Virginia Woolf once wrote: "I think politicians and journalists must be the lowest of God's creatures, creeping perpetually in the mud, and biting with one end and stinging with the other." Robert Woodward and Scott Armstrong's *The Brethren* is further evidence—if any were needed—to establish the validity of this dictum. The book is not useful for much else. The publication of *The Brethren* is a media event, i.e., an occasion without any intrinsic importance which is foisted off on a gullible public through ballyhoo as though there were something there. It is a tour-de-force effected solely through "hype." P. T. Barnum would have loved it.

*The Brethren* is a journalists' weapon that was quite clearly aimed at the bête-noir of the American press, the incumbent Chief Justice of the United States. Chief Justice Burger was an easy target for the gossip-mongering of which this book largely consists, for surely at times he is vain, overbearing, crotchety, self-righteous, and thin-skinned. Nor did the authors miss their target. But they were firing a shotgun, not a rifle, and the buckshot they scattered tore the skin of every other Justice as much as it did that of the Chief. Indeed, it was the three Justices that the authors and their spies seemed to regard as the most admirable who were most severely wounded: Justices Douglas, Brennan, and Marshall. The first of these largely because of the authors' disgustingly graphic depiction of a once-great jurist—perhaps the last of them—in the last days of his tenure when he had control over neither his mind nor his body. And Brennan appears as a whimpering, petty, hate-filled, disappointed Don Quixote, frustrated by the failure of the new Chief to follow where his predecessor had led. Marshall is made to look like a clown, in the words of Woodward and Armstrong, like an "Amos and Andy" character, which is surely unfair.

But then no man is a hero to his lackeys. And the stories told in *The Brethren* are essentially built on the tale-bearings of the Justice's loyal ex-staff members, law clerks apparently disappointed by their failures to control the decisions of the Court. Only Mr. Justice Stevens escapes with his skin whole, and that probably because the scope of this volume doesn't cover the Terms of Court during which Stevens has served.

Doubts must exist as to the truthfulness of the tale-telling. The sources of the stories are unidentified, allegedly because the tale-bearers were unwilling to be known for their breaches of confidence. The book consists largely of hearsay, or hearsay once-, twice-, thrice-removed. That some of it is heavily embellished by the authors' imaginations seems obvious. That some of it is pure fiction is revealed by the numerous quotations of thoughts that could be known only to the minds they occupied. (The few statements of events about which I have direct knowledge are plainly erroneous. These disparities from truth are not important in themselves, but sow seeds of doubt about all the other allegedly factual statements unproved by objective criteria.) Much is accomplished by the authors through innuendo of a kind worthy of Joseph McCarthy.

I do not mean to deny the validity of the primary effect of the book, a demonstration that the Emperor is in fact naked. That the Justices have, and

* Professor of Law and William R. Kenan Distinguished Service Professor in the College. This review was originally published in the *Chicago Tribune*, December 16, 1979. Reprinted courtesy of the *Chicago Tribune*.
have expressed, distaste for one another, that they bicker and engage in petty annoyances, that each regards himself as the keeper of the Holy Grail, that some lack the learning or intelligence necessary to an adequate performance of their functions, that irrationality often replaces rationality as the measure of judgment, that politics in its lowest form plays a large role in adjudication, all of these things cannot be gainsaid.

The fact is, too, however, that the Emperor has been naked almost since he came to power. Similar disclosures could have been made—had there been similar breaches of confidence—about the Justices of the Warren Court, the Vinson Court, the Stone Court, the Hughes Court, the Taft Court, etc., back on to the time when the Great Chief Justice started the Court on its road to becoming a council of revision and a continuing constitutional convention.

Obviously, the Court as a public institution of no small power is a very proper subject of informed criticism. Justice Frankfurter once wrote: "Judges as persons, or courts as institutions, are entitled to no greater immunity from criticism than other persons or institutions... Judges must be kept mindful of their limitations and of their ultimate public responsibility by a vigorous criticism expressed with candor however blunt." Another great jurist, Judge Learned Hand, added: "While it is proper to find fault when their judges fail, it is only reasonable that [the critics] should recognize the difficulties. Let them be severely brought to book, when they go wrong, but by those who will take the trouble to understand them." Nothing in The Brethren comes close to the kind of reasoned criticism of the Court's work that was endorsed by Frankfurter and Hand.

What we have here is simply a collection of personal crotchets, conceits, quirks, whimsies, foibles, eccentricities, and caprices of nine human beings engaged in a task worthy of Plato's Guardians. This book is not criticism, it is only muckraking. It will afford titillation to the naive, and rouse the prurient interest of the sophisticated, political voyeur. Perhaps it is in the best tradition of the journalistic profession, but if so, it is the tradition of Walter Winchell rather than Walter Lippman. In terms of importance and longevity, its most likely precedent is a book by the authors' boss, Benjamin Bradlee's Conversations with Kennedy. The Brethren likely will bring no shame to any except those who provided the offal that was packaged in this volume.

One can readily guess as to the book's lasting consequences: None. Temporarily, it may cause the Justices to deny private confidences to their law clerks or even to their brethren. It may, but it is not likely to, cause a lowering of popular confidence in the Court which, while it doesn't stand high in the people's estimation, stands higher than either of the other two branches of the national government. Since the power of the Court depends entirely on public respect for its judgments, the Court may come to feel somewhat constrained in rewriting the Constitution, congressional statutes, and executive orders. That would be good, but not likely, so long as the Justices look upon this book as the shoddy thing that it is.

The only sure consequence of The Brethren is that it will enhance the purses of its authors and publishers, thus giving the lie to Iago's proposition that "he that filches from me my good name robs me of that which not enriches him." H. L. Mencken records an old German proverb: "Little people like to talk about what the great are doing."