1965

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Andrew Schiller
University of Illinois

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Available at: https://uknowledge.uky.edu/klj/vol53/iss3/2

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Law or Justice? A Layman Looks at the Courts

By ANDREW SCHILDER

I. AN INNOCENT QUESTION

Murder is like a diamond, expensive. The price is artificial in both cases, and for opposite reasons. The number of diamonds on the market is controlled to keep the cost high; the cost of murder is set high in order to control the number of crimes. Every crime has its price on a graduated scale: murder is from Tiffany’s, car theft is from Woolworth’s.

If this plan is to be workable, there must be no haggling in the market place. If the penalty for a crime is the deterrent force, the criminal (presumably) weighs the cost before he commits it. It should make a difference to him whether he is risking a two or a twenty year stretch. Whether, in practice, it works this way (or works at all) I doubt, but then I am only one man, and a layman at that. Since I am neither lawyer nor ologist (socio-, crimino-, what have you) I presume no answers. I have nothing to offer but questions, fortified with a few observations.

My first observation is that there is a relatively fixed scale of prices. You don’t get thirty days for murder, or the chair for car theft. Not at list price, that is. But in law as elsewhere there are gyp joints and discount houses. A man can get five years for a joyride while another gets away with murder. And what does it prove except that man-made institutions are humanly imperfect? We aim at a higher mark than we can attain. The intention is symbolized by the lady in the shift, offering her blindfold test to all comers.

And so my first question: is the lady really blind? Or can she see through that gauze bandage? Does she distribute her favors to the wealthy, handsome and powerful, and scorn the poor, the misshapen and lowly?

* Associate Professor of English, University of Illinois.
This is an innocent inquiry—naïve, if you prefer. I cannot pretend that as a layman I can have anything to say that the learned readership of this journal does not already know. In matters of law, I am a child; but from a child we expect not information but a point of view. It needed a child, we remember, to point out that the emperor was naked. To expect such a mighty revelation here would be too much. Does every spadeful of dirt contain nuggets?

I understand that my question is ingenuous. The practicing attorney is concerned not with questions of abstract justice but of concrete evidence. His business is the unphilosophical one of winning his case, his motive the prosaic one that he has been hired to do so. I do not really quarrel with this. When I pay an attorney to represent me I want him to win, and never mind the abstractions. So much for virtue.

But the question remains, ignore it or not. Is that an honest blindfold on the lady with the scales, or can she distinguish the cut of your clothes, the color of your money, the tint of your skin? I wished to answer this question, and in the process became a trial watcher, as other men become baseball fans, or sidewalk construction buffs. What follows here is a report on some of my observations. In my own exercise of even-handed justice, I falsify all names and enough of the circumstances to prevent embarrassment to innocent and guilty alike.

II. A Case of Murder

For three weeks, my life has hung suspended in time. There was the week for the impanelling of the jury and now we are in our second week of testimony. I am re-living, in this murder trial, a few overwhelming hours of nine months in the past. What happened in those few hours is the life or death question. But can one ever know—really know? The light of inquiry focusses intensely on those few hours scanning them back and forth from every angle, reaching out from time to time for a wider focus, but always returning with fierce concentration to that brief interval. Words were spoken and vanished in the air; objects were lifted and set down again; there were footsteps on dark staircases; neighbors sleeping by open windows heard they knew not what nor at what hour; adulterous love and wedded hate flashed like
summer lightning into violent death; a cuckolded husband does not live to see the dawn.

What happened? Can the past be forced to yield its secrets? The patient processes of this inquiry seem to frustrate their own ends. Witnesses are contradictory, experts in disagreement, facts even when established open to conflicting interpretation. The more we learn, the less we know. The only certainty is that, according to law, the young woman accused of this crime is either innocent or a murderess, that these proceedings must sooner or later end, and that her life hangs forfeit on the conclusion. Twelve citizens will retire to contemplate the tangled snarl of testimony and emerge with certainty.

Or official certainty, at least—sufficient to put this young woman in the black chair and shock her to death before sickening witnesses.

The stakes make the game interesting. The drawbacks of a courtroom, even for a murder trial, are serious. The seats are hard, the acoustics tricky, the lighting flat and undramatic. Invariably proceedings commence late, and even then they are interrupted by incomprehensible wranglings over legalisms. Sometime all hands retire to the judge's chambers, leaving us only to guess what the quarrel is about, and what (when they re-emerge) has been decided.

But the analogy is false. A trial is not entertainment. It may be entertaining—sometimes like a burlesque, sometimes like King Lear—but it is not intended for the amusement, convenience, or even the edification of spectators. The object is to arrive at the truth—not philosophical Truth, which is after all unreachable—but official certainty, that imperfect approximation to Truth which justifies us in destroying a human being.

Truth may elude us but a climax is certain. As the trial moves ponderously, piling up mountains of testimony through hours and days and weeks, the moment does come when the defense counsel, exhausted by his own rhetoric, sits down at last, when the judge has done with his final admonitions, and the jury files out to its cloistered deliberations. Out of whatever haggling, whatever interplay of stubborness and docility, a unanimity is achieved.

Now it is over, except for the waiting for the revelation.
Commonly one waits for days, but this time it is only hours. The defense is confident, the prosecution glum: both subscribe to the superstition that quick verdicts are acquittals. The judge asks the ritual question and the foreman of the jury clears his throat. "Your Honor, we find the defendant guilty, as charged, of murder in the first degree."

The hubbub and faintings, the courtroom dramatics, are all on the evening front pages. The lady is now a murderess. No longer do the newspapers use the defensive adjective "alleged." They shout KILLER in three inch type, making the most of it, because in a few days no one will remember or care. Even the foreman of the jury has his moment. Caressed by publicity, he gushes forth; for the benefit of lovers of justice everywhere, he tells all. There was not much doubt of the outcome, he informs us. Three ballots in as many hours, and the question was settled. Even the box score is told: 9-3, 11-1, 12-0.

This interests me. I am reduced, since I am no lawyer, to grappling with mere facts. After that first ballot, jurors Smith, Brown and Jones each knew that he was one of a minority of three who voted for acquittal. To put it differently, jurors Smith, Brown and Jones were convinced that the defendant was innocent—or at least that the case against her had not been proved, which in law amounts to the same thing. Yet on the next ballot an hour later (let us guess), Smith and Brown had changed their votes to conviction.

What happened in that hour? Discussion, to be sure. But no new evidence was introduced. The jurors had seen and heard all they ever would. The books were closed on that. Now evidence must be interpreted, but Smith and Brown had already done that and found the defendant innocent. Opinions, obviously, can be modified, but that is not really a fair description of what Smith and Brown did. In the normal process of bargaining, you expect to give a little here in order to get a little there; you may move from an unqualified to a qualified position; you are faced, in short, with a whole spectrum of possible final outcomes. But in a jury room the choices are drastically limited, in this case simply binary: guilty or innocent. There is no middle ground. Each juror is asked to answer a simplistic but not simple question: Shall we give this lady back to her family, or condemn her for
murder? Smith and Brown had voted once to return the woman to her children, and on the heels of that had voted to turn her over to the warden. If one of those votes represented an honest opinion, then the other is simply incredible—I am tempted to say immoral.

But this is not the worst. After the second ballot, Jones knew that he alone stood between the defendant and conviction. On that second ballot, even though he knew he was of the minority, he held firm. His judgment was not to be that easily overturned. His continued refusal to totally reverse his judgment could deadlock the jury. If he remained unconvinced of guilt, was that not "reasonable doubt"? But on the next ballot all doubt evaporates and Jones votes for conviction. Suddenly all allegations become fact, accusations are transformed into guilt, ambiguities are resolved, and the central questions are beyond discussion. The jury is unanimous—as if stricken by revelation—and official certainty has been established. Out of the clouds of unknowing the law has created truth.

How can this happen? Narrow the question down to Mr. Jones. Why did he change his vote on the third ballot? Was it the American discomfort at belonging to a minority? Did the others actually persuade him that he was wrong—wrong by 180 degrees? There is also the possibility that the problem was not of knowing, but of kinds of knowing. There was a general impression that the defendant's guilt was clear and obvious; at the same time, even those who felt convinced of her guilt were free to admit that the objective evidence was shaky. If Jones shared this feeling, we could interpret his first two votes as legal, and the third as moral. ("Never mind the legal technicalities. She's guilty and we're not going to let her get away with murder.") Is this wrong? It makes a nice ethical question, but from the legal point of view it is subversive. Shall we ignore the evidence and be guided by our feelings? We will never know what Mr. Jones' motives were. He is not accountable for them. Perhaps the explanation is altogether different. Was he simply tired of the whole matter and wished only to bring it to an end? ("All right, the hell with it, let's convict her.") But that is the most horrible possibility of all. Can one be convicted of murder simply because a juror is bored?
But for my own part, I am not so quick to condemn the jurors. After all, they were playing the game according to the rules, which demand unanimity of decision. If we depended only upon spontaneous and unforced unanimity, nearly all juries would be hung. Consequently, a minority of three, as in this case, feels obliged to accede to the majority decision. This is very American. It is like the "unanimous" nomination of Barry Goldwater. Without pressing that analogy, it is worth remembering that matters of fact are not to be decided by majority vote. How would a fifteenth century jury have voted on whether or not the earth is flat? Truth is truth, even if nobody believes it.

Nevertheless, juries seemingly recognize the impossibility of real unanimity, and the minority generally gives in. This means that the game is being played according to an underground set of rules. Beneath the apparent unanimity there is an actual principle of majority. There is nothing innately sinful about majority rule; we run our government that way. What is sinful is that the jury is obliged to operate on the basis of an unspecified ratio. Shall it be a simple majority? Two thirds? Three quarters? Who knows? Every case is ad hoc. Each decision is subject to the unpredictable pressures of personality, intelligence, prejudice, private affairs, and God knows what else. It is a Kafka-ish nightmare in which we have all staked our lives on a game whose rules we cannot understand.

III. A "B" Production

A report on criminal justice is like talk about the state of the theater. It's always gloomy, but more or less so depending upon specifics. Tragedy may perish while comedy prospers; Broadway may be opulent while the provinces starve. And "the theater" encompasses a spectrum from the Metropolitan Opera House in New York to a hole-and-corner strip show in Kansas City. So it is with "the courts." From the austere majesty of the United States Supreme Court, it is a long way down to the cracker barrel judge who is hired to maintain a steady flow of legal slave labor for a southern chain gang.

Our murder trial was the Broadway production of the judicial system, with glamorous principals and well-publicized stars. The defense attorney was a matinee idol with an adoring public; the
defendant was shapely and (according to the newspapers) sexually overendowed. There were surprise witnesses, confrontations, tears and histrionics; there were revelations both grisly and lascivious. It was the full treatment, playing to a packed house.

But the system also has its "B" productions, not to mention the carny side shows. In decent obscurity down the hall, Wilbert Stanbridge, with the aid of a far less expensive attorney, was trying to convince a jury of his innocence. He was accused of handling pharmaceuticals without a license—namely heroin. He was middle aged, unattractive, uninfluential, unimportant—like you and me—and, perhaps not just incidentally, a Negro.

I had a little talk after lunch with one of the prosecution witnesses, one of the two narcotics agents who had raided Stanbridge's apartment. Agent Wilson is also a Negro, and earlier that day Stanbridge had pointed him out in court, not remembering his name, and identified him as "the light one." It struck me that Stanbridge was referring not so much to skin tone as affiliation: the agent belonged in the enemy camp.

"Do you want to know," agent Wilson asked me, "how to prevent nine crimes?"

I did.

"You just pick up three junkies on a Friday afternoon. They hold them till Monday, bring them before the judge and let them go. We've got no case. But they've been off the streets Friday, Saturday, Sunday. Nine crimes never happened."

"In the light of the whole problem, though, that doesn't seem to be the answer."

"Man, if you'd been robbed and slugged by one of those hopheads wild for a fix, you wouldn't be yelping about the whole problem, only your problem. One crime. And I just told you how to prevent nine of them."

"You're right. All the same, it does seem like treading water."

"That's exactly what it is, treading water."

And on that sour note we went back to the Stanbridge trial.

Bleak is the work for the defense's prospects—or so it seems at first. Agents Wilson and Crown had entered Stanbridge's apartment and presented him with a search warrant. Stanbridge was somewhat flustered, since the raid had interrupted him in flagrante delicto with a lady not his wife and he had come to the door clad
only in undershorts. (How much dignity, let alone presence of mind, can a man have without his trousers?) The ensuing search yielded $15,000 worth of uncut heroin out of a dresser drawer, confirming the agents’ suspicion that Wilbert Stanbridge, janitor, was in actuality one of the major distributors of dope on the south side. Later, in the police station, the defendant signed a full confession.

The defense’s case hinges on a single point: Wilbert Stanbridge is illiterate. And so the argument rages over those two documents, the search warrant and the confession. Agent Crown testifies that he handed the warrant to Stanbridge, who glanced at it for a few seconds and then said, “Okay, so you’re cops. What the hell can I do!” Stanbridge does not deny this.

“I said something like that,” he replies to his attorney’s question, “something pretty close to that.”

“Did you know what the piece of paper that they gave you said on it?”

“No. How could I?”

“Then how did you know that they were cops?”

“When they busted in like that, they showed me their badges and said don’t try nothing funny because they got the outside of the building surrounded.”

Later, Lieutenant Werle testifies that it was he who took the statement from Stanbridge at the police station following his arrest, that he typed it up in the defendant’s presence, showed it to him, and watched him sign it. But Stanbridge had a different version of his “confession.”

“They searched me at the police station and they took away everything in my pockets. Mainly there was seventy-five dollars in cash.”

“How come you had so much money on you?”

“I just got my pay the day before, and I had fifteen dollars besides.”

“I see. And now to get back to that piece of paper. Did Lieutenant Werle say anything when he handed it to you?”

“Yes, he said if I wanted to get my money back I better sign this.”

“Is this your signature?”

“Yes, sir.”
“Can you write anything more than your signature?”
“No, I just learned how to sign my name.”
“So you signed this piece of paper without knowing what was written on it, is that right?”
“No, sir. The lieutenant told me I couldn’t get my money back if I didn’t sign it, so I thought maybe it was some kind of receipt. Anyhow, when a cop tells me you sign this if you want your money, I don’t argue, I just sign.”

As for the heroin, he knew nothing about it. How should he? It was not his apartment but the young lady’s. The lady herself so testified on the stand. No, there was no lease on the apartment. It was rented by the week, paid in cash. No, she didn’t have any receipts. Didn’t know anything about business matters. Yes, sometimes her friend, Mr. Stanbridge, paid her rent for her, but that was just because he was her good friend. What about that white powder that was found in the dresser drawer? She didn’t know nothing about no white powder.

And so to the jury, which swiftly found the defendant guilty. The pattern of the murder trial is repeated. The accused seems to be guilty. Heroin does not grow in dresser drawers. Stanbridge’s girl friend was probably lying about whose apartment it was. It seems fantastic that a person raised in Chicago (even though he left fourth grade at the age of fifteen!) should be actually illiterate. Or at least it seems incredible to the twelve earnest P.T.A. members on the jury, and so they conclude that Stanbridge, too, was lying. The whole story as the prosecution lays it out seems so smoothly credible—and it may, as a matter of fact, be true. Anyhow, how can you trust a man with a wife and kids at home in the cozy basement of a slum building, who entertains a girl friend in a separate apartment, and without his pants on? How can anyone trust, well, you know—one of those people?

The odor of guilt, let’s grant it, is powerful. Still, the prosecution was unable to prove whose apartment that was, to say nothing of whose heroin was in it. And how do you prove that a man cannot read and write? Even if you think it is improbable (though I happen to know otherwise), you need evidence to refute the claim, and there was no evidence in this case. Even
though (as it turned out here) the defendant had three previous narcotics convictions, wasn’t the court supposed to be trying him on this present charge and on its merits alone?

Shall we put it this way? The more likely a man is to be guilty, the stronger the evidence appears. In this case the jury was nauseated by the odor of guilt; but they did not know that Stanbridge was guilty. Their certitude was based on belief, not fact; their meditations were a kind of religious exercise: in whom shall we put our trust?

IV. The Small Shot

If men spoke but "the truth, the whole truth, and nothing but the truth," we would have no need of law or lawyers, cops or courts; the Millenium would have arrived and seas would turn to lemonade. But man is fallen and depraved and Paradise is not about to be regained. Lawyers’ wives may continue to expect mink coats, and the general run of mankind can be trusted to deal loosely with the truth, even (or especially) in court. Judges and jurors hear irreconcilable versions of what happened, and so—in the absence of the damning fingerprint, or what have you—they confront our last question: in whom shall we put our trust?

In Stanley Switkowski? Look at him. Everything about him cries out his damnation. He is the raggle-tailed fox in the briar patch of society, tired but still shifty. Age, indeterminate; it could be anything from forty to sixty. He is not so much aged as worn. He looks like a discarded object salvaged by a starving rag-picker. Even his clothing condemns him: cracked brown-and-dirty-white shoes; frayed trousers of “metallic” weave, the remnant of a suit once owned, perhaps, by a used car salesman or a saxophone player; a plaid shirt topped by a wide flower-print necktie, askew at the neck.

What kind of man would choose to wear such clothing? Shall we put our trust in him? But then, in all likelihood, he did not choose this wardrobe, or at least we charitably think so. Who could select such a tie to go with such a shirt? No doubt it is his only tie, possibly his only shirt. We are not impelled to move close to Stanley Switkowski, either physically or spiritually.

Absolve him on taste, but the question remains: how much
faith can you have in a man who owns only one necktie? Can he be a stable, responsible citizen? What is his stake in the status quo? Are we not looking now at the very man who could be expected to cadge, gamble and steal, to snatch purses, to push dope, to be incited to riot and rebellion by any demagogue? Surely we are prepared to believe that he is guilty as charged, of armed robbery.

The arresting officer testifies, and we are glad to know that his name is John Wedmeyer, for without that name he is a cipher. We do not ask why he wears black shoes, or blue trousers with a stripe down the seam, or a blue shirt and black tie. This is the clothing not of a man but an institution. He wears no commitment around his neck. Who is he? How do you know anything about him? He is polished and pulled in, his conscience clean as his gun barrel. We cannot think of him as a hunter for food or shelter or sex like the rest of the jungle skulkers. When he gives his testimony it is with institutional dispassion, snapping out a square, brisk “Yes, sir,” and “No, sir.” His firm unequivocal answers are those of an officer who patrols the jungle. He is not one of the beasts; his withers are unwrung. Surely the truth is in him.

John Miklas, the complainant, is a committed man. He is aggrieved, suspicious, surly. He wears no necktie at all, yet we forgive him. He is a man who has been robbed, who wants his money back, who wants to punish the criminal. His testimony is short and simple. At one-thirty in the morning, Stanley Switkowski entered the D & J Cafe on Belmont Avenue and walked up to the cash register where Miklas, the proprietor, was sitting over a cup of coffee. Switkowski produced a revolver from his pocket and demanded the contents of the cash register. Miklas complied with no argument, whereupon Switkowski disappeared into the night with approximately $175 in loot. Miklas immediately called the police. The whole affair had taken no more than a minute. The restaurant was empty at the time, so there were no other witnesses.

Switkowski’s attorney (a painfully young man) cross-examines Miklas, who reacts visibly to the attorney’s age. He is hostile, as if he were being interrogated by his own son. The line of questioning soon leads to the question of identification.
"You say the man who robbed you was in and out of your restaurant in a minute or so."

"That's right."

"What time did this happen?"

"Just after one-thirty in the morning."

"Why are you so sure about the time?"

"I was listening to the radio."

"What were you listening to?"

"I don't remember."

"What did he say to you when he came in?"

"Something like 'Gimme all your money.'"

"What do you mean, 'something like'? What were the exact words?"

(After a silence . . .) "Like that. I mean, I can't remember the exact words. After all, I was looking at that gun."

"All right, so you don't remember exactly. But you were looking at the gun. What kind of a gun was it?"

"I don't know. I don't know one kind of gun from another. I seen it was a gun and that's enough for me."

"Then you couldn't recognize the gun if you saw it again?"

"Objection."

"Sustained."

"All right, then, You were looking at the gun. How was the robber holding the gun? I mean, where was it?"

"Oh. He was holding it down low just above the counter."

"About waist high?"

"That's right. I guess so somebody passing by on the outside couldn't see it."

"All right, Mr. Miklas then what did you do?"

"I give him the cash out of the register."

"What was the man wearing?"

"What was . . .?" Miklas' jaw hangs open incredulously, then he becomes angry. "How'n'a'hell should I remember that? I don't even remember what I was wearing."

"We understand," the attorney smirks triumphantly. "You had your eyes on the gun all the time."

"Objection, your honor!"

"Sustained. The prosecution will abstain from contributing to the witness' testimony."
"What happened next, Mr. Miklas?"
"Like I said, I took the money out of the register and set it on the counter."
"Bills and change?"
"Just bills."
"Didn't he ask for the change, too?"
"No. Like he was in a hurry, as soon as he seen that stack of bills he scooped it up and took off."
"How do you mean, he took off? Describe it."
"Well, he was standing right by the door, so he just went out."
"Did he back out?"
"No. He just turned and walked out like anybody would."
"So from that moment on you couldn't see his face any more, is that right?"
"That's right. But I already seen enough. I'd know him any time. . . ."

And so it went. The defense attorney tried to undermine Miklas's identification of the defendant as the robber. But despite the speed with which the crime was committed, despite the complainant's poor memory for every other detail, despite his admission that he had barely looked at the robber's face, Miklas insisted that Switkowski was the man beyond all doubt.

The arresting officer had already testified that he picked up the defendant in the vicinity of Halsted and Diversey at 4:15 of the morning in question. The defendant was drunk and resisted arrest violently. The following morning John Miklas identified him in the lineup as the man who had robbed the D & J Cafe. A search of Switkowski's room turned up approximately $175 in bills and a revolver, for which he had no permit.

And now the defendant has his part of his day in court. He looks up at the judge suspiciously. Technically, he is as yet innocent, but no one is fooled by that, least of all Stanley Switkowski. He is in the enemy camp. His past experiences with the law—of which, it turns out, there were several—have led him to expect no good of this encounter. Plainly, he looks guilty. The mark of the jungle is on his face, a rew gash on his upper lip, just beginning to scab over. (An ambitious right-handed cop could have scored that one in the back room of the station.
house, but who knows?) And he acts guilty, alternately cringing and blustering. Who can believe such a person? After all, he’s cornered, he’s trying to get out of going to jail—he’s liable to say anything.

But we listen. He testifies that he had been drinking in his own room, that he had gone out for a walk to clear his head, that he had been accosted by this officer who had insulted him.

“How do you mean, insulted?” the Assistant District Attorney asks.

“He called me a bum. What do you do when somebody calls you a bum?”

“The officer testified that he said that you were acting like a bum. Is that correct?”

“Objection.”

“Sustained.”

“But you did resist arrest, didn’t you?”

“What d’you mean?”

“Did you strike the officer who arrested you?”

“I didn’t lay a hand on him until he started calling me names and pushing me around.”

“Then you did strike him?”

“Sure. Then I did.”

“And now about that money that was found in your room. . . .” and a quarter of an hour later the trial is over and (presumably on the strength of a single identification and the coincidence of the sum of money) the jury promptly finds Stanley Switkowski guilty.

V. THE BIG SHOT

Joey “Four Finger” Lufrano runs a nice restaurant on the North Shore. His nickname reflects the occupational hazard of meat-cutters, which is what he was when he first started out in business. Anyway, that’s his version. Ask the man on the street and he’ll tell you that if Lufrano was ever a butcher, it wasn’t that kind. He’s a second echelon man in the crime syndicate, which means that he has at least as much clout as an alderman. In his younger days Lufrano ran up a long record of arrests, some of which turned into convictions. But that was years ago. Now
other young men do for him the things that risk arrest and conviction. Today he is a balding, paunchy family man of about fifty who looks, as he sits in court, like any anonymous straphanger.

"I'm a respectable man!" Lufrano cried out at one point in his testimony. But that touches exactly the heart of the matter: he is not a respectable man. Had he been, this trial would probably have had a different outcome, or the case might never have come to court at all. But we get ahead of our story.

Four months ago, Mrs. Sandra White turned up at the Venetian Gardens Restaurant and asked to see the manager. After being introduced to Mr. Lufrano, she explained that she and her daughter, Fran, had just arrived in Chicago from a little town downstate, and she wanted to know whether there might be a job here for her daughter, who was an experienced waitress. As it happened, waitresses were in short supply just then, so Mr. Lufrano said certainly, send her over. Mrs. White accompanied her daughter to the Venetian Gardens the very next day, shortly before midnight. After a brief interview, Mr. Lufrano said the girl would do and asked her when she was ready to start. Fran said right away. Accordingly, one of the waitresses was assigned to getting her a uniform and showing her where everything was. Mrs. White left her daughter at that point, telling her only to come home right after closing time, which was four A.M.

Because business was slow that night, the restaurant was closed at three. A friend of Lufrano's invited a group of people to come up to his apartment nearby for a drink. Lufrano asked Fran to come along and she accepted. There were five in the party. When they got to the apartment they decided that they wanted some coffee, and so three of them went downstairs to a coffee shop to get it, leaving Lufrano alone with Fran White. The witnesses told conflicting stories as to how long they were left alone, but the range was from five to twenty minutes. As to what happened in that interval, the stories differ sharply.

Fran's version is that Lufrano removed her shoes, stockings, garter belt and panties, that he fondled her and lay on top of her, she meantime taking evasive action by rolling from side to side on the couch where all this transpired. Asked how she could be undressed so far without her cooperation, Fran replied that she was woozy from the drinks that Lufrano had given her during
the three hours she had been working in the restaurant. Were
they alcoholic drinks? Yes. How did she know that? Because
she had had alcohol before. And did Mr. Lufrano do anything
more than fondle her as described? No, that was far as it went.

What Joey Lufrano did not know was that Frances White was
only fifteen years old. "Why should I question her age? Her
mother tells me she's an experienced waitress? She brings her to
the restaurant all dolled up and leaves her to work the late shift."

For her court appearance Mrs. White has seen to it that her
daughter looks her age, or younger. Fran's hair is down about her
ears, there is no makeup on her face, and she wears a blue sailor
suit with a short skirt, ankle socks and flat shoes. But one can
imagine that it takes very little to transform this girl into a
woman.

In no way, however, did Joey Lufrano (according to his own
testimony) contribute to the delinquency of this minor. In fact,
during the five minutes that the other three persons went down
for coffee, he was in the bathroom. He neither plied her with
drinks in the restaurant nor undressed her in the apartment.
Yes, her shoes were off, but she had taken them off herself. Aren't
women always taking off their shoes?

And on this ambiguous note the trial ends. The judge un-
hesitatingly finds the defendant guilty, and Lufrano and all the
attorneys clump about the bench for the sentencing. The As-
sistant District Attorney, after reviewing Lufrano's criminal rec-
ord, recommends fifteen to twenty years. The judge pulls his
eyeglasses down on his nose and stares over them at the prose-
cutor. "Is counsel suggesting a sentence for the present charge,
or for the defendant’s entire career?" This excellent question re-
main in abeyance, and the defense counsel pleading mercy,
the judge sentences Joseph Lufrano to one to four years.

VI. A LOADED QUESTION

The question is answered. Was there ever any doubt? Of
course the lady is not blind. How you fare in the courts depends
heavily upon who you are. At least three of our four cases are
clear-cut evidence of this commonplace fact. The case of Wilbert
Stanbridge, viewed strictly on its merits, should have been an
acquittal. The prosecution never did prove that Stanbridge
could read and write, and hence that he knowingly signed a confession; nor did it prove that it was Stanbridge's apartment that the agents raided, and hence that the heroin found in it belonged to him. Looked at this fiercely, the chain of evidence is weak. But what of that? The prosecution was not worried about the possibility of encountering twelve logicians in the jury box. It expected, and got, a jury which would sit in judgment not on the case but the man.

And who is Wilbert Stanbridge? An ex-con, a junkie, an uneducated, immoral purveyor of sex and dope, a shark of the black ghetto masquerading as a janitor. Are twelve shockable citizens going to let him go, now that they've got him? And clearly another jury felt the same way about Stanley Switkowski. The case was, if anything, leakier. But they were getting a shady character off the streets, helping to make a city safe for honest shopkeepers like themselves. Is this not commendable? Shall we allow robbers to roam in the night because of a flaw in our metaphysics?

And the judge posed exactly the right question when he asked whether Joey "Four Fingers" Lufrano was to be punished for the present charge or his entire career. Let us assume him to be guilty as charged. Would a "respectable" man get one to four years in prison for fondling a young lady? It's absurd, of course, but that's not the point. The forces of decency, law and order finally had its hooks in Joey Lufrano, big time hoodlum, guilty of more vicious crimes than we would ever know, and the law wasn't about to let him go, either. The judge, despite his rebuke, quite agreed with the prosecution in principle, if not in degree. He was trying and sentencing not the case but the man. We might also ask, what kind of case could be made for the responsibility and morality of that girl's mother? But she was a "respectable" woman. She was not on trial.

Our murderess presents, it seems, a different problem. She is a "respectable" woman, wife and mother, who just happened (or so at least the jury was convinced) to fall in love with another man and to collaborate with him in the murder of her husband. She is neither pariah nor hoodlum, that we need to sweep the streets of her like, merely a bourgeois lady, widowed by her own hand. Nevertheless, there seems to be a common principle at work.
Once more, there is no direct evidence of guilt. Indeed, the lover cries out from his prison cell that he alone is guilty. This is the true romantic love of yore, faithful unto death, and his statement is discounted accordingly. For all that, it might be the truth. But the truth is helplessly in the shadow of impure motives. It was nothing so concrete as evidence that convicted her. It was—the only way to put it—a sense, a feeling, a compounded of a multitude of things that somehow added up to more than the sum of their parts. It simply seemed incredible that she could be innocent. “Let us not be misled,” we can imagine the jurors saying to themselves, “by these tricky lawyers with their fine-spun arguments, their points of law, their rules of evidence. We know what we know. Never mind the law, what about justice? This woman killed a man.” And so once more we come to this, that it is not the evidence but the person that is being weighed in the balance.

Very well, then, the lady is not blind. In fact, one might ask, who needs me to assert this truism, or to marshal this tiny miscellany of cases to support it? Who, indeed? The question is naive and begs its own answer. I raise it only in order to ask another: Ought the lady to be blind?

The consensus is no, of course she should not be blind. Shouldn’t the process of justice be adaptable rather than inflexible, dealing with human beings rather than ciphers, with people and society, rather than abstractions? “Look at it this way,” one of the District Attorney’s men said to me. “The issue is not whether every man is going to risk one to four years from now on every time he lays a hand on a girl’s fanny. Who’d be out of jail? The real point is that we’re at war with crime, and Joey Lufrano is a wheel in the syndicate. We make no bones about it: we’re out to get him. With guys like that there’s no such thing as a bad conviction.”

“Even one like this?”

“Yes. The way the syndicate operates you’ll never convict the big shots for their real crimes; and you get nowhere just chasing their messenger boys. So you nail them any way you can. After all he did, Al Capone was convicted of income tax evasion. And he was brazen. The hoodlums nowadays are a lot more slippery. They couldn’t convict Accardo, even on tax evasion. So what’s
left? Just keep hounding them. Don’t let them spit on the sidewalk.”

It makes a powerful argument. Crime strikes at all of us, and which side are courts on anyhow? Honest citizens complain—and who can blame them—when judges release known hoodlums on “technicalities.” Each of the four cases that I have cited was, in this sense, a “popular” decision. Justice overrode the law every time. And I confess for my own part to a moral certainty that each of the defendants was guilty. Nor can I complain about the motives of law enforcement officers who try to cleanse our society of burglars, dope dealers and hoodlums.

It is ironical that I, a layman, should worry about the technicalities while the men of law, both the police and the courts, prefer a free and easy application of the statutes and procedures (in my own interests, to be sure). I am told that no honest man need worry about this, but I also remember that the late Senator McCarthy asserted that no man with a clear conscience need fear investigation.

Maybe the lady in the shift ought to take that bandage off and be done with it. What bothers me is that the rules keep changing mysteriously. I keep thinking of the box score in that murder trial, and what does “unanimous” mean there? If we grant that certainty can rarely be absolute, then what degree of probability equals official certainty? I have no answer to this question. In fact, the thing that has impressed me most is the basic excellence of our judicial system. The elaborate, cumbersome ritual, the fastidious rules of evidence, the labyrinthine machinery that stretches out between arrest and conviction—all this seems to me to be one of the finest achievements of our society.

The system, viewed largely and in the abstract, is not at fault; the main problem lies in how we choose to work the machinery. What good is a beautiful set of rules if judges and jurors are to wink at them?

But human institutions, inevitably, are going to be warped to human ends by human prejudices. Until the cheerless day dawns when unerring justice will be rendered by computers, this system seems to be about the best we can achieve, and it is working about as well as it can. We come back, after all, to Voltaire’s gloomy optimism: This is the best of all possible worlds.