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Book Reviews

Reforming the American Justice System

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Paul B. Wice, Public Defenders and the American Justice System (Westport, CT: Praeger, 2005). 224 pp., \$49.95 (hardbound), ISBN: 0275985768.

Jeffrey A. Butts and John Roman, eds., Juvenile Drug Courts and Teen Substance Abuse (Washington, DC: Urban Institute Press, 2004). 283 pp., \$29.95 (softbound), ISBN: 087766725X.

In recent years, harsh and punitive approaches to American criminal justice have begun to yield to more humane methods that are designed to better address both the legal and social welfare needs of clients. Two recent books examine this trend in justice administration and offer proposals for reforming public policy and practice. In *Public Defenders and the American Justice System*, Paul B. Wice offers the layperson a detailed look at the workings of the nation's public defense system. The author, a professor of political science at Drew University in New Jersey, has published several books on the American legal system.

The second book, *Juvenile Drug Courts and Teen Substance Abuse*, edited by Urban Institute scholars Jeffrey A. Butts and John Roman, examines the application of the drug court model in the juvenile justice system. It focuses on the quality of drug court research and the effectiveness of juvenile drug court reforms. The bulk of the information used in the volume's articles was drawn from research on juvenile drug courts produced by the Urban Institute and funded by the U.S. Department of Justice's National Institute of Justice.

In *Public Defenders and the American Justice System*, Wice provides a wealth of information on public defender programs and criminal indigent legal service systems. He opens with a brief legal history of the right to competent counsel in the United States, traced through key U.S. Supreme Court decisions and culminating in the landmark decision *Gideon v. Wainwright*, which, in effect, mandated public funding for competent legal counsel for indigent defen-

dants facing felony charges. The book then reviews the four primary models used by the states to provide counsel to indigent criminal defendants: public defender, assigned counsel, contract with private agency, and a mixed system. The author compares the effectiveness of public and private criminal defense and provides research data to dispel the myth of public counsel incompetence, showing that conviction rates for defendants represented by private and public counsel are essentially identical (19).

In chapter 2, data are presented on public resources for criminal defense in the American legal system, in which the overwhelming majority of criminal defendants (75 percent) are indigent. Unfortunately, as the book reveals, many public legal defense programs are inadequately funded and consequently have high caseload-to-defender ratios, which limit their effectiveness. Low pay and related problems have given public defenders a reputation for low-quality representation (25). Wice traces the impression that public defense means inadequate defense to the findings of a 1987 study of the Chicago–Cook County public defender program by Lisa McIntyre. She found that Cook County public defenders labored under a “stigma of ineptitude” resulting from low pay and short job tenure and that they sought to remain in the “shadows of obscurity” to avoid becoming mired in the political corruption that plagued the local criminal justice system (26–27).

The New York system was similarly stigmatized. Wice recounts its origins in 1917, when the Legal Aid Society was established by reform-minded members of the New York City Bar to improve services to impoverished criminal litigants. After the 1963 *Gideon* decision, the Legal Aid Society expanded its work to become the city's primary public defender agency. In the 1990s, however, protracted political and budgetary battles with the Rudolph Giuliani administration diminished the Legal Aid Society's role in indigent criminal representation and increased the use of an assigned counsel system. Wice reports, however, that

studies show private attorneys shunned assignments or shortchanged indigent clients because of the low statutory compensation rates paid to assigned counsel, and this produced a legal representation crisis in New York City. Readers should be aware, however, that after this book was submitted for publication, legislation was enacted in New York to substantially increase the hourly rates paid to assigned counsel, thus easing the shortage of competent attorneys willing to accept indigent clients in the city (New York State Unified Court System 2004, 248).

The main focus of the book, however, is a detailed analysis of the Regional Defender Office in Essex County, New Jersey, whose jurisdiction includes the urban center of Newark. The environment is daunting: In 1997, “Newark’s overall crime index, which is comprised of murder, rape, robbery, aggravated assault, burglary, larceny, and auto thefts totaled 29,713—more than twice that of any other city in the state” (52). Ninety percent of criminal offenses in Newark involve indigent defendants, a figure that is well above the national rate.

Wice presents a largely positive picture of the workings of the Regional Defender Office. He describes supportive leadership, a collegial and independent atmosphere, merit-based selection and promotion, adequate and stable funding for support staff and facilities, and reasonable attorney compensation levels. The existence of a central state office to provide personnel and budget management was also found to enhance local agency effectiveness.

Contrary to McIntyre’s (1987) Chicago study, which found high turnover and low levels of job satisfaction, Wice found low turnover, long tenure, and job satisfaction to be the norm in Essex County. Although satisfactory compensation might attract attorneys to the public defender job, the motivation to remain comes from the challenge of litigation, the collegial working environment, and supportive and flexible office leadership. Of these reasons, Wice reports that the challenge of litigation provides the strongest motivation. “The major reason given by every experienced public defender for their lengthy tenure was their love of litigation” (113). This view of the trial experience as the centerpiece of the public defender’s professional life is consistent with Robert P. Burns’s (1999) theory of the trial as an extremely important American institution in which the struggle between good and evil, truth and falsity, is carried out every day.

The book also provides insights into the role of the public defender in the legal process by describing the daily work of defender office attorneys and staff. This account is divided into two segments: the preindictment and postindictment period. During the preindictment period, the defenders primarily work with

accused defendants in the central judicial processing unit at the courthouse, where charges are presented and bail is set. At this stage, attorneys primarily represent in court defendants who enter guilty pleas and seek to gain release into the community for clients whose cases are not resolved at arraignment. For certain cases, defenders also attempt to get clients into diversion programs, such as the Pretrial Intervention Program and drug court. Although the defenders reportedly had a positive view of diversion programs, Wice indicates they are reluctant to invest much time on client placements because they perceive access to be very restricted and controlled by the prosecution.

Most of the time and energy of the Essex County defenders is expended during the postindictment period. The Essex County program uses an uncommon method of assigning cases that is referred to as “vertical case management” (106). Under this system, cases are assigned randomly to defenders, and all activities through case disposition are handled by the assigned attorney. A concern with this case management approach among defenders is that, because of the team atmosphere created by the vertical system, clients may not consider their public defender to be independent.

Chapters 6 and 7 evaluate the quality of the relationships between the defenders and external agencies and the positive and negative aspects of the job. Interactions with prosecutors and police, though adversarial, are quite positive. Relationships with the judges, on the other hand, are strained. The defenders attributed this uneasy relationship to some judges who exhibit a lack of respect for the independence of public advocates. Unflattering assessments of the local judiciary are made by several defenders in the book. The author sums up these negative views: “They [defenders] thought too many ‘political hacks’ were reaching the bench, in addition to an abundance of new judges who lacked any previous litigation experience” (124). In evaluating client–defender relations, Wice explains that although the defenders provide clients with effective representation, most clients do not trust or appreciate their defenders. Client dissatisfaction and distrust is attributed to the stress of the legal process and to underlying issues faced by defendants, including substance abuse and mental health problems (141).

The final chapter of *Public Defenders and the American Justice System* analyzes lessons learned from the case study and discusses emerging defender program reforms, exemplified by new policies adopted by the Washington, D.C., Public Defender Service. Here, defender responsibilities have formally broadened beyond legal representation to include working with outside agencies to provide treatment and social services to clients who suffer from substance abuse and mental health disorders. This new approach, which

provides both legal and social services, is consistent with innovations adopted by American courts in the past decade to address underlying individual and community problems (Berman and Feinblatt 2005; Harrell 2003).

Wice attributes the success of the Essex County defender program to its (1) inclusion in a statewide system that provides adequate and stable funding, (2) apolitical hiring and promotion practices, (3) nurturing leadership, and (4) supportive coworkers. Once again, the intrinsically satisfying work of representing needy clients—especially in trials and referred to as a “love of litigation”—is emphasized as critical to the defender program’s effectiveness. The book’s lessons, however, seem incomplete because they are developed only by contrasting the Essex County defender office and the troubled programs in Chicago and New York. A better comparison could have been made between Essex County and the District of Columbia Public Defender Service. Overall, however, this book makes an important contribution to the limited body of scholarship on indigent legal representation, and it is recommended for anyone who is concerned about ensuring equal access to justice for all Americans.

The second book, *Juvenile Drug Courts and Teen Substance Abuse*, examines the emergence and evolution of drug courts and their application in the juvenile justice system. This book’s articles seek to build a case for improved methods of evaluating young offenders’ substance abuse problems and drug court outcomes. Editors Butts and Roman introduce the volume with an overview of the American drug court movement. By 2003, American communities had opened more than 1,000 adult and nearly 300 juvenile drug courts (2). In the second chapter, Roman, Butts, and Rebeck chronicle the evolution of American drug policy and the rapid spread of the drug court reform movement, which they link to rising drug-related caseloads and the prevalence of chemically addicted offenders. They discuss the goals of drug courts, which seek to promote both individual rehabilitation and improved community safety, and contrast this model with earlier approaches to dealing with drug-related crime (52).

Rossman, Butts, Roman, DeStefano, and White then examine the operations of the juvenile drug courts and contrast the policies and practices of programs in six cities: Charleston, South Carolina; Dayton, Ohio; Jersey City, New Jersey; Las Cruces, New Mexico; Missoula, Montana; and Orlando, Florida. There appear to be notable variations in eligibility standards, screening and assessment methods, and use of community resources. In a review of published research on adult and juvenile courts, Roman and De Stefano point to serious gaps in program research. They report that only a limited number of studies have used

experimental or strong quasi-experimental designs and that “to date, few evaluations of juvenile drug courts have been completed, although several are ongoing” (121). Their analysis of the research is backed up by a comprehensive appendix to the book that summarizes and evaluates drug court research literature published between 1993 and 2004.

The book also considers the challenges associated with defining the mission of juvenile drug courts. Butts, Zweig, and Mamalian urge policy makers and practitioners to be aware of the developmental variables involved in determining serious drug problems during adolescence. The data presented indicate that experimentation with illegal drugs has become commonplace among American youth: “[N]early one-half of adolescents in the United States will try illegal drugs before the age of 18” (137). The authors raise questions about the accuracy of common assessment tools used for determining drug abuse and addiction in the juvenile justice population. “Researchers have suggested for over 20 years that mental health professionals tend to overdiagnose substance abuse pathology in juveniles” (172). For several reasons, including cost-effectiveness and the potential harm from labeling young offenders as addicts, the authors promote targeting appropriate populations for intensive drug court programs.

In a separate chapter, Mears addresses the reliability and validity of the diagnostic instruments used to detect serious drug problems. In this review, Mears points out that the *Diagnostic and Statistical Manual of Mental Disorders* approach, which is widely used by professionals to define a drug problem, has been criticized as unable to capture adolescent-specific patterns of drug use (for example, research that shows that by age 21, most young people “mature out” of drug use; 197). To reduce the potential for misdiagnosis of young offenders, Mears recommends developing better screening and assessment tools based on systematic research (215).

Although the book raises many concerns about drug courts in general and juvenile drug courts in particular, it also acknowledges the need for meaningful alternatives to incarceration for nonviolent, drug-involved offenders. To determine how best to address this need, Butts, Roman, Rossman, and Harrell recommend more research, including cause-and-effect research designs and reliance on the conceptual frameworks previously developed by researchers. They detail several examples of fruitful drug court analytic research frameworks that could be applied in future research. These options include the key components framework developed by the Drug Court Program Office of the U.S. Justice Department, the RAND conceptual drug court research framework, and the Urban Institute’s inputs, outputs, and outcome

model. Additionally, they suggest that future research be refined to determine which aspects of drug courts are most important to achieving positive outcomes. Confirming the value of research on specific components, a recent study on judicial status hearings by Marlowe et al. (2003) concluded that some operational aspects of drug courts may be more important than others.

In the final chapter, Roman and Butts recommend a new research agenda for drug court policy and practice. They propose that an accreditation model based on research-based standards and best practices replace individual evaluation studies. The approach recognizes that limited resources are available locally for evaluation research and that performance standards can assist program proponents in maintaining political and funding support. Consistent with this standards-based approach to evaluation, Cheesman, Rubio, and Van Duizend (2004) report that at least four states (Missouri, Tennessee, Vermont, and Wyoming) have developed performance measures for their adult and juvenile drug courts to improve effectiveness and accountability.

In closing, however, the editors express ambivalence about the juvenile drug court model. "Using juvenile drug courts to address adolescent substance abuse is a gamble" (276). Roman and Butts argue that diagnosing substance abuse is an inherently subjective activity that is "often laden with social, cultural, and class bias" (277). Although this book makes a strong case for better research to more effectively address sub-

stance abuse and addiction problems among youthful offenders, it also reveals that crafting appropriate juvenile justice policy is complex and urges that juvenile drug court reforms be applied in a targeted and values-sensitive manner.

References

- Berman, Greg, and John Feinblatt. 2005. *Good Courts: The Case for Problem-Solving Justice*. New York: New Press.
- Burns, Robert T. 1999. *A Theory of the Trial*. Princeton, NJ: Princeton University Press.
- Cheesman, Fred L., Dawn M. Rubio, and Richard Van Duizend. 2004. *Developing Statewide Performance Standards for Drug Courts*. Statewide Technical Assistance Bulletin 2. Williamsburg, VA: National Center for State Courts.
- Harrell, Adele. 2003. Judging Drug Courts: Balancing the Evidence. *Criminology and Public Policy* 2(2): 207–12.
- Marlowe, Douglas B., David S. Festinger, Patricia A. Lee, Maria M. Schepise, Julie R. Hazzard, Jeffrey C. Merrill, Francis D. Mulvaney, and Thomas A. McLellan. 2003. Are Judicial Status Hearings a Key Component of Drug Court? *Criminal Justice and Behavior* 30(2): 141–62.
- McIntyre, Lisa. 1987. *The Chicago Public Defender: The Practice of Law in the Shadows of Repute*. Chicago: University of Chicago Press.
- New York State Unified Court System. 2004. *Budget Request for Fiscal Year April 1, 2005– March 31, 2006*. Albany: New York State Unified Court System.