled diamondback rattler, as resplendent as an ocelot in the early morning sunlight, as euphoric as a serenading nocturnal mockingbird, but unmatched in stealth, strength, secretiveness and sovereign essence as the territorially dominant whitetail buck."

In Ramon's other novel, *The Mystery of Lawlessness: A Tale by A Fisher of Men*, the editing is much improved, with typos and punctuation errors nearly eliminated (an exception is that, on the book's cover and title page, the "a" preceding "Fisher" is capitalized), as are most awkward turns of phrase. In general, the novel is much more tightly written, the narrative flows more seamlessly, and the story is more engrossing. Spanish conversations are still not translated, but, as before, the context enables a non-Spanish-speaking reader to understand their general meaning. In nearly all respects but one, *The Mystery of Lawlessness* is greatly superior to *On Both Sides of the River*. The negative feature of *The Mystery of Lawlessness* is that its protagonist expresses opinions about politics and religion that readers might find so repugnant as to substantially reduce their enjoyment of an otherwise compelling story. Ramon does not seem to have put these opinions in González's mouth in order to portray him negatively; rather, he seems to have used González as his own mouthpiece. More on this below.

The novel takes place in the present, a dozen or so years after the events described in *On Both Sides of the River*. Joe González is still a solo practitioner and is now married and has a young son. The story begins with the death of a jurist who had recently received a briefcase containing a quarter of a million dollars in cash; drug cartel bribery is suspected. The FBI determine that the Mexican drug cartels targeted that judgeship for bribery because drug mules and others in their U.S. organization often appeared in front of that court and having the judge in their pocket could help cartel employees draw lesser sentences. The FBI asks González to place his name in nomination to succeed the judge in order to draw a bribe himself. Despite the danger to himself and his family, González agrees to do so in order to assist the U.S. government in confirming the source of the bribery and the purpose for which the initial bribe was provided to the deceased member of the bench. What follows is a realistic and frightening tale of the insidious machinations of Mexican drug cartels to infiltrate the judicial and political infrastructure of the United States, and Ramon's take on how U.S. agencies might confront them.

To say more about the plot would give away too much, but, as the story progresses and González is drawn more deeply into setting a trap for the cartels, Ramon intersperses the action with González's historical and political perspectives on the nature of terrorist states and organizations working in South and North America. In addition to recapping his position on the infiltration of cartel influences into Mexican politics and law enforcement, González opines that Venezuela's Hugo Chávez is lending protection to drug cartels and has made deals with Russia and Iran to introduce terrorists into the Western Hemisphere, extrapolating on the close ties among those countries and concluding, "If and when radical jihad and Hugo Chávez's dictatorial socialism are consolidated around their mutual hatred of the United States, they will provide a millennium of violence and perhaps war the like of which this continent has never experienced."

Whatever the reader might think of González's political views, they are not necessarily incendiary. One can read similar opinions in mainstream venues. However, the same cannot be said for González's views on religion. Ramon establishes in his prologue his belief that the world's major religions must work together to overcome the hatred and violence that have caused such tensions in the past decade. This truism quickly devolves, however, into a profound religious fanaticism that is at once sad and frightening. Ramon, through his protagonist, declaims his

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philosophy repeatedly throughout the novel: he hopes that there arise "diplomatic and ecumenical avenues to convert both the Muslims and the Jews before those other children of Abraham falter[ ] into mutual destruction" and "bring them under one shepherd and into one fold— … the Roman Catholic Church."

Not once, not twice, not thrice, but many times in the course of the novel, González proclaims that only through conversion of Jews and Muslims to Catholicism will the threat of lawlessness and evil, including terrorism and the drug trade, be squelched. He asserts that "[t]he only power strong enough to turn the tide toward peace is the Roman Catholic Church." He writes, "I believe that Our Lady of Guadalupe will eventually manifest her son's power to bring all men, all religions, under one fold and one shepherd." González prayed "that through the intercession of Mary the people of the Crescent would finally discard the heresy of Islam and embrace the true church established by Christ. … What a waste of human talent and true spirituality has been the heresy of Islam!" Finally, González expresses the hope that "Mary … would make an apparition in the midst of her errant Jewish and Muslim children just as she had in Mexico to heal the strife of the Indian and Spanish peoples. In order to achieve her maternal purposes, she will also consecrate Mexico … to pray for the conversion of Jews and Muslims."

Sadly, Ramon uses his novel as a grandstand for this polemic, which diminishes rather than enriches the story, constantly drawing attention from the struggle against narco-business and narco-terrorism that is the substantive matter of the novel. By weaving González' religious philosophy through the narrative, he undermines the impact of his novel. This reviewer is not taking issue with González' many expressions of sincere religious belief in such things as prayer and attendance at church services, nor in the joys and comforts he finds in his spiritual life. Those who share his ardent personal belief in an Almighty will discover a brother in faith. But Ramon is neither a philosopher nor a theologian, and it is difficult to credit a rigid philosophy that denies the legitimacy of belief systems outside (presumably) his own in such a patronizing and myopic way, rendering it simplistic and cringe-inducing. These highly controversial religious views lend nothing to, and in fact mar, an otherwise intriguing book.

If the reader, now alerted, can move beyond the dubious philosophical content of *The Mystery of Lawlessness: A Tale by A Fisher of Men*, the reward would be a fast-paced, intriguing, and ultimately sobering story of one man's attempt to help law enforcement uncover and dismantle drug cartels' involvement in the judicial arena. Nevertheless, *On Both Sides of the River*—although the lesser of the two novels but without the overt religious bias of *The Mystery of Lawlessness*—may provide a less challenging but ultimately more enjoyable way to spend a few hours. But whether one chooses to read either or both of these novels, it is certainly true that the voice you will hear is not a common one. **TFL**

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International White Collar Crime: Cases and Materials

By Bruce Zagaris

Cambridge University Press, New York, NY, 2010. 584 pages, $145.00 (cloth), $84.99 (paper).

Reviewed by George W. Gowen

"White collar crime" has been defined, Bruce Zagaris tells us, "as a crime committed by a person of respectability and high social status in the course of his occupation." The classic international white-collar criminal brings to mind the villain in a James Bond movie: living in luxury, surrounded by art, servants, and nubile beauties. If one thinks of Bernie Cornfeld, Robert Vesco, Conrad Black, and Marc Rich, then this image may contain as much truth as fiction. Of these men, only Marc Rich makes it into the pages of *International White Collar Crime*.

The book's more than 500 pages are divided into 14 chapters: "Introduction," "Taxation," "Money Laundering," "Transnational Corruption," "Transnational Organized Crime," "Export Control and Economic Sanctions," "Extraterritorial Jurisdiction," "International Evidence Gathering," "Extradition and Alternatives," "International Prisoner Transfer," "The United Nations," "The World Bank Group," "INTERPOL," and "Economic Integration and Business Crimes." The discussion of these topics is enhanced by numerous references to relevant books, blogs, articles, cases, conventions, and treaties.

Three subjects that the author discusses exemplify the broad scope of his book. The first is the Foreign Corrupt Practices Act (FCPA). In 1977, when Congress enacted this statute, the United States became probably the only country, Zagaris notes, that actively prohibited those participating in its capital markets from bribing foreign officials. How the FCPA influenced foreign nations was demonstrated in 1999, when Germany changed its tax code to disallow bribes as a legitimate business expense, and in 2005, when Germany began to investigate Siemens AG. United States authorities became involved in 2006 because Siemens shares are traded on the New York Stock Exchange, and the bribes violated the books and records provisions of the FCPA. In 2008, Siemens and three of its subsidiaries pleaded guilty and paid penalties of $1.6 billion, which would have been much higher if not for the companies' "extraordinary cooperation" with U.S. authorities and the expenditure of more than one billion dollars in legal and accounting fees for internal investigations that the companies made available to the authorities.

A second and totally different example of white collar crime is described

in *Kawakita v. United States*, 343 U.S. 717 (1952), which concerned the treason conviction of a native-born U.S. citizen who through parentage was also a national of Japan. He was visiting Japan when Japan attacked Pearl Harbor and the United States declared war. It became impossible for him to return to the United States, and he took a job with a nickel company, interpreting communications between the Japanese and the American prisoners of war who were assigned to work in the company's mine and factory. After Japan surrendered, he returned to the United States on an American passport, having sworn that he was an American citizen and had performed no acts amounting to expatriation. He was charged with treason for having brutally abused American prisoners of war. In upholding the treason conviction, Justice Douglas wrote:

> Circumstances may compel one who has dual nationality to do acts which otherwise would not be compatible with the obligations of American citizenship. An American with a dual nationality who is charged with playing the role of a traitor may defend by showing that force or coercion compelled such conduct. The jury rejected that version of the facts which petitioner tendered. He is therefore forced to maintain that, being a national and resident of Japan, he owed no allegiance to the United States even though he was an American citizen. That proposition we reject.

A third subject that the book covers is whether extralegal methods of arrest violate a defendant's due process rights under the Fifth Amendment. *Ker v. Illinois*, 119 U.S. 436 (1886), and *Frisbie v. Collins*, 342 U.S. 519 (1952), both involved the forcible abduction of a defendant, one from Peru to Illinois and the other from Illinois to Michigan. The so-called *Ker-Frisbie* doctrine, as stated in *Frisbie*, is that "[t]here is nothing in the Constitution that requires a court to permit a guilty person rightfully convicted to escape justice because he was brought to trial against his will." In *United States v. Toscanino*, 500 F.2d 267 (2d Cir. 1974), this doctrine was somewhat modified but only if the arrest involved torture and the "government's deliberate, unnecessary and unreasonable invasion of the accused's constitutional rights."

International White Collar Crime devotes almost 200 pages to resolutions, conventions, policies, governing documents, and statements of the goals of the United Nations, the World Bank, INTERPOL, and regional organizations—all of which is useful source material, but difficult reading, and is directed at law professors and their students. The book is an excellent text for a course in law schools, but one might wish it had been aimed at the wider readership that the subject merits. **TFL**

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regulate greenhouse gas emissions, two groups of plaintiffs (including a number of states, New York City, and several nonprofit land trusts) filed suit against five major electric power companies; the plaintiffs requested injunctive relief requiring the defendants to gradually reduce their carbon dioxide emissions. The U.S. District Court for the Southern District of New York dismissed the suits as presenting political questions best resolved by a legislative body. The Second Circuit Court of Appeals reversed the district court, holding that the plaintiffs had standing, had stated a claim under the federal common law of nuisance, and that the Clean Air Act did not displace the federal common law.

In *American Electric Power Company v. Connecticut* (10-174), the Supreme Court, sitting without Justice Sotomayor, held that the Clean Air Act and the EPA rulemaking activity authorized by the act displaced any federal common law right to seek abatement of greenhouse gas emissions. Justice Ginsburg delivered the Court's opinion acknowledging that the Court's decisions in the past have recognized a "specialized" federal common law governing air and water, while also emphasizing the need for prudence and caution by federal courts in contributing to this law. In this case, she argued, recognition of Congress' decision to delegate the regulation of greenhouse gas emissions to the EPA compelled a finding that the federal common law had been displaced. She emphasized that this conclusion doesn't depend on final rulemaking by the EPA; even if the EPA declined to issue final rules, its sphere of expert decision-making would displace the federal common law. However, if the EPA declined to issue final rules, the "prescribed order of decision-making" under the Clean Air Act would at that point enable federal judges (and ultimately the Supreme Court) to review the decision. Although Justices Alito and Thomas concurred in the judgment, their concurrence was based on an "assumption … for the sake of argument" that a 2007 case (*Massachusetts v. EPA*) was correctly decided; this case held that the EPA possesses authority under the Clean Air Act to regulate greenhouse gas emissions.

Full text is available at topics.law.cornell.edu/supct/cert/supreme_court_2010-2011_term_highlights. **TFL**

Prepared by Esther Choi. Edited by Laura Ford.