"The Boss" documents how Hoover approved widespread bugging, illegal break-ins and the surveillance of the private activities of prominent Americans, including members of Congress and even presidents. His goal, of course, was to use intelligence data to discredit adversaries and intimidate would-be foes.

"The Boss" also makes clear that Hoover wasn't afraid to dip into his secret files—which he denied keeping—to share damaging information with political allies. Richard Nixon, to no one's surprise, exercised this prerogative the most, according to Theoharis and Cox.

The authors show how Hoover aided Nixon in forcing Abe Fortas off the Supreme Court in 1969, and assisted Gerald Ford's botched attempt to unseat Supreme Court Justice William O. Douglas in 1970.

No request was too petty for Hoover, who even agreed to provide Nixon Chief of Staff H.R. Halderman with a list of homosexuals in the Washington press corps.

"The Boss" also tells how Hoover used FBI agents to make midnight house calls to people who criticized the director or suggested that Hoover, as a bachelor who kept company with handsome male companions, was himself a homosexual.

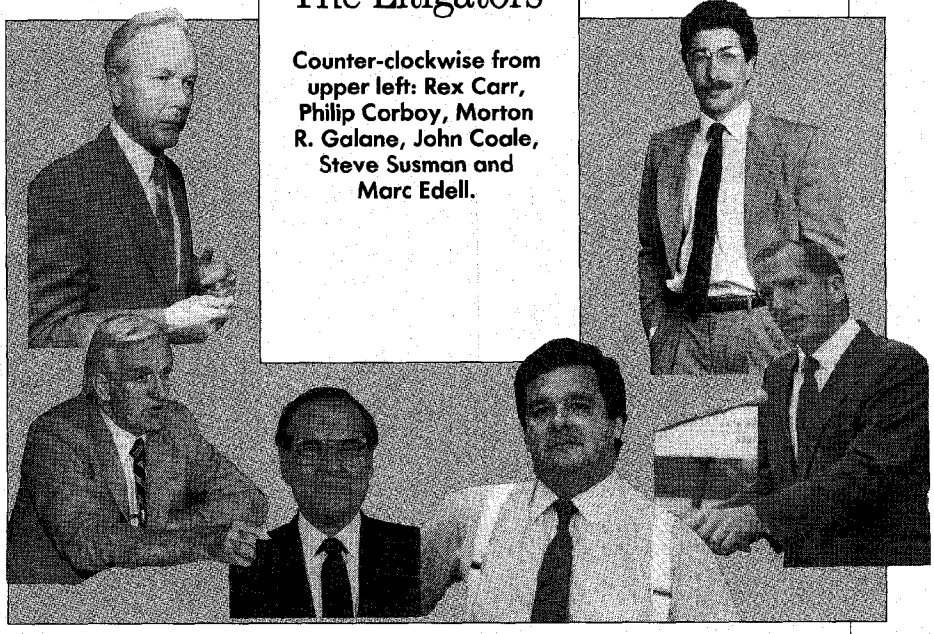
What all of this shows is that Hoover succeeded in keeping his power for so long by intimidating friend and foe alike.

As Lyndon B. Johnson observed, it was better to have Hoover in your tent than to have him outside—regardless of what you thought of him.

But by clinging to power, and growing more and more mean-spirited and intolerant in his later years, Hoover ensured that his place in history would be severely tarnished.

It's possible that some will remember J. Edgar Hoover as the man who built the FBI into the top law-enforcement and intelligence agency it is today. More likely, he will be remembered by most Americans as a petty and vindictive bureaucrat who placed himself and the FBI above the law, engaged in political blackmail and character assassination, and in general did whatever was necessary to get his way.

It's a sad legacy for a man who built his reputation on the ideal of law and order.



The Litigators

Counter-clockwise from upper left: Rex Carr, Philip Corboy, Morton R. Galane, John Coale, Steve Susman and Marc Edell.

TRIAL AND ERROR

THE LITIGATORS: Inside the Powerful World of America's High Stakes Trial Lawyers

By John A. Jenkins
Doubleday; N.Y.
462 pages; $19.95

Reviewed by Stephen D. Sugarman

This fascinating account tells how multimillion dollar torts cases are dreamed up, solicited (as in the race to Bhopal), referred (where lawyers are paid more for their marketing skills than for advocacy), packaged, forum-shopped, settled and sometimes even tried before a jury.

Author John Jenkins supplies breathtaking and sometimes mind-numbing details of the law in action—both inside the courtroom and out.

The six litigators profiled are fundamentally plaintiffs' lawyers. To a large extent, they are loners who have battled their way up from underprivileged backgrounds to positions of enormous wealth and fame.

Skeptical of the social value of tort litigation to start with, I was aghast at much of what I read, as Jenkins' tales documented my worst fears about how this area of practice functions. A good example is the frequent and often ugly infighting among the toxic-tort lawyers as they battle for control of management committees and the big fees those roles promise.

Jenkins calls his subjects "swashbucklers" of American jurisprudence—"the country's greatest lawyers." I wonder. Although all of these litigators have won some very big dollar awards, in the trials featured here they tend to lose or else obtain a hollow victory—either the case is reversed on appeal or the jury award is no more than the settlement offer.

Moreover, the quality of advocacy Jenkins describes often is quite poor. Although many of these litigators are portrayed as superbly effective in their opening and closing statements, I was left wondering whether they don't often win because of the jury's pre-existing sympathy for their clients. Besides, when portraying the trial artist's technique, Jenkins' descriptions seem to credit neither the evidence nor the persuasiveness of the arguments presented, but the kind of show the lawyer puts on. But doesn't our ideal of the jury emphasize sober-minded and rational decision making, the very opposite of verdicts determined by passion?

Assuming that the lawyers, one way or another, do make a big differ-

ence, I worry about the justice of a system that turns so importantly on whom you get to represent you—and especially when so many of the litigators seem to think that the most important thing they do at trial is pick a jury.

Juries, deliberately selected for their lack of sophistication, are asked to decide fault and causation when, at best, experts are hopelessly divided on the issues. Moreover, many of the so-called experts are shown to be shamelessly biased for the side they represent.

Although the high-stakes cases that Jenkins describes seemingly bring enormous satisfaction to the winning litigators, how satisfied the clients are is much less clear. Contact between lawyer and client, and involvement of clients in the process are not really discussed here. The main exception—when clients give depositions or are cross-examined on the witness stand—is frequently portrayed as a horrible experience.

Too often, these litigators see themselves as playing a game or fighting a war. But when they win, who loses? Is it Monsanto, or the tobacco companies or NBC or Union Carbide (to name some of the prominent defendants in this book)?

I don't think so. Rather, the losers are either the stockholders, or more likely, the consumers who pay for this game. Jenkins also shows us the deep pocket phenomenon—how the enterprises that pay the most are often among the least culpable defendants in the case.

It might all be worth it to the public, if the system at least functioned to provide compensation to people in need. But instead we see, as Jenkins recognizes, that lots of people who are hurt come away with nothing. Either their defendant has no money and these lawyers won't take their case, or something goes wrong and the blame can't be pinned on anyone. At the same time, many victims who are not seriously hurt clean up: Interestingly enough, the claimants in two of the cases featured by Jenkins already were people of great fame and wealth—Wayne Newton and the "notorious" Hunt brothers.

Although Jenkins says at the outset that he admires the litigators he has studied, he concedes at the end that "the process itself punishes all who come in contact with it." Surely the talents of these "entrepreneurs of adversity" could better be put to social use if the system were changed, doing away with the need to bring a lawsuit in order to pay for medical bills and recoup lost income. That, however, is quite another book.

Stephen D. Sugarman is a law professor at the University of California at Berkeley.

STATE OF CONFUSION

ACROSS STATE LINES: Applying the Conflict of Laws to Your Practice

By Robert A. Sedler
ABA Press; Chicago
216 pages; $39.95
($34.95—General Practice Section Members)

Reviewed by Larry Kramer

Conflict of laws ought to be an active and important field of law. It presents questions of great theoretical interest and provides practicing attorneys with an extremely useful tool. Being able to argue that another state's law applies adds a new dimension to any case and may convert a sure loser into a winner or vice versa.

Yet conflicts is neither active nor important. Rather it is an obscure, technical field that most lawyers find mystifying, frustrating and even a bit silly.

There are reasons for this, of course. Most of the blame lies with the academy, which has done so much to make conflicts analysis murky and difficult to understand. This is where Robert Sedler's book comes in. He provides a readable summary of conflict of laws that should be useful to lawyers who are unfamiliar with the ins and outs of the field, but who want a place to start.

A renaissance in conflict of laws will not occur until the bar starts to present sensible, persuasive conflicts arguments to the courts. Sedler's book provides an overview of the field that should help practicing attorneys begin to formulate these arguments.

Most of the book is devoted to choice of law, strategically the most important aspect of conflicts. Sedler provides succinct explanations of general principles like domicile, renvoi and depecage, as well as of the various theories that different courts use to analyze choice-of-law problems. He then devotes separate chapters to problems of tort, contract and property, substance and procedure, and family law. Along the way, there is a brief excursion into constitutional limitations on choice of law and a more lengthy discussion of judicial jurisdiction. There also is a chapter on recognition of judgments and full-faith-and-credit issues.

Throughout, the discussion is clear and informative, and it sets forth the principles fairly and accurately. If there is a problem with the book, it is the focus on results. Sedler asserts that "the courts that have abandoned the traditional approach tend to reach fairly uniform results in the cases that arise in practice, regardless of which modern approach to choice of law they are purportedly following." For this reason, he focuses the discussion on these most-frequently reached results.

This is unfortunate for several reasons. First, the results are less uniform than Sedler would have us believe. Certainly courts depart from Sedler's rules of thumb enough that diligent counsel could not count on them in giving advice. Second, and more important, merely knowing the most likely outcome is of limited use. Lawyers need to understand how the various approaches work and how to make arguments based on them. Sedler's assumption that approaches are unimportant because results are generally uniform leads him to overlook this task.

For lawyers whose clients prefer different results, or for lawyers whose clients want these results but who must answer arguments on the other side, the book is incomplete. Nonetheless, it provides a comprehensive introduction to the field that is well worth reading. ■

Larry Kramer is a law professor at the University of Chicago.