

The Price of Justice

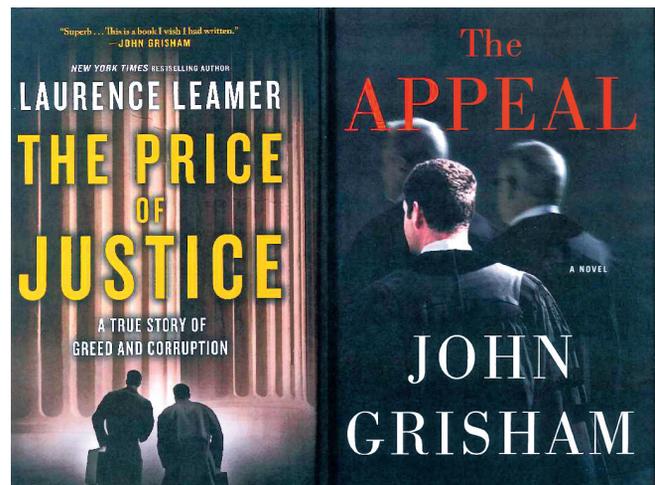
A REVIEW BY TALMAGE BOSTON

In January of 2008, the *Today Show*'s Matt Lauer interviewed novelist John Grisham about his book, *The Appeal*, a story set in Mississippi that depicts a corporate defendant on the short end of a multimillion dollar trial verdict who succeeds, through a partisan political judicial election, in purchasing a tort-reforming swing vote justice on the state supreme court that would hear his appeal. Lauer applauded his guest's vivid imagination, but then chided the author for his far-fetched plot. Grisham retorted, "Matt, it's already happened in West Virginia."

Yes, the essential facts in *The Appeal* actually happened in the case of *Caperton v. Massey Coal Company*, in which an August 2002 jury verdict for Hugh Caperton in the amount of \$50 million finally became a West Virginia Circuit Court judgment in March 2005. The delay, caused by Massey Coal's stalling tactics and a court reporter who mysteriously couldn't complete the transcript, gave the CEO of the defendant company plenty of time to find a candidate (obscure corporate attorney Brent Benjamin) to run for a seat on the five-person supreme court that would hear Massey Coal's appeal (West Virginia has no intermediate appellate court); directly and indirectly contribute to Benjamin's campaign with \$3 million; and have Benjamin sworn in to the state's top bench well before the appeal was docketed.

By the time the oral argument before the West Virginia Supreme Court occurred in October 2007, the court's deck was stacked in favor of Massey Coal, thanks to Justice Benjamin's refusal to recuse himself. Ultimately, the state appellate court's disposition of the case in favor of Massey Coal proved so egregious that the U.S. Supreme Court granted certiorari and the justices reversed and remanded the West Virginia case in a 5-4 decision. On June 8, 2009, Justice Kennedy, in his majority opinion, stated: "There is a serious risk of actual bias when a person with a personal stake in a particular case has a significant and disproportionate influence in placing the judge on the case by raising funds or directing the judge's election campaign when the case was pending or eminent."

After the U.S. Supreme Court's remand, and despite Justice Benjamin finally recusing himself, the West Virginia Supreme Court still found a way to maintain a majority favoring Massey Coal, and dismissed the case with prejudice on the basis that only West Virginia's courts had jurisdiction over the lawsuit. Following this dismissal, led by his crack team of lawyers, Caperton



pressed on. In the spring of 2014, Caperton's case is set to go to trial in a Virginia circuit court. Then, maybe, just maybe, impartial justice will finally be achieved during the case's second decade.

Journalist Laurence Leamer has now brought this disturbing story of political jurisprudential corruption under the bright light with his new nonfiction book, *The Price of Justice* (Henry Holt, 2013), endorsed on the jacket by Grisham, who says, "This is a book I wish I had written."

Leamer portrays Caperton's lawyers, Dave Fawcett and Bruce Stanley, as full-blown legal heroes who have persevered against Massey Coal, overcoming one seemingly insurmountable obstacle after another, committing to themselves and their client that they will not stop "until we have justice." In plowing through their historic case, Fawcett and Stanley consistently demonstrate superior litigation tactics through discovery, trial, and the epic appellate journey. Non-lawyer Leamer does a fine job of detailing the strategies and performance that have kept Caperton moving down the slow road toward ultimate victory, making this book highly instructive in providing the specifics of the lawyers' superior performance, and establishing the point that our profession is not easy nor fun, but essential to the righting of wrongs in a civilized society. **TBJ**



TALMAGE BOSTON

is a shareholder in Winstead in Dallas. He serves on the Texas Bar Journal Board of Editors and formerly served on the State Bar of Texas Board of Directors and as chair of the State Bar Litigation Section.