The First One Hundred Justices: Statistical Studies on the Supreme Court of the United States by Albert B. Blaustein and Roy M. Mersky

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BOOK REVIEW


This study of the first one hundred United States Supreme Court justices contains some new and some old information.

The composite biography found in Chapter One provides some highly interesting information about Justices of the Court: only fifty-eight of the first one hundred justices had prior judicial experience; not until March 25, 1957, were all members of the Court law school graduates; twelve of the one hundred were sons of judges; eighty-nine were Protestants; seven were bachelors; and forty-eight died in office. Many similar informational tidbits are provided. Justice William O. Douglas leads the Court in many statistical items, including longest term of service, most opinions written, and most marriages. Chapter One also poses the question: "Is public service a valid prerequisite?" The authors note that Chief Justice Earl Warren never served as a judge before his appointment to the Court but was a County District Attorney, Governor of California, and a Vice-Presidential candidate. The authors omit in this chapter the fact that Chief Justice Warren served a term as Attorney General of California. Although they do include this information in a subsequent chapter, the failure to mention it at the more appropriate place is an annoying oversight.

Chapter Two rates the Justices: "The Best and the Worst." Portions of this information were previously published in Life\(^1\) and the American Bar Association Journal.\(^2\) Although the authors take great pride in listing their rating consultants, the fact that none of the authors of the monumental Oliver Wendell Holmes Devise history of the United States Supreme Court as Leon Friedman, Philip Kurland, and Gerald T. Dunn

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\* Redford, Redford & Gardner, Glasgow, Kentucky. B.S. Western Kentucky University, 1967; J.D. University of Kentucky, 1969.
\^1 Life, Oct. 15, 1971, at 52.
\^2 58 A.B.A.J. 1183 (1972).
served as consultants detracts somewhat from the authoritativeness of their rankings.

Kentuckians will recognize from the rankings the names of John M. Harlan and Louis D. Brandeis listed as two of the twelve great justices, Samuel F. Miller and Wiley B. Rutledge listed as two of the fifteen near-greats, Thomas Todd, Horace H. Lurton, and Stanley F. Reed listed as three of the fifty-five average, Robert Trimble as one of the six below average, and James C. McReynolds and Fred M. Vinson as two of the eight failures.

The authors state that "there are really no accepted criteria for measuring Supreme Court competence." The truth of this is vividly illustrated by comparing their ranking of Felix Frankfurter as one of the greatest justices with the assessment of Frankfurter biographer Joseph P. Lash: "[Frankfurter] was not one of the giants of the Court."

Chapter Three of the book, entitled "Selection of Capable Justices: Factors to Consider," was written by Thomas G. Walker and William E. Hulbary. The most interesting part of Chapter Three is the use of performance indicators as they apply to Chief Justice Warren Burger, who has himself repeatedly belittled the competence of trial lawyers. After examining Burger's background, Professors Walker and Hulbary conclude:

While his age at appointment (62) and ethnic background (Swiss/German) are similar to those Justices who have served well in the past, his family origins, (rural, farming), region (mid-western), religion (Protestant), education (University of Minnesota and St. Paul College of Law), and judicial experience (thirteen years) are factors which, over the history of the Court, have been associated with less than distinguished levels of performance.

Chapter Four provides information on individuals who were nominated for Court service but did not serve, for one reason or another. This chapter provides insight into the often

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4 J.P. Lash, From the Diaries of Felix Frankfurter 87 (1974).
intensely political aspects of the nomination process, although it compares unfavorably with an earlier article by William F Swindler. ⁶

Chapter Five tabulates the opinions in the first 412 volumes of the official Supreme Court reporter. Their tabulations end with a case decided on June 18, 1973. This is a disappointing discovery in a book carrying a copyright date of 1978.

An extensive portion of the book is reserved for tables contained in the appendix, which is actually longer than the textual material. The eleven tables there plus the selective bibliography contain a wealth of readily accessible information. The tables present a variety of data, ranging from historical information to court service information to information on individual opinions written by the respective justices.

The book is certainly a useful acquisition for legal and university libraries, but only an individual devoutly interested in the United States Supreme Court could justify spending $15.00 for so little new information.

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