

BOOK REVIEW

Money and Justice: Who Owns the Courts?

by Lois G. Forer

New York: W.W. Norton & Company, 1984

Reviewed by the Honorable Justin C. Ravitz*

Judge Lois G. Forer begins her book, *Money and Justice: Who Owns the Courts?*, by taking us back to the concerns of the Kerner Commission of 1968.¹ She writes: “[T]he legal system is divided into two separate and unequal systems: one for the rich . . . the other for the poor.”² She adds, judiciously, “I preside over both systems alternately.”³

Judge Forer has been a trial court judge in the Philadelphia Court of Common Pleas since 1971.⁴ Before that, she practiced law for thirty-two years, serving as a deputy attorney general for Pennsylvania,⁵ heading an anti-poverty office representing juveniles,⁶ and engaging in private practice where she handled many civil and criminal cases.⁷ The book is written with a sense of urgency and with obvious sincerity. Some of the most engaging portions are anecdotal accounts that highlight the contradictions between the two systems over which she presides.

She describes a scene where thirteen lawyers, sitting in neat pin-striped suits, await proceedings in two cases. One case, involving the dissolution of partnerships with assets of more than thir-

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1. Lois Forer, *Money and Justice* 9.
2. *Id.*
3. *Id.*
4. *Id.* at book jacket.
5. *Id.*
6. *Id.* at 8.
7. *Id.*

teen million dollars, has been in trial for twenty-two days.⁸ The other involves two banks and an insurance company. They are fighting over who is to absorb a \$500,000 embezzlement loss.⁹ In the midst of these "important" matters, Judge Forer interrupts proceedings to hear a landlord/tenant dispute. The tenant, represented by a legal service attorney, complains about rats, roaches, frozen pipes and numerous code violations. The landlord, who is unrepresented and borderline indigent himself, asks, "If you don't pay the rent how'm I goin' to pay for the oil?" The parties bicker back and forth about garbage problems, broken windows and high blood pressure. Finally, the case gets resolved. The tenant will pay the landlord fifty dollars from her next welfare check and fix the window. The landlord will buy oil and fix the plumbing.¹⁰

The judge turns her attention back to the pin-striped barristers. Aghast, they complain that the case belongs in municipal or small claims court and certainly not before Judge Forer.¹¹ The judge explains that the legal service attorney avoided a month or two delay in landlord/tenant court by invoking her court's equitable powers. As a result, the attorney secured a hearing in five days.¹² One of the bank's lawyers protests, "[w]e have waited two years for our hearing."¹³ Judge Forer's response to his indignation was simple. She reminded him that his clients, bankers, were not suffering from the cold and, if they won, they could collect interest. She then asked: "Don't you think that these people are as much entitled to the time of the court as you are?"¹⁴ Clearly, Judge Forer thinks so.

It is the juvenile courts that most readily arouse Judge Forer's wrath.¹⁵ She decries the fact that the IBM antitrust case took 672 trial days while proceedings in our nation's juvenile courts are handled in hearings called "The Five-Minute Children's Hour."¹⁶ She attacks the hypocrisy designed to protect the sensibilities of lawyers, judges and the adult community. She writes:

No one is offended by a report that a juvenile was adjudicated delinquent and placed in the Greenacres Farms for rehabilita-

8. *Id.* at 107.

9. *Id.*

10. *Id.* at 105-07.

11. *Id.* at 107.

12. *Id.*

13. *Id.* at 108.

14. *Id.*

15. Judge Forer's first book, published in 1970, no doubt grew out of her experiences heading an anti-poverty law office for juveniles. Her concerns in that book, *No One Will Listen: How Our Legal System Brutalizes the Youthful Poor*, continue, unabated, in *Money and Justice*.

16. Forer, *supra* note 1, at 132.

tion. We might be shocked to read that a child was convicted of stealing five dollars and sentenced to prison for seven years. In fact, that may be the effect of a juvenile adjudication and commitment.¹⁷

As Judge Forer points out, pleasant-sounding names, such as "Greenacre Farms," often mask the truth of the treatment of juveniles.

Judge Forer underscores the cost to us, as a society, for neglecting the needs of juveniles. She points out that approximately forty percent of all crimes in 1982 were committed by juveniles, and she observes the high recidivism rates of juvenile offenders as they become adults.¹⁸ Her conclusions are sound:

No court has more socially and morally important responsibilities than the juvenile court. But it is denigrated by the bench and bar. Its hasty proceedings cause immeasurable harm. . . . The public must ask, as I do, why we do not accord this court the dignity, prestige, and time to give every child a meticulously fair hearing. Why are not the most learned judges assigned to this court? Why do the best lawyers devote their finely honed minds to working out corporate mergers and acquisitions, stock issues and tax shelters instead of to the protection of children?¹⁹

Judge Forer provides a simple answer: "There is little money to be earned in representing children."²⁰ She also points out that the children herded through juvenile courts are children of the poor.²¹ Different, "private" treatment is generally accorded to the wayward children of the elite.

This schism between rich and poor lies at the heart of her critique of the legal system. Her chapter on criminal justice, entitled "Apartheid Justice," contrasts the treatment of poor, "street" defendants with wealthier, white-collar defendants.²² To illustrate differences in the quality of justice the two groups receive, she summarizes two trials. In one, the poor defendant had a brief bench trial, which she estimates cost the taxpayers about \$200 in court time. The white-collar defendant had a five-week jury trial which cost about \$50,000. The use of jury selection specialists prolonged the trial. These specialists, sociologists, psychologists and market researchers, conduct interviews and use public opinion surveys to help select jurors sympathetic to their clients.²³ They

17. *Id.* at 136.

18. *Id.* at 139.

19. *Id.* at 149.

20. *Id.*

21. *Id.* at 139, 140.

22. *Id.* at 110.

23. *Id.* at 117.

may even have attorneys prepare their cases by presenting them to "shadow juries" who are selected to sit, hear the case and offer informative feedback.²⁴ In contrast, attorneys who labor on the assembly line, processing indigent cases, know less about these jury selection techniques than first year law students who read Judge Forer's book. Worse yet, as she makes clear, too many do not even care.

Judge Forer does care deeply. Her experience, intelligence and sensitivity help provide much useful information. For example:

—In the entire history of the United States Supreme Court there have been only five Jewish Justices, six Catholic Justices, one Black Justice and one woman Justice.²⁵

—For many years, the American Bar Association was a bastion of wealthy white male Protestants. Blacks were not admitted until 1953.²⁶

—The Second Circuit Court of Appeals limits oral argument on appeals to five minutes for each side.²⁷ In 1981, 5,311 cases were filed in the United States Supreme Court. The Court heard less than two percent of the cases filed, issuing only 141 signed Opinions and ten Per Curiam Opinions.²⁸

—The public costs of courts and litigation, when compared with other governmental expenditures, are minimal. The entire federal court system in 1983 cost the taxpayers a little more than \$5 billion. The price of 1,000 small missiles that same year was \$70 billion.²⁹

In addition, the chapter "The Siren Songs of Research" offers a thoughtful analysis of deficiencies in legal research and education, and of the inadequate efforts by social scientists to fill this void.³⁰

The last two chapters of *Money and Justice* concern proposed reforms. The first, "Popular Panaceas," is a critique of a number of standard proposals. Judge Forer rejects the suggestion that the number of judges be expanded to combat the docket problem.³¹ She argues that demographics may suggest a decline in crime.³²

24. *Id.*

25. *Id.* at 78.

26. *Id.*

27. *Id.* at 166.

28. *Id.* at 163.

29. *Id.* at 54.

30. *Id.* at 171-89.

31. *Id.* at 191.

32. *Id.* at 193.

As a result less demand will be placed on the judicial system in the future. She claims that adding judges would not reduce the appellate docket because the Supreme Court and most state supreme courts sit as a body.³³ Her criticisms are, however, unpersuasive. The effect of Judge Forer's demographic projections appear "iffy" and optimistic. Also, the miniscule number of appeals actually reviewed by supreme courts would only seem to enhance the need to provide more trial judges. Additional judges would slow down the assembly line and at least offer more opportunity to improve the quality of lower court justice.

Judge Forer states that mediation, arbitration and conciliation programs are, in some instances, quite successful and warrant pursuit.³⁴ She voices concern, however, that alternative disputes resolutions will further institutionalize the two-track treatment of rich and poor.³⁵ She comments briefly on "rent-a-judge" proposals, saying they need more careful review.³⁶ She does not, however, mention neighborhood justice centers, and I suspect that her reaction would be that these efforts are designed to remove poor people's cases from the justice system. I think the question that needs review, however, is that if one's neighbors and co-workers are to be empowered to decide a peer's case, rather than the judge running the assembly-line downtown, might this not result in a much more democratic and just vehicle for resolving certain types of disputes?

The last chapter of *Money and Justice* is aptly entitled "A Few Modest Proposals." Judge Forer tells us that there are "no quick fixes," and that she does not offer a "blueprint" for change.³⁷ Despite her disclaimers, I must confess I hoped for more. I will summarize some of her ideas (in italics), and offer a few comments of my own.

1. *Limit the number of cases a judge can hear per day. To avoid backing up the docket defer hearing longer cases.*³⁸ Judge Forer suggests that longer cases generally need not take so long, and putting them off would force settlements and stipulations that would shorten trials.³⁹

It is often true that "justice delayed is justice denied," and this is especially so for plaintiffs who cannot afford to wait years to

33. *Id.* at 191-92.

34. *Id.* at 198.

35. *Id.* at 195.

36. *Id.* at 201-02.

37. *Id.* at 204.

38. *Id.* at 205.

39. *Id.*

be compensated for their losses. Insurance companies often stall cases in order to force injured parties to accept unfair settlements. Further delays of complicated, "longer cases," is hardly a fair method for reducing the docket backlog. There is also little point in limiting the number of cases an individual judge can hear each day. Most judges do not work too hard; many do not work hard enough. Such a rule would add to the docket problem without solving the substantial problems caused by a system of assembly-line justice. Ironically, in many courts where people are herded through with excessive haste, you will find the "hard-working" judge gone by 2:00 p.m., enjoying the leisurely life on a golf course.

2. *No litigant should go unrepresented, and anyone who cannot afford an attorney should be provided counsel of his/her choice.*⁴⁰ *Poor litigants can choose legal service attorneys or select attorneys from a list of counsel willing and qualified to take such cases.*⁴¹ *Attorneys will be paid according to a designated fee schedule.*⁴²

I agree with the right to representation and even to the suggestion that litigants be free to choose their attorney. The problem, of course, apart from the administrative difficulties, is a political one. Indeed, we have a federal administration dedicated to cutting back if not eliminating legal services for the poor.

3. *Law schools must improve their educational programs. Clinical programs, more similar to the medical school model, should be instituted and additional qualifications before taking a bar exam should be imposed.*⁴³

The inadequacy of law schools and bar examinations presents a dual problem. First, the public is not well served by attorneys who are not prepared to competently represent their clients. Second, as the number of attorneys has increased, many find it increasingly difficult to find employment or to survive as practitioners. Many others find themselves flunking bar examinations and never being able to even secure a license. Both law school graduates and the public have been hurt by this laissez-faire approach. By the time the law of "supply and demand" regulates the number of practitioners to the needs of the community, thousands of dedicated people will have suffered incalculable losses and personal pain.

4. *Every judge should be required to have at least fifteen*

40. *Id.* at 206-08.

41. *Id.* at 207.

42. *Id.* at 211.

43. *Id.* at 211-12.

years of experience. ⁴⁴

I have seen judges with virtually no experience take the bench, and the results have often been catastrophic. Still, there are many excellent judges who have had less than fifteen years experience. To the extent that some requirement should be rigidly imposed, I think five years of experience is sufficient.⁴⁵

5. *Appeals should be simplified by requiring stipulations as to the legal issues to be reviewed.* ⁴⁶

Judge Forer recognizes that many indigent criminal defendants have incompetent trial attorneys. The sad fact is that they also often have incompetent appellate attorneys. This problem is especially unwholesome in jurisdictions like my own where trial judges select appellate attorneys for indigent defendants convicted before them. The worst and most venal judges too often appoint attorneys who they know will be least likely to pick out and aggressively seek to reverse the trial judge's rulings. In addition, complete transcripts are essential to people convicted of crimes. I wonder how many hundreds of people, wrongly convicted, would still be in prison had complete transcripts not been required. The reproduction of the full record enables appellate law clerks, judges, jailhouse lawyers, and others to happen upon reversible errors that appellate attorneys might ignore.

6. *In the interest of judicial economy and efficiency, if for no other reason, the death penalty should be abolished.* ⁴⁷

This great debate is not likely to be settled on such pragmatic grounds. While I oppose capital punishment, I also think there is a danger in trying to resolve such a vital question in this sort of way. I suppose if we put the issue to a plebiscite, misguided "law and order" zealots would carry the day with quite different proposals that would, indeed, promote "judicial economy and efficiency." Lawyers and judges, especially, have to fight for what is right, even in times when their positions might be unpopular.

7. *A National Center for Legal Research should be established to study the problems of equal access to justice.* ⁴⁸

The *problems* of equal access to justice need no more study. We need no more Kerner Commission Reports. Millions of people have been and continue to be victims of two systems that are sepa-

44. In fairness to the reader, I should point out that I had six and one-half years of experience when I became a judge at the age of 32.

45. Forer, *supra* note 1, at 212.

46. *Id.* at 214.

47. *Id.* at 216-17.

48. *Id.*

rate and unequal. What we need is to study the *solutions* to this deep-seated, systemic problem.

Judge Forer, however, does not view the system with a critical eye. In her concluding paragraph, she not only whitewashes the past, but she promises that we do not need to shift our values to move smoothly into a more just future.

She writes:

For more than two centuries the American legal system has met the challenges and demands of a heterogenous people—a dynamic, changing society—and problems of unprecedented diversity and seriousness while protecting and broadening the rights of the individual and preserving a peaceable, orderly, democratic government. With intelligent effort these values can be maintained and implemented so that the right to equal protection of the laws for all persons can be enforced.⁴⁹

There is much that I respect about our legal system, but essential and humane changes require critical analysis and not false platitudes. Women who had no vote and Blacks who were non-people could hardly applaud the values of the first century of the United States legal system. Moreover, if the second century denotes progress, what progress is being made today? What “intelligent effort” is underway to overcome our “separate and unequal” system?

Solutions to problems require an understanding of their origin. While Judge Forer does an excellent job describing inequities in the judicial system, she fails to examine their root causes and their connections with other inequities. She does not ask how the “five-minute children’s hour” relates to education inequities. She draws no correlation between the problems she describes and the fact that we also have two separate and unequal systems of education, health care, housing, and transportation.

To the contrary, Judge Forer tries to place the judicial system on a separate pedestal. She writes: “Equal access to justice cannot be equated with the right to jobs, education, housing and health care, important though they are. Equal justice is the foundation of our polity.”⁵⁰ I see no logic in such a position. To paraphrase Anatole France,⁵¹ there is no reason to brag that in this country “both the rich and poor alike are free to sleep under bridges.” Abstract legal rights simply are not more important than fundamental human needs!

To me, the problem and solution have a common origin. The

49. *Id.* at 217.

50. *Id.* at 18.

51. Anatole France, *Le Lys Rouge* (1884).

quest for equal justice cannot be separated from the struggle for more equal opportunities in all these related spheres. This country has been and is organized politically, economically and legally in a manner that gives priority to profit over the fulfillment of human needs. Many people, like Judge Forer, seem to believe that we must cling to the present system or succumb to "the specious promises of dictatorship."⁵² I disagree. Surely politically conscious and sensitive people have the ability to organize and develop a third, more just and viable alternative based on values more humane than those which have led to the present morass.

52. Forer, *supra* note 1, at 204.

