

Grossman: Lawyers & Judges

Michael Berger

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BOOK REVIEWS

The English Bar: A Priesthood. By BARNETT HOLLANDER. London: Bowes and Bowes, 1964. Pp. 70. 18 s.

The dust jacket of this miniature volume features a bewigged outline of the face of a member of the English legal profession. In the text, the author paints a fully detailed portrait, a composite study of the barrister, the solicitor and the jurist. It is an affectionate treatment with a realistic brush stroke here and there to highlight a foible or two of the subject.

This is a most unconventional lawbook, in which the footnotes are, for the most part, explanatory extensions of the text, imparting color, definition and depth to the commentary. In the first footnote, the author sets down a post-humous acknowledgement of the assistance of the late Joseph L. Andrews, Reference Librarian of the Association of the Bar of the City of New York. The author is one of a legion of readers who are indebted to this eminently literate law librarian of international reputation.

The contents of this work are drawn largely from the direct experience of the author, who has practiced law in New York and London over a period of sixty years, with chambers in the Temple, and more recently in Lincoln's Inn. His description of practice in New York City in the early twentieth century is as authentic as his description of the English courts—both scenes drawn with sensitivity and accuracy.

The author writes his tiny book for the legal profession in the United States, and he intends it as a tribute to the bench and bar of England. He touches upon the beloved anachronisms of the full-bottomed wig and the ceremonial cuffs, known as "weepers," but the essence of his message is spiritual. Implicit in every line is the writer's admiration for the British sense of sacredness of law and advocacy, from which is derived the dignified dedication of the solicitor, the barrister, and lofty respect for "Justice in the highest." Without the benefit of the canons of professional ethics, the English legal profession has sensed the priestly character of its calling in a manner which should compel the admiration and emulation of its American counterpart.

ROBERT Q. KELLY*

* Assistant Professor of Law and Law Librarian, De Paul University.

Lawyers & Judges. By JOEL B. GROSSMAN. New York: John Wiley and Sons, Inc., 1965. Pp. 228. \$6.75.

The role of the private interest group in the American political system has proved to be a most fertile field for research to the political scientist. In one area of political activity, the selection of federal judges, the American Bar Association, through its Standing Committee on the Federal Judiciary, has played this sort of "interest group" role. In *Lawyers & Judges*, Joel Grossman, Assistant Professor of Political Science at the University of Wisconsin, has

fashioned the judicial selection activities of the A.B.A., its goals and techniques, its accomplishments and failures, into a most informative description of how our federal judges are chosen.

The main participants in the selection of federal court judges are the President, the Attorney General and the Senate. Under the Constitution, the President has the responsibility of selecting justices of the Supreme Court, "by and with the advice and consent of the Senate." Although the inferior federal court judges need not be chosen in this manner, traditionally the President has also exercised the authority of choosing them. In carrying out this task, the President, down through the years, has relied more and more on the Attorney General for the choice and selection of judicial candidates. Thus, it has become the Attorney General's job to pick, screen and recommend to the President those candidates worthy enough for the federal bench. Through its function of advising and consenting to presidential appointments, the Senate also has increasingly been able to exercise its own prerogative in the field of judicial selection. It is against this highly partisan backdrop of activity that the A.B.A. has been able to exercise an increasingly important role in the selection process. Formed in 1946 as the result of increased criticism of the Supreme Court from all sectors of public life, the Standing Committee on the Federal Judiciary was empowered by the House of Delegates of the Association in 1947 to promote the nomination and confirmation of competent persons for appointment as judges of Courts of the United States, and to oppose the nomination and confirmation of persons deemed by it to be not sufficiently qualified.

How successful, then, has the A.B.A. been in implementing this broad delegation of power? According to the author, the A.B.A.'s most important success in its attempt to influence the selection of federal judges has been its liaison with the Attorney General. This relationship can well be seen, since it is the Attorney General's main function to pass upon a candidate's qualifications and temperament for the bench. Professor Grossman's research indicates that from the Attorney General's point of view, he primarily expects that the Committee supply him with reliable information from sources (i.e. local bar associations in the state where the candidate lives, individual lawyers, etc.) with which, under normal circumstances, he would be unable to communicate. In the author's opinion, this is the primary reason to justify the Committee's present, unique status in the selection process. But the author finds that the Committee performs other useful functions for the Attorney General, such as providing him with a reasoned evaluation of the prospective candidate and formal recommendations that are of sufficient weight that they can be used by the Attorney General to convince powerful party leaders and senators to withdraw their support from other candidates. On the other side, the author indicates that the Committee's *quid pro quo* for its continued support includes the following: continued consultation on all nominations, serious consideration of the Committee's recommendations, recognition of the Committee as the true representative of the legal profession in the selection process, and acknowledgement by the Attorney General of the Committee's position in selecting federal judges. Although the Committee is firmly entrenched with the Attorney General, there is conflict between them over the basic qualifications for the selection to the federal bench, including the amount of legal experience that each individual nominee possesses, the importance of the nominee's political position, and the maximum age and physical capacity of the nominee to serve.

Just as successful as the Committee has been with the Attorney General, the author points out that the Committee has generally failed in its attempt to influence the Senate's role in the judicial selection process. Although the Committee, ever since its foundation, has regularly been invited to testify concerning the qualifications of the various candidates nominated by the President, the position of each Senator as the guardian over all lower judicial appointments in his state has seriously weakened the Committee's position. It is only where the Committee can produce clear-cut derogatory evidence relating to the candidate that it will be able to block confirmation of the nomination. As an example of the difficulty of blocking a nomination in the Senate, Professor Grossman details the A.B.A.'s unsuccessful fight to block the highly controversial nomination of Irving Ben Cooper for a federal judgeship in New York.

Possibly the most interesting chapter in Professor Grossman's book concerns his detailed study of the functioning of the Standing Committee on the Federal Judiciary. From painstaking research, he unfolds a clear-cut picture of who is appointed to the Committee, the Committee's decision-making apparatus and how it functions, and the basis behind the Committee's final judgment that a particular candidate is or is not qualified for the federal bench.

In the preface to his work, Professor Grossman states that his book will fulfill his objectives if it raises more questions than it answers. In this reviewer's opinion, the author has admirably succeeded in a most abstract and difficult area. Beyond question, the A.B.A.'s position in an almost completely partisan area is quite unique and unprecedented. Probably the most significant factor presented in Professor Grossman's study is that from the time of its inception, the A.B.A.'s Committee on the Federal Judiciary has found its greatest success in working within the existing framework of judicial selection rather than trying to make over the system according to its own political and social precepts. Although Professor Grossman presents a strong case supporting the A.B.A.'s position in the judicial selection process, the questions that he tries so hard to raise do persist. For example: how strong actually is the A.B.A. in the judicial selection process; how well has it succeeded in carrying out the original tasks for which it was created; does it truly represent the bar in the judicial selection process, and if not, what part should lawyers play in selecting judges; does the information on which the A.B.A. bases its ratings of "qualified" or "not qualified" clearly reflect the legal community's opinion about a particular candidate; and what role should "politics" play in the selection of judges. For any lawyer deeply interested in the workings of judicial selection, Professor Grossman's book, *Lawyers & Judges*, is heartily recommended as a most stimulating and thought provoking experience.

MICHAEL BERGER*

* Member of the Missouri Bar. LL.B., Washington University (St. Louis), 1960.

The Government as a Source of Union Power. By PHILIP ROSS. Providence, R.I.: Brown University Press, 1965. Pp. 320. \$6.50.

The collective bargaining process, since it was injected into the labor-management relations area, has had both supporters and critics. Naturally, labor unions would support the process, and employers and employer organ-