

Book Reviews

Licensed to Lie: Exposing Corruption in the Department of Justice, by Sidney Powell, 460 pp, Kindle \$7.99, hardcover \$28.95, ISBN 978-1-61254-191-4, Dallas, Tex., Brown Books, 2014. Independent Publishing Platform, 2017.

Three Felonies a Day: How the Feds Target the Innocent, by Harvey Silverglate, 297pp, Kindle \$9.99, paperback \$13.89, ISBN 978-2-594-03548-7, New York, Encounter Books, 2011.

Both of these books concern the dark side of the U.S. law enforcement system, the FBI, the Department of Justice (DOJ) and its career prosecutors and investigators, and some of their miscreants, hacks, and predators. These books are painful to read, since the stories are about the people the DOJ destroyed or tried to destroy, enabled by DOJ's unlimited resources and the trust of the courts and the public. These horror stories will make you fearful, and then outraged.

Prosecutors in the American system are charged to be exemplary in their role—they are not mercenary destroyers, but represent the government. They are tasked to be fair and judicious in their decisions to prosecute, but unfortunately the incentives reward unethical practices and tactics.

With Robert Mueller currently on a general warrant (an illegal, unconstitutional authority) fishing expedition intended to take down a President, consideration of the history of prosecutorial misconduct is especially timely.

Some of the perpetrators in the Powell book are now on the Mueller special counsel team, hired by Mueller because he knew they were predatory and well-practiced in the “sharp” methods Powell discusses. Powell knows and writes about them because she defended people who were accused and pursued by people like Andrew McCabe, Robert Mueller, Peter Strzok, Bruce Ohr, and Andrew Weissmann, whose records and careers, as Powell relates, are built on prosecutorial overreach, excess zeal, and just plain cheating and dirty work. Yet they are still in public service.

Silverglate writes that Mueller attempted to entrap him in his work as a defense attorney. A man wearing a wire was sent to Silverglate's office, offering to provide testimony to exonerate Silverglate's client. At the very end of his presentation, he admitted it was a lie. Silverglate sent him away, and later Mueller admitted to the attempted entrapment in subornation of perjury.

According to the Center for Prosecutor Integrity, problematic types of prosecutor conduct include:

1. Charging with more offenses and more serious offenses than warranted;
2. Withholding or delaying release of exculpatory evidence;
3. Deliberately mishandling, mistreating or destroying evidence;
4. Allowing testimony by witnesses they know are not truthful;
5. Pressuring defense witnesses not to testify;
6. Relying on fraudulent forensic experts;
7. During plea negotiations, overstating strength of evidence;
8. Making statements to media that are designed to arouse public indignation;
9. Making improper or misleading statements to the jury; and
10. Failing to report prosecutor misconduct when it is discovered.

The authors explain how prosecutors are subject to a variety of pressures that make them forget their special status as the legal system's guarantors of justice. They have incentives—gratitude of victims, favorable media coverage, career promotions for successful prosecutions, appointments to judgeships, or election to high office. And there are seldom repercussions for mistreating a defendant, or intimidating or harassing defense witnesses.

Powell's book narrates her work in the Enron prosecutions that resulted in multiple convictions. Though the convictions were later reversed by appellate courts all the way to the Supreme Court, individuals and the large accounting firm Arthur Anderson were destroyed before they could be exonerated. She also discusses the wrongful conviction of the longest-sitting

member of the U.S. Senate, Ted Stephens. This resulted in his losing an election, changing the balance in the Senate, before he was eventually exonerated.

In these cases, judges' bad judgment was a factor. There had been cheating in FBI investigations, including misrepresentations of investigative interview summaries (called 302 reports) to the court. The judges failed to properly supervise and test the claims of prosecutors, even after their deceptions were pointed out.

Silverglate's book focuses on the problem of vague statutes that ensnared innocent people in prosecutions involving egregious prosecutor misconduct. He points out a panoply of federal statutes that are so vague that prosecutors and courts can invent crimes out of whole cloth. One despicable statute creates a crime based on loss of honest services, and some wire fraud and drug regulations have resulted in prosecutions of business and professional people engaged in what should be considered normal activities. Silverglate includes stories of physicians caught up in a prosecutorial web for alleged fraud because of dispensing pain medications.

Silverglate explains how the mens rea (criminal state of mind) concept in criminal law is in conflict with the concept of strict liability (“ignorance of the law is no excuse”). Between those two concepts is the political/constitutional legal principle that a criminal statute must be written so the offense is understood by a reasonable person. A vague and confusing criminal statute cannot be the basis for a prosecution and conviction. Yet both Powell and Silverglate narrate with wrenching details in multiple cases how federal prosecutors play games with statutes that are vague, and pile on with intimidation of witnesses and misconduct in investigation and prosecution as well as in conduct before the bench. Prosecutors often seem to act on the old sports joke, that if you're not cheating you're not trying—instead of placing justice first, even if it means they don't win.

I recommend that you read these riveting stories of federal prosecutor

terrorism that ruined people's lives. But as you read, you might want to look under the bed and keep a light on.

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The Big Picture: On the Origins of Life, Meaning, and the Universe Itself, by Sean Carroll, 480 pp, hardback, \$28.00, ISBN-13: 978-1101984253, New York, N.Y., Dutton, 2016.

My daughter chose astronomy last semester to fulfill her college's science requirement; the professor assigned *The Big Picture* for his students to read, and thus came this book into my hands.

The author, Sean Carroll, is a research professor of physics at the California Institute of Technology. In case you weren't paying attention to particle physics over the latter half of the 20th century, "the standard model" of nuclear physics evolved to account for the enormous number of particles observed in high-energy collision experiments.

Recent developments in astrophysics have focused on a subset of the standard model that scales successfully from subatomic to astrophysical phenomena, what Nobel laureate Frank Wilczek has called "the core theory." Carroll thinks that the core theory is close enough to "the theory of everything" to craft a world-view based upon it.

Since this theory describes phenomena from the atomic nucleus to the cosmos, his world-view only allows concepts that are consistent with it. Some chapter titles will give a sense of the breadth of what he covers: "Who Am I?," "Death Is the End," "Freedom to Choose," "Constructing Goodness," and "Existential Therapy." To help the reader understand the theory, Carroll thoughtfully includes an "Appendix: The Equation Underlying You and Me." "The Equation" is the path integral formulation of quantum mechanics.

Carroll starts in familiar territory: when we use the "scientific method," our arguments are essentially materialistic. In the chapter "What Determines What Will Happen," he seems chagrined that Newton, after masterfully presenting his system of the world, concludes that it "could not have its Origin from any other than from the wise Conduct and Dominion of an intelligent and powerful

Being." Laplace, on the other hand, almost perfectly expressed Carroll's key premise when he articulated the concept that if, at one instant, for every particle in the universe, its position and the forces acting on it were known, then the course of the universe would be determined for all time going both forward and back. No need for any other ideas.

Although laws of classical physics in Laplace's time were not known to scale up from the very small to the very large, the core theory now remedies that defect. Carroll praises Laplace for having the correct, coldly materialistic world-view at a time when it was not popular. He repeats much of the lore that has accrued around Laplace's thinking and quotes approvingly the story that when Napoleon asked why God was never mentioned in his *Celestial Mechanics*, Laplace answered: "I did not need that hypothesis." Well, Newton didn't need God as a hypothesis either.

It is frustrating that the author waves his hand in the direction of historical complexities but does not address any. Laplace was educated as a Catholic and received the last rites on his deathbed; do scattered statements of material determinism in the context of physics brand him as an atheist? Carroll indirectly argues that atheism and materialism grow naturally out of the scientific method. A disinterested observer might conclude that belief in God is independent of the pursuit of the scientific method because both devout believers and atheists have made important contributions.

The pattern illustrated by his treatment of Newton and Laplace repeats throughout the chapters; concepts and facts that undermine his thesis are alluded to and then ignored. Carroll must be aware of his hand-waving, which suggests that the primary purpose of his book is to instruct the reader in the proper materialistic vocabulary for discussing the origin of life and the human search for meaning. Based on my reading through 50 chapters, I would formulate his general argument in this way:

I am smart (see Appendix).

I am an atheist.

If you are not an atheist, then you are not smart.

But read my book and you can talk as if you're smart, even if you don't quite get that path integral thingy.

Here is a sampling of the required "Newspeak." Life? A process of material particles. Mind? An emergent phenom-

enon of a process of material particles. God? Not covered by The Equation, therefore non-existent. Free will? An illusion from an emergent phenomenon of an emergent phenomenon.

There are objections that can be raised within the framework Carroll has chosen. One concerns The Equation. Just what is the relationship between the mathematical concepts required to write that equation and the physical law described? Do mathematical ideas require matter or fields to exist?

Another question arises from the observation that only the phenomena of classical physics could have played a role in biological evolution; the subatomic and cosmological phenomena included in The Equation could not have affected the evolution of the human mind. What was the selective pressure that led to a human mind capable of comprehending abstruse theories that could not have played any role in natural selection?

Carroll is silent on both points. It's a pity that Carroll wants Newton to be silent, too, and not wonder aloud if we are made in the image and likeness of an "intelligent and powerful Being."

Should physicians care? Yes, but not enough to actually read the book at this point. Carroll has engaged in many debates that are available online. For anyone interested, I would recommend the one held at Cal Tech with Carroll and three other debaters, one of whom is Dinesh D'Souza.

Given the history of politically correct speech, I worry that the materialistic vocabulary promulgated by Carroll will creep into everyday life and eventually into the practice of medicine; when ICD 11 arrives, we'll be coding for "Acute alteration in emergent phenomenon status, not otherwise specified."

To his credit, my daughter's professor assigned *The Big Picture* in the hope that his students would create arguments to refute it.

Are the professor and I over-reacting to have concerns about this book? In an interview published in *New Scientist* in April 2016, Carroll was asked what he hoped to achieve by writing *The Big Picture*. He answered: "Well, this is the book that should accompany the Gideon Bible in all hotel rooms in the world—that would be a nice achievement!"

To paraphrase what Wolfgang Pauli said about Paul Dirac, "There is no God, and Sean Carroll is his prophet."

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Rigged: How Insurance Ruined Healthcare (and How to Fix It), by Ralph Weber and Dave Racer, 159 pp, Kindle, \$8.88, ASIN: B072WC2HKN, Alethos Press, 2017.

Modern medical care financing is generally incomprehensible—even to people in the business of medicine. And, I confess to being overcome by nauseating, mind-numbing ennui when faced with spreadsheets and pages of insurance jargon.

Fortunately, Weber makes topics such as “community rating,” Health Savings Accounts, and “re-pricing” understandable. Although I had heard “medical loss ratio” discussed before, I finally understand this subject and the problems it causes after reading this excellent book.

To make the book accessible to patients, Weber explains many aspects of the economics involved from the perspective of hypothetical patients. He supplies many quotations that warm my libertarian heart. To wit: “Nearly all government attempts to reform health care fail, and a primary reason is they try to fix what does not work by repeating what does not work.” Right on!

As a surgeon I must correct a few minor points when it comes to physician billing and reimbursement. (Maybe a collaborative second edition with an insurance expert/physician is warranted!) Weber is absolutely correct when he says that a procedure’s cost is dependent on “your provider network...and which doctor you see.” So far, so good. But then he explains, “An orthopedic surgeon in one state may charge \$25,000 for a new knee. In another state, the price might be \$12,000—or less.” In fact it is considerably less and has been for more than 20 years.

The actual Medicare reimbursement for a total hip is around \$1,350 and going down. When Barack Obama said we greedy orthopods would rather get paid \$30,000 dollars for an amputation than treat the diabetes, I looked up my reimbursement and found it to be \$350-\$500, so he was off by a mere \$25,500. And the average person would not learn from this book how physicians’ fees are set.

We do not set our Medicare fees at all. We are paid what the government tells us we will be paid regardless of our overhead. And private insurance usually pays a percentage above or below Medicare. We can bill whatever we want, but we get paid what they

determine to pay us. This makes it almost impossible to do the things that people want: to provide competitive prices and transparency. That only works when the prices are set by the physician based on his overhead and profit margin.

But Weber does understand the mind and purpose of “MediCrats” (medical bureaucrats), a term he coined in his previous book. As he sets the stage in Chapter 1, “For the government to control its people, its goal is to establish a MediCratic system where medical rulers have authority to decide when, where, and how health care will be delivered.”

Many lay people and some snoozing physician readers will be surprised to learn of the evil collaboration, under “ObamaCare” between the AMA, AARP, big insurance, big pharma, and government. Weber rightly calls this public-private crony partnership by its true economic term, “fascism,” as opposed to the Clinton-proposed version that was to be based on socialism: control by government ownership of the means of medical production. Under the so-called Patient Protection and Affordable Care Act or ACA, MediCrats rule by regulating everything except the actual wielding of the surgical scalpel. (And in my opinion they would try that if they could get the robotics worked out.)

Another great quotation: “If politicians were honest...they would admit that their reform efforts are directed at prodding trillions of dollars out of Americans for health insurance, and using those trillions to construct a massive, expensive, bureaucracy run by MediCrats.”

I thought I had a pretty good understanding of the insurance issues Weber addresses, but I learned a lot from this book. *Rigged* is a book for anyone in or out of medicine. It will give you historical framework, explain the problems of insurance, and even help you make better choices in your medical spending. An index is sorely needed because it is the kind of book I would like to return to for reference.

I think readers will agree with Ralph Weber after reading *Rigged* that, “The biggest threat to health care is the third-party payment system, its networks, and blind spending by patients that drive over-consumption and overspending. This is how insurance is ruining health care.”

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PEOPLE ARE TALKING ABOUT MYTH BUSTERS

Linda Gorman. “Greg Scandlen provides clear, concise, common sense explanations of why generally accepted health policy ideas fail the reality test.”

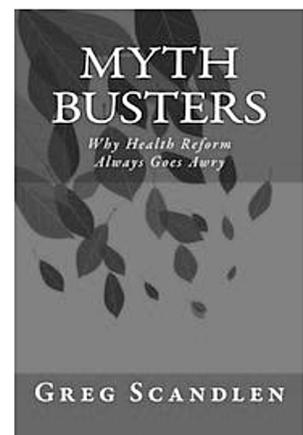
John McLaughry. “This 156 page memoir is a collection of what Greg learned over four decades from watching dumb, foolish, self-interested, and misguided efforts of various groups of policy geniuses to “reform” health policy.”

Rick Willard. “Greg Scandlen has taken his rightful place as one of the incisive thought leaders in the Health Reform world. We can all learn from his experience and his practical interpretations of how we got into this mess.”

Dave Racer. “Scandlen has done the heavy lifting of giving us data to expose the myths of pin-headed academics and politicians who care very little about individual patients.”

Dan Perrin. “Greg’s decades in health care policy come shining through in this excellent book. A must read for serious people who have a serious interest in health care policy.”

Allan Wald, MD. “A magnificent presentation of the myths that have led to so many mistakes in healthcare policy. Scandlen is an insightful independent thinker and that becomes clear each time a myth is revealed. If only the people in academia could be as concise and clear. A must read for anyone that wants to understand the healthcare debate.”



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