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## Book Review of Judging Jehovah's Witnesses: Religious Persecution and the Dawn of the Rights Revolution, by Shawn Francis Peter

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### **Body**

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#### **The Lawyer's Bookshelf**

**By Shawn Francis Peters. University of Kansas Press, Lawrence, Kan. 342 pages. \$34.95**

In the early 1940s there were some 40,000 Jehovah's Witnesses in the United States. The Protestant millennialist sect had taken form in the 1870s, and after World War I its leadership modified some of its distinctive beliefs and practices. Three proved to be critical for both the sect and American constitutional law.

One was the belief that millions of people who were not among the saints could nevertheless be saved and that Witnesses had a duty to preach the gospel to them aggressively. By the early 1930s the sect had come to regard such proselytizing as the highest form of worship. The second doctrine was that other religions were rackets that taught Satanic ideas. Protestant clergy were the most reprehensible men on earth, while the harlot Catholic Church was run by the wickedest organization of liars, murderers and gangsters that has ever cursed a planet. The third doctrine, announced in 1935, was that honoring any graven image was

idolatry and that the American flag was such an image. Saluting the flag, therefore, was a repudiation of the Creator.

Understandably, the Witnesses ran into hostility as they preached their gospel, and their plight worsened in 1940. Initially, they made themselves more visible and infuriating by expanding their tactics from door-to-door canvassing to public preaching on street corners. Then World War II, the stunning fall of France and the rapidly escalating expectation that the United States would enter the war intensified popular feelings about patriotism and the flag salute. Finally, the United States Supreme Court handed down its decision in **Minersville School District v. Gobitis**. There, the Court rejected the First Amendment claim of two Witness children who had been expelled from school for refusing to salute the flag. Writing for the Court, Justice Felix Frankfurter emphasized the need for judicial restraint and upheld the right of states to require the flag salute, stressing the positive contribution the practice made to inculcating patriotic impulses. The following months exploded in hundreds of incidents of mob violence and official persecution directed against Witnesses.

In *Judging Jehovah's Witnesses*, Shawn Francis Peters ably details this widespread abuse and tracks the determined efforts of Witnesses to seek relief in the courts. Witness children were not only thrown out of school, but their families were prosecuted, boycotted, denied relief benefits and threatened with loss of custody. Witnesses suffered discrimination at the hands of employers, police, the military and the courts. Those who were convicted of violating the draft laws received the harshest penalties of any group, for example, and, in Louisiana, a judge ordered a Witness attorney out of town at gunpoint. If you ever show your face to me again, he screamed, I'll kill you. While numerous factors contributed to the outpouring of abuse, Peters highlights the role of **Gobitis**. He cites a Southern sheriff who placidly watched a mob assault Witnesses: They're traitors - the Supreme Court says so.

Peters' valuable and well-written book is a useful balance to much literature on the First Amendment. Quite simply, it documents the everyday, practical and compelling significance of civil rights and liberties in a pluralistic society that would remain free, open and democratic. Although the book discusses most of the famous Witness cases that the Supreme Court heard, its strength lies in its focus on the streets, not the courts.

The book suggests a number of conclusions. One is that the persecution of Witnesses flowed from failures at every level and in every branch of government. Peters, in fact, overemphasizes the importance of **Gobitis**. Although it was a terrible mistake (rectified only three years later in **West Virginia Board of Education v. Barnette**), the Court bore but part of the overall responsibility for the massive breakdown of order and civility. As Peters points out, Witnesses were safe where local communities were tolerant and their authorities responsible. The Supreme Court was not, and can never be, the principal de facto force in safeguarding the civil rights and liberties of Americans.

A second conclusion is that the concept of judicial restraint is not only analytically inadequate but also misleading and often self-delusive. In spite of Justice Frankfurter's repeated insistence that in **Gobitis** he denied his personal values in order to apply the Constitution objectively, the fact was that he was deeply committed to the patriotic symbolism of the flag, absorbed by the crisis presented by the European war, and driven by a compelling need to prove his own Americanism. His opinion, like his career, confirms the truth that judicial restraint may flow from, and implement, subjective and personal values every bit as much as does judicial activism.

A third conclusion is that the expanded constitutional rights that Witnesses helped establish did not represent a triumph of ordinary or helpless individuals. The Witnesses were a relatively large and indefatigable group that included a number of courageous and dedicated attorneys, and the sect fought literally thousands of legal battles across the nation and over the course of decades. The American legal system, in other words, did not readily and effectively protect poor and abused individuals from even obvious and outrageous forms of persecution. Rather, it responded erratically and imperfectly to wholesale discrimination, violence and abuse. Moreover, it required a methodical campaign carried on for more than a quarter of a century by a large organization possessed of both resources and determination before the legal system responded adequately. The result was fortunate for us all, but the lesson is hardly one of triumphalism or complacency.

*Judging Jehovah's Witnesses* is a fine book that reminds us that the battle for civil rights and civil liberties is never won easily or with finality. Indeed, its lesson seems regularly forgotten. In 1988, Peters notes at the end of his book, George Bush ran for President of the United States by attacking his opponent

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for vetoing a bill that would have fined school teachers who failed to lead their classes in the Pledge of Allegiance.

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