

preserved for appeal. He reminds us that the Legal Aid Society has a contract with the courts to provide public defender services, a contract that can be canceled by a judicial oversight committee. These factors make it difficult to guarantee a fair trial for a young, impoverished immigrant, especially when the FBI leaks inflammatory statements about him to a hungry press.

Chapters correspond with phases of the trial and related themes. "Cross-Examination" is a trial advocacy lesson with examples of effective and ineffective attempts to elicit that government witness Aashref Moneeb was pressured to identify defendants who had apparently met and planned in secrecy. In "Mosque," Precht visits a Jersey City mosque and urges 100 worshippers to attend the trial, recognizing his responsibility to expose Saleme's humanity to jurors. "You Don't See the Case for What It Is" quotes William Kunstler as he unsuccessfully tries to persuade Precht and co-counsel John Byrnes that the case is political and should be tried that way. He explains the theory that FBI informant Emad Salem entrapped Mohammad and his three co-defendants, and that an embarrassed FBI may be trying to hide that fact. Byrnes reminds Precht that a good reason not to call Salem to testify is to avoid angering the judge.

As the trial proceeds, we long for impartiality. We hope that faith in the system will be reaffirmed despite Judge Duffy's disregard for the rules of evidence in allowing highly prejudicial victim testimony to be presented. Thus, it is a relief when the judge reminds counsel that the co-defendants may not take the stand to exonerate themselves because their testimony could be challenged by proffers made during plea negotiations. He seems to have the defendant's interest in mind until he bluntly states: "I think your client will be convicted. ... I'm fairly certain he did it." We cringe when we realize that Judge Duffy's knowledge of the confidential proffer statements convinced him early on that Saleme was guilty. And we learn, after the conviction, that the office of the in-

spector general found the FBI chemist's testimony on the bomb to be either false or unsupported by scientific evidence. (This was one of the findings in a 1997 report on allegations of corruption in the FBI laboratory.)

Contrasted with these glimpses into the courtroom, Precht's relationship with Saleme exposes the frailties and humanity of the accused. Attorney visits, telephone conversations with Saleme's parents, and a visit to the mosque contrast with the negative picture painted in the press by unnamed FBI officials linking Saleme to a sect of violent Muslim fundamentalists.

The prejudices against "others" referenced in *Defending Mohammad* are now widely institutionalized in the name of national security. In the past two years, the government has deported thousands of noncitizens, especially Arabs and Muslims, subjected them to interviews and registration, and held them indefinitely based on secret evidence. The government has issued a military order allowing noncitizens to be tried by military tribunals with the possibility of executions and without the possibility of appeal to a civilian court. The recent rash of anti-terrorism measures starkly contrasts with the subtle and thoughtful insights provided by Precht about fairness in our justice system.

An expert media commentator, Robert E. Precht is now assistant dean of public service and director of the Office of Public Service at the University of Michigan Law School. Precht leaves us with a final message: Our system of legal safeguards works only if the participants use them. The best weapon against terrorists is the rule of law and the tools designed to promote neutrality — the jury, an impartial judge, and appellate review. Such unwavering trust in the rule of law may seem naïve to readers who question the constitutionality of recent government actions. Yet *Defending Mohammad* is a refreshing testament of the hope that each individual's efforts may ensure integrity in the judicial system. **TFL**

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Mugged by the State: Outrageous Government Assaults on Ordinary People and Their Property

By Randall Fitzgerald

Regnery Publishing, Inc., Washington, DC, 2003. 155 pages, \$27.95.

REVIEWED BY MICHAEL COBLENZ

Looking for a pithy anecdote to fill out your latest anti-government manifesto or a tale of woe for that conspiracy theory? Look no further; Randall Fitzgerald has provided a book full of action-packed government misdeeds.

Mugged by the State is a collection of horror stories about ordinary citizens who have had their property seized, condemned, or rendered valueless by government action. These stories — called "muggings" by the author — relate to the seizure of property by civil forfeiture laws used to fight the so-called "war on drugs"; the condemnation of private property for private (rather than public) use under eminent domain; and the denial or diminishment of property rights in furtherance of environmental protection, health and safety regulations, or benefiting the disadvantaged.

Fitzgerald presents these episodes as morality tales of government gone mad. One problem, however, is that he provides no context for, or analysis of, the issues he addresses. Take eminent domain: Fitzgerald never mentions how many condemnation actions occur each year to show if this is a pervasive problem. Nor does he describe a typical condemnation; he simply provides anecdotes. We get heart-wrenching stories but no analysis of whether seizure of property is, or is not, an effective tool for fighting drug possession or drug trafficking.

Certainly there are excesses in each of the areas Fitzgerald covers, and his stories are clearly examples of government abuse. Although I agree with Fitzgerald that, in many cases, the government has gone too far and that its power needs to be curtailed, I don't think that this book will help fix the problem. These stories are true, yet horror stories on the opposite side of

every issue he presents also exist. For every story of overzealous environmental agency action, there is an example of a company dumping toxic pollutants.

Remember Art Linkletter's daughter? On Oct. 4, 1969, Diane Linkletter jumped out of a window of her high-rise apartment and died. Art Linkletter claimed that it was not suicide but the result of experimentation with drugs, and he became a zealous advocate for toughening this country's drug laws. As a result of hundreds of tales like that of Diane Linkletter (as well as a great deal of political posturing and hopefully some rational analysis), drug penalties were increasingly stiffened. And we now have a "war on drugs," which has created another type of horror story.

Does anyone rationally believe that the best way to create a more balanced and effective drug policy is by presenting enraging stories of drug agents kicking in doors of innocent families and holding small children at gunpoint? Using emotionally laden anecdotes is hardly the most effective means to develop rational public policy.

If you burn with hatred of the government and feel contempt for its every action, then you'll love this book. But if you're trying to understand anything about the issues ostensibly presented in this book — if you wonder whether drug policies are absurd or environmental regulations have gone too far — don't waste your time.

My initial impression was that *Mugged by the State* was too one-sided

to be worth reading. On further reflection, however, I believe that it is even worse because it embodies a pernicious view that government is not just bad, but uniquely evil. Fitzgerald supports this impression through deeply biased language. He describes all the "victims" of government action as uniformly virtuous, and many that he describes (perhaps to kick up the pathos a notch) also have health problems or are members of historically oppressed minorities. Government officials are, at best, faceless bureaucrats who zealously apply the letter of even the most trivial law and, at worst, are openly contemptuous of the suffering of the people with whom they deal. In one case, where rezoning not only prevented two humble retirees from building their dream house but also rendered the property nearly valueless, the best the county employee who delivered the information to the couple could do was shrug and say, "That's the law." Gosh, did he and his fellow "heartless" bureaucrats have a good laugh at these gullible rubes after they left? It is hard to believe that all government employees could be as uniformly callous as Fitzgerald depicts them. Is it possible that they were merely overworked or simply having a bad day? Not in Fitzgerald's telling.

I'm not suggesting that the government doesn't do bad things. Clearly it does. But our government does good things as well. And government is certainly not unique in perfidy. Read the advance sheets; they're full of stories of companies that produce dangerous products that maim people, employers

who purposefully harass employees, and businesses that use their power to rob private citizens. You don't need to be a lawyer to know that — just open the business section and read about Enron, WorldCom, or HealthSouth. Mendacity is not a government monopoly.

Humans are neither completely virtuous nor totally venal. Life's a mixed bag. We deal with incompetent people every day in both government and private business. But because our taxes pay for government, we expect more from its employees and its policies. And some people want government policies that reflect only their own political views, and they claim that the government is evil when it does things contrary to those views.

The reality is that bad things happen not because of the evil intent of nefarious actors, but because of the imperfection of humanity. Laws are intended to mitigate these imperfections, and they are most effective when they balance competing interests. Environmental laws, for example, must balance the desire for a clean environment against the need for competitive businesses. Finding the line between the two is not an exact science; it is a messy and imperfect undertaking. But *Mugged by the State* does nothing to help us find the proper balance between legitimate competing interests. It seeks only to enrage one side and discredit the other. **TFL**

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ices rendered by such trustee, examiner, professional person, or attorney." The missing conjunction "or" does not change the provision's "plain meaning." Nor does the elimination of the parallel categories created by removal of § 330(a)(1)'s reference to a "debtor's attorney" and retention of "or attorney" in § 330(a)(1)(A) cloud the provision's meaning. Subparagraph (A)'s reference to "attorney" can be read to refer to those attorneys whose fees are authorized because they qualify as § 327 "professional persons." Although

the word "attorney ... may well be surplusage" under this interpretation, the "preference for avoiding surplusage is not absolute." Application of a "plain meaning" that limits the debtor in incurring expenses for professional services without the trustee's approval is not an "absurd result." Moreover, reading the word "attorney" to refer to "debtor's attorneys" runs counter to a canon of interpretation that disfavors the addition of "absent words" to statutes. It is unnecessary to rely on legislative history of the 1994

amendment, and, in any event, that history "creates more confusion than clarity about the congressional intent." 9-0. Opinion of Court by Kennedy, joined by Rehnquist, O'Connor, Souter, Thomas, Ginsburg, and Breyer, and joined in part by Scalia. Concurring opinion by Stevens, joined by Souter and Breyer. **TFL**

These summaries are prepared by George Costello of the Congressional Research Service for use by Congress.