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Getting Justice by Stephen Gillers

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Book Reviews

GETTING JUSTICE, by Stephen Gillers, Basic Books, Inc., with Foreword by Ramsey Clark. \$6.95.

Stephen Gillers' *Getting Justice* is three books in one. The first concerns the legal and political structure within which the criminal process functions. Woven into this discussion are the polarized value systems of what Herbert L. Packer has called the Crime Control Model and the Due Process Model of the criminal process. Gillers makes no attempt to conceal his strong preference for the Due Process Model, noting that:

When we ignore the rules because we think that will make catching criminals more efficient, we increase the potential for abuse of power. We must carefully weigh what we're giving up against what we're getting because as the rules drop away, we come closer to a police state. In a police state, the police are not answerable to the people, but only to themselves.

Gillers' discussion of the Supreme Court is shallow at best. For a Berkeley Free Speech Movement veteran, he too easily dismisses the intolerable delay in the vindication and assertion of citizens' rights as the Court's "timing and sensitivity to the nation's mood," e.g., *Griffin v. Illinois*, *Gideon v. Wainwright*, etc.! How long will it take the Supreme Court to disclose all the rights of Americans? Even if, as Gillers contends, the constitutional safeguards of the Bill of Rights are time-tested and "not whimsical creations of nine men who happen, at any one time, to occupy the Court's nine seats," is it not true that the assertion of these safeguards on behalf of the citizenry is the whimsical result of the nine personalities which occupy the Court at any given time?

Speaking of history and timing, the second book of this trilogy attempts to analyze the various rules of constitutional criminal procedure. Gillers takes the layman, and perhaps the law student, on a guided tour of the history of the Supreme Court's decisions concerning the Fourth, Fifth and Sixth Amendments. What this part of the book

will need is a slash in the inside back cover, so that an annual pocket part may be distributed to purchasers of the book. In fact, Gillers' tour is probably fascinating for the layman. But, realistically, it should be entitled "The Bill of Rights Under the Warren Court." Somehow, most people who have observed the legal scene in the past have the darndest feeling that not all the rights enunciated by the "Warren Court" will survive intact under the "Burger Court." As Gillers concedes, "law is a changing thing." For this reason, a pocket part or at least a scorecard, may be necessary so that the layman will realize that what rights the Court giveth, it also may taketh away! The same appears true concerning the Congressional rollback on citizens' constitutional rights. Above all, what Gillers fails to tell the layman is that, for whatever reason it may be said that Supreme Court decisions are the "law of the land," some lower federal courts and state courts have continually ignored, chipped away at, and sliced the underpinnings out from under Supreme Court decisions in such a way that too often there seems to be two bodies of law—the Supreme Court decisions and the decisions of other courts.

The third portion of *Getting Justice* makes Gillers' whole venture worthwhile. Overcriminalization and a police lawlessness too often describe current law enforcement methods. By his efficient and hard-hitting use of secondary sources, Gillers poignantly illustrates America's misdirected goals in what it chooses to label as "criminal" and how it chooses to enforce commensurate sanctions, especially concerning "petty" offenses. Americans should no longer tolerate the existence of "blank check" statutes which give law enforcement officials the discretion to label as criminal those acts which neither have a victim nor are antisocial. Worse, the perverse nature of most confinement facilities fails to deter and instead enhances the prisoner's appetite for what all Americans view as dangerous criminal behavior. Police lawlessness, a more pervasive danger than overcriminalization, confronts American society on two fronts, according to Gillers: distortion or suppression of facts in order to assure conviction, and disregard of individual rights to achieve a goal other than conviction. Such accusations alarm and anger Americans for different reasons, but these same people must acknowledge the existence of the problems or else risk eternal paranoia toward some segment of the population. As Gillers concludes:

. . . [T]he best qualified policemen will not be a significant improvement unless the people who run the departments and those to whom they listen bring the role of the law enforcer closer to crime solving and crime prevention and away from behavior con-

trol. So long as the police are used to do illegally what society may not do legally, the Bill of Rights is so much window-dressing and citizen distrust is inevitable.

*Frank E. Haddad, Jr.**

THE UNITED STATES AND THE WORLD COURT, by Philip C. Jessup, Assistant Professor of International Law, Columbia University, with foreword by Elihu Root, published 1929 by World Peace Foundation, Boston, first reprinting 1970 by Johnson Reprint Corporation, 159 plus six pages of index.

Why this reprint at this time? Like Hamlet's father's ghost, awalk in the night, crying out in the mists of the darkness for redress of the murders of good schemes for peace for mankind? From 1929 to 1970 is a long time, and much has happened. But, has much changed? And that, probably, is the reason for this book to be revived now, reprinted by Johnson with Richard H. Leach, Duke University, as Editor-in-Chief.

A strange and intriguingly fascinating conjunction of events come near together now: in March, 1971, at Guatemala, the United States' two State Department representatives sign the protocol of the international revision of the Warsaw Convention. It limits death recoveries of air crash victims' families to one hundred thousand dollars on a sort of "no-fault" basis and recommends that Congress enact into law "no-fault" concepts for all United States states for all traffic cases, the American Bar Association enacts in Belgrade in July, 1971, a moot-court trial of international tort questions in collaboration with Mr. Rhyne's World Peace through Law movement, and, in "The Secret Lives of Laurence of Arabia" current historians and researchers reveal startling inside facets of World War I intrigues partitioning Morocco and Tunis which are dealt with by the World Court in a way reported on pages 670 and 671 of this reprint.

One has a strange feeling, like being in the haunted house at Disneyland, in reading this history of efforts to involve the United States after World War I in the League of Nations and in the World Court.

Elihu Root was an American lawyer of great stature. He was Secretary of State, and long continued his efforts to get the United States to support the World Court. He says in his foreword that

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