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## Lawyers And Judges: The Aba And The Politics Ofjudicial Selection. Joel B. Grossman.

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Justices and the comments of legal scholars. This abundance of supplementary material detracts from the book's value as a biographical study but enhances its value as a review of important Bill of Rights cases.

The New Deal Court is itself well remembered for its decisions concerning civil liberties. Justices Black, Douglas, Murphy, and Rutledge formed a strong and consistent nucleus in support of Thomas Jefferson's "bright constellation" of Bill of Rights freedoms, and the efforts of those four libertarians provided much of the groundwork necessary for the decisions of the Warren Court. These efforts are described in considerable detail. Along with discussion of the actual opinions there are excerpts from unpublished opinions and intracourt memoranda which reveal a great deal about the operation of the Court and the maneuvering for votes. The cases themselves are placed in a historical perspective by references to the relevant preceding and succeeding cases and to the contemporary criticism of the decisions.

While all of this material tends to obscure Justice Rutledge, it does give the reader a good opportunity for comparing him with his associates. Unfortunately for the author's implicit thesis, such comparison indicates that death did not keep him from a brilliant judicial career. But Rutledge certainly was a fine person and a man profoundly dedicated to his work: "Every case which came before him was a challenge but it was also a deep emotional experience. It was not abstract justice that he sought. He was not interested in a form of words. It was not justice in the air but in this very case, between man and man—between man and the state." (p. 336).

This book is most valuable for its exposition of the Supreme Court's activities during an important era in the history of Bill of Rights cases. There is also a chapter describing the events leading to Justice Rutledge's appointment to the Court which should be required reading for all aspiring Supreme Court Justices.

TALBOT SHELTON, JR.

**LAWYERS AND JUDGES: THE ABA AND THE POLITICS OF JUDICIAL SELECTION.** Joel B. Grossman. New York: John Wiley and Sons, Inc., 1965. 221 pp., \$6.75.

The manner in which Justices of the United States Supreme Court are placed on the bench also applies to lower federal court judges. The Constitution leaves untold the actual process by which one be-

comes a federal judge. Joel B. Grossman, an Assistant Professor of Political Science at the University of Wisconsin, offers a well-documented report on that process and the role played by the Standing Committee on Federal Judiciary of the American Bar Association.

Although the book could be thought of as a primer for those who wish to ascend to the federal bench, it is essentially a study of the Committee's position in the intricate and delicate balance of traditional maneuvers, politics, and personal relationships which comprise the decision-making process. The author reiterates the statement of its members that the Committee takes great pains to avoid being thought of as "judge-makers"; however the operation of the Committee demonstrates that the Committee is not unable to exert pressure in bringing one type of person to the bench as opposed to another.

In this regard Mr. Grossman calls for an examination of the role of a private group in the selection process. While recognizing the right of the Committee to assert what influence it can, the author asks, "to what extent is the continued quasi-public function of a professional group consistent with the requirements *and* needs of a democratic system?" (p. 212). Should the Committee have, in effect, a veto in the selection of judges? In dealing with this matter, certain facts are stated with concern. ABA membership is representative of less than half of all lawyers in the United States. The political beliefs of those on the Committee do not fully encompass those of the membership. Rather selective sources of information are chosen prior to issuing a "rating" of particular potential nominees. The author concludes that a veto, even in the hands of this distinguished group, to the complete exclusion of the public, should never be accorded. Instead, the Committee should be an advisor to the Attorney General.

There are several specific areas in which light is cast on the workings of the Committee and its determination of ratings of prospective judges. Although a National Conference on Judicial Selection and Court Administration, jointly sponsored by the ABA, the American Judicature Society, and the Institute of Judicial Administration, recommended that neither maximum age nor trial experience be considered prerequisites for the federal bench, the Committee nevertheless renders an automatic "not qualified" rating if the person is over the age of 64 or lacks sufficient trial work. This rating was given in the case of Judge Sarah Hughes who was 65, even though she was deemed otherwise "exceptionally well qualified."

In remarking on the unsuccessful attempts of the Committee and

the local Bar Association to block the nomination of Irving Ben Cooper to a Federal District Court in New York, the author observes, "Of course, it is possible that the Committee's efforts in this case may not have been entirely futile. Its fight was undoubtedly a source of acute embarrassment to the administration, and if those who choose judges in the future do so with the awareness that 'bad' choices will be exposed by the Committee . . . the case of Irving Ben Cooper may stand as a monument to the success instead of the futility of the Committee's work." (pp. 194-95).

As to the sources used by the Committee, there is no precise way of judging whether such sources are well-informed or, in the case of lawyers, "what is meant by a 'cross section' of the bar." (p. 109). Mr. Grossman dutifully raises a question as to this and many other matters and then does not answer them. As noted in the Preface, "This book will fulfill my purpose if it raises more questions than it answers." (p. viii). As a result of this purpose its value is somewhat diminished, for his questions have been raised many times before and remain unanswered. He has succeeded admirably in collecting in one place a complete study of the judge-selection process today. It is a well organized work following only the most objective standard, giving a thorough discussion of the Committee's attempts to improve that process.

CHARLES C. BOWIE