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Review of "The Benchwarmers," By Joseph C. Goulden

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BOOK REVIEWS

THE BENCHWARMERS. By Joseph C. Goulden. New York: Weybright & Talley, 1974. Pp. 375. $12.50.

Normally, books about judges are written primarily for lawyers, and a limited percentage of the bar at that. On the other hand, books about courts are written for political scientists, social reformers, and occasionally a segment of the lay or student public that enjoys a bit of muckraking. The former are usually well researched, beautifully detailed, and informative to their limited readership, but except when the subject is a Holmes, are remarkably easy to set aside. The latter, partly to attract a wider sale, are racy and opinionated; they tend to cite the extreme examples of arrogance and stupidity as the norm for all courts although, on inspection, they turn out to be extremely limited in their selection of classic examples of what courts should not be.

Here, finally, is a book of the first genre, in the manner of the second. Joseph C. Goulden has managed to depict the good and the bad in federal judges in his exceptionally readable book, *The Benchwarmers*, with as much muck as any lay reader could want and with a few examples of the heights to which judges can rise. The book is limited, extremely limited, in its examples, but the reader has fair warning. In his twenty-page prologue, Goulden tells the reader that the good in federal district judges will be confined to a discussion of two courts as seen through the eyes of the chief judges of two important districts, and the bad chiefly to a single fascinating character in the southwest, with a look at the collective products of appointment by way of Richard Daley's Chicago machine thrown in for good measure.

It is in its incidentals that the book attains some stature. The prologue is a cataloguing, with geographically well-distributed examples, of the four deadly sins of the federal judiciary: capriciousness, arrogance, indolence, and stupidity. To some extent, these sins are balanced by a description of the zeal and industry of one senior-aged, but not senior-minded, judge, Peirson Hall of Los Angeles. The page or so describing Hall's methods in settling airline disaster claims pro-

vides a background for the student who must wend his way through the complicated procedural maneuvering detailed in Hall's subsequently published *In re Aircraft Disaster*[1] opinion.

Immediately following the prologue is the best, most entertainingly told, and in its way, most scholarly chapter. Entitled "Getting There: The Politics of Judicial Selection," the chapter is an absorbing account of just that. The author puts much flesh on the bones of the political scientist's casual assumption that the senator, or senators, of the party in executive power have the greatest influence in judicial selection. The author gives, too, examples of the exceptions to the norm, such as the use of the bench as a dumping ground for the washed-up or too-hot-to-handle administrator or the deserving lame duck. In addition, he furnishes a thorough account of the virtual veto power of the prestigious American Bar Association Federal Judiciary Committee. It is with this last-named subject that the author does an exceptionally fine job, describing the curious rise and fall of bar influence, the makeup of the current committee, its screening methods, and the compromises the committee has been willing to make to keep its foot in the door.

Thereafter, the author devotes nearly forty pages to the Southern District of New York, as seen through the eyes of its chief judge, David Edelstein, eyes which are almost entirely focused on the IBM antitrust case and its satellite cases elsewhere. Occasionally another judge, or even a law firm, flits in and out of the pages, but by and large, the Southern District is the story of Judge Edelstein and IBM. Next, but not sequentially, the district court for the District of Columbia is examined by way of John Sirica and the various Watergate cases. If the reader wants to survey the work of an important bench by scrutinizing the background, philosophy, and determination of one man, here is the opportunity. Later, much later, as an appendage to his description of the courts of appeals, the author does add thumbnail descriptions of the other district bench occupants. The thumbs are small, however, and most have dirty nails.

It is when the author describes the bad, in two chapters entitled "When the System Flops," that the book, in the best muckraking tradition, becomes most readable. Here are no thumbnails, but long accounts of the seamy political backgrounds and activities of nearly the

1. *In re* Aircraft Disaster at Juneau, Alaska, 64 F.R.D. 410 (N.D. Cal. 1974).

whole bench of federal judges in Chicago. The Honorable Julius Hoffman, scarcely an example of Daley machine politics, comes in for his turn of pasting, but fortunately not in terms of the Chicago Seven trial. Otto Kerner, although a former circuit rather than a district judge, gets into the act through his trial, and even Judge McLaren can be transposed into this chapter from the opening one.

The great pity of the description of the Northern District of Illinois bench, and dragging Otto Kerner into it by the ears, is that the author neglects to even mention the distinguished judge, sitting by designation, who impeccably tried the *Kerner* case at the very time Mr. Goulden and this author[2] were pursuing their separate investigations of different facets of the district operation. In a later exposé of the Oklahoma district, the visiting judges pass in and out of the scene almost on cue. But in Chicago, the presence and background of Judge Robert Taylor of Knoxville, Tennessee, who did so much to improve the reputation of a poor federal bench, goes completely unnoticed. This neglect is even stranger since, in his earlier chapter on selection, the author devoted considerable attention to the attempted influence of Tennesseeans on an appointment to the Sixth Circuit from Michigan.

The second chapter describing the flops of the federal judiciary—thus evening the count of black hats versus white hats—records a stirring account of the judicial career of the Honorable Stephen S. Chandler. Here the muck is spread, not with a rake, or even a shovel, but by dragline. No phase of the judge's activities, if derogatory, is left untouched. His associates, his colleagues, his superiors, and even the visiting judges assigned to hear the cases from which he was disqualified, get a working over.

In order to provide some sort of balance between trial and appellate judges, a chapter describing the Court of Appeals for the District of Columbia is then included. Concluding his book with a coda based on the prologue, the author probes the question with which he began—how do we judge the judges? The author appears not to be sure, but he adjusts the kaleidoscope to allow others to view judicial foibles from most parts of the United States. In this final chapter, the four deadly sins are again enumerated, with different examples and with senility and psychopathic tendencies also thrown in. Here the work is, per-

2. This author was conducting jury use studies of the Northern District of Illinois and four other midwestern districts at the time of the *Kerner* trial preliminaries.

versely, at its readable best, although admittedly it does not paint a true picture of the bulk of the federal judiciary.

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JUSTICE ACCUSED: ANTISLAVERY AND THE JUDICIAL PROCESS. By Robert M. Cover.[1] New Haven and London: Yale University Press, 1975, Pp. xii, 322. $15.00.

Slavery in America has long been a subject of intense scrutiny by historians.[2] Indeed, several major interpretations of slavery have appeared recently, enhancing our understanding of the complex workings of the peculiar institution.[3] Although the relationship between slavery and the legal system has not been explored as fully as other aspects of human bondage, contemporary scholarship has examined the colonial origins of slavery,[4] the enforcement of the Fugitive Slave Act of 1850,[5] and the personal liberty laws enacted by free states to hamper the return of fugitives.[6] Similarly, legal historians have probed the handling of slave crimes and private manumission proceedings before state supreme courts.[7] Much, however, is left to be done. The treat-

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2. *E.g.*, U. PHILLIPS, AMERICAN NEGRO SLAVERY (1918).

3. *E.g.*, D. DAVIS, THE PROBLEM OF SLAVERY IN THE AGE OF REVOLUTION, 1770-1823 (1975); R. FOGEL & S. ENGERMAN, TIME ON THE CROSS: THE ECONOMICS OF AMERICAN NEGRO SLAVERY (1974); E. GENOVESE, ROLL, JORDAN, ROLL: THE WORLD THE SLAVES MADE (1974).

4. *E.g.*, Alpert, *The Origin of Slavery in the United States—The Maryland Precedent*, 14 AM. J. LEGAL HIST. 189 (1970).

5. *E.g.*, S. CAMPBELL, THE SLAVE CATCHERS: ENFORCEMENT OF THE FUGITIVE SLAVE LAW, 1850-1860 (1970).

6. *E.g.*, T. MORRIS, FREE MEN ALL: THE PERSONAL LIBERTY LAWS OF THE NORTH 1780-1861 (1974).

7. *E.g.*, Flanigan, *Criminal Procedure in Slave Trials in the Antebellum South*, 40 J. So. HIST. 537 (1974); Nash, *A More Equitable Past? Southern Supreme Courts and the Protection of the Antebellum Negro*, 48 N.C.L. REV. 197 (1970); Nash, *Fairness and Formalism in the Trials of Blacks in the State Supreme Courts of the Old South*, 56 VA. L. REV. 64 (1970).