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The Supreme Court in Current Literature

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THE SUPREME COURT IN CURRENT LITERATURE OVERVIEW, 1964-1974

ROY MERSKY and JENNI PARRISH

When Dr. Samuel Johnson observed that a dog's walking on his hinder legs may not be done well but one is surprised that it is done at all,¹ he might well have been contemplating the problem of preparing a roundup review of recent books ² on the Supreme Court. Can it be done well is not the question; but rather, can it be done at all? Indeed, can any valid generalizations be made about so diverse a body of literature?

The editors of the Supreme Court Historical Society's *Yearbook* have determined that such a review covering the current year's crop of Supreme Court-related titles can be a useful tool, and can serve as a valid springboard for more focused discussion. Thus it will become a regular feature of the annual *Yearbook*. For this first year, a tripartite approach will be taken. Part One will consist of a statistical breakdown of some of the major, pertinent titles published in the last dozen years.³ Part Two evaluates several of the multivolume sets produced during this period. Part Three concerns the major titles published from 1974 to the present.

PART ONE

Considering the output on a purely statistical level, some 301 titles were published from 1964-1967. For manageability's sake, they were divided into eleven categories. This was not an easy task in itself. Authors of books on the Supreme Court do not always think in categories, thus, the classification was arbitrary at times. To take one example, in Harvie Wilkinson's *Serving Justice; a Supreme Court Clerk's View* (New York: Knopf, 1974), the author describes the day-to-day workings of the Supreme Court and also Justice Powell's personality and his work before and since joining the Supreme Court. Therefore, it could have found its niche under both the categories, "Mechanics" and "Specific Justices." The latter category was chosen as it seemed more appropriate for the book as a whole.

Some explanation of the categorization process is in order. The reader is referred to the three tables entitled: "Books on the Supreme Court," "Specific Justices," and "Fundamental Rights." In the first table, "Historical" was the label given to titles dealing either with the development of a theme or themes over time (an obvious example: *The Oliver Wendell Holmes Devise History of the Supreme Court of the United States* (New York: Macmillan, 1971), or a specific personage and/or period (e.g., Alfred Cope's *Franklin D. Roosevelt and the Supreme Court* (Lexington, Massachusetts: Heath, 1969).

The category "Political" was employed when the work concerned the relationship between the Supreme Court and another branch of government. As the numbers in the first table indicate, this classification was used sparingly. An example is Samuel Krislov's *Supreme Court in the Political Process* (New York: Macmillan, 1965).

"Specific Justices" was one of the easier sub-topics to use, as the title alone usually made its appropriateness self-evident. Included here were books on one or more Justices (biographical and autobiographical works and critical analyses of their work on the Court) as well as books on specific nominees (e.g., two books on George H. Carswell⁴). Also included were collections of letters and papers of specific Justices. An example of a title fitting under this label is Hugo Black Jr.'s *My Father, A Remembrance* (New York: Random House, 1975).

"Minorities" was a difficult category to use. It was employed for titles like Arnold M. Paul's *Black Americans and the Supreme Court Since Emancipation: Betrayal or Protection?* (New York: Holt, 1972), which deals with the subject of segregation in a more general way than a book like Richard Kluger's *Simple Justice: the History of Brown v. Board of Education and*

Black America's Struggle for Equality (New York: Knopf, 1976) which was classified under "Specific Cases." Once again the arbitrariness of the whole process leaps out at the reader and the only justification which can be offered is that of necessity.

"Law Enforcement" looked like a promising term in the beginning but only two titles fell into that slot: Ronald Sokol's *Lawabiding Policeman: a Guide to Recent Supreme Court Decisions* (Charlottesville, Virginia: Michie, 1966) and Stanley Cohen's *Law Enforcement Guide to United States Supreme Court Decisions* (Springfield, Illinois: C. C. Thomas, 1971). As with all the titles, others might have fit this category but seemed better suited to other categories and so there they rest.

"Warren and His Court" is a category like "Specific Justices" which was very easy to fill. While there was a steady trickle of books on Warren and "his" Court from 1964-69, one finds a veritable flood in 1970, 1971, and 1972. This large volume of books following Chief Justice Warren's death is understandable, as is the relative dearth of titles in recent years as current attention shifts. This category took precedence in classifying the books over any other possibly suitable ones.

"Mechanics" seemed the best term to use for those books explaining the internal processes of the Supreme Court. This classification includes the appointing of Justices and the more or less day-to-day operations of the Supreme Court (e.g., Henry Abraham's *The Judiciary; the Supreme Court in the Governmental Process*, 3rd ed., (Boston: Allyn & Bacon, 1973).

"Constitution" was another fairly obvious heading under which could be grouped a steady stream of volumes over the years concerning what the Court has and has not done with that most important work, an obvious example being Wallace Mendelson's *The Constitution and the Supreme Court*, 2d ed. (New York: Dodd, Mead, 1965).

"Specific Cases" is fairly self-explanatory. Any book whose taking-off point was a specific case or a related group of cases was placed in this category regardless of where else it might fit. (For example, Stanley Kutler's *Privilege and Creative Destruction; the Charles River Bridge Case* (Philadelphia: Lippincott, 1971) was placed in this class though it could have fit under other categories).

"Social Science" was a fairly arbitrary category for what appeared to be a developing trend in legal scholarship. Titles like Abraham Davis' *United States Supreme Court and the Use of Social Science Data* (New York: MSS Information Corp., 1973) and Paul Rosen's *The Supreme Court and Social Science* (Urban: University of Illinois Press, 1972) are so bold about making the connection that they seem to call out for a category of their own.

Finally, "Fundamental Rights" was the label used for the fairly constant flow of books concerning the Constitutional guarantees which are the center of so much scholarly and emotional debate. Again the difficulty with overlapping appears: Michael Meltsner's *Cruel and Unusual; the Supreme Court and Capital Punishment* (New York: Random, 1973) could have fit other categories but was included here.

Once again Dr. Johnson's statement springs to mind and one wonders if the dog isn't trying the even more impossible feat of walking on its own two front legs.

PART TWO

Having considered the categorization of the vast quantity of available literature, it is appropriate to turn to several sets which by their size and scholarly content merit individual analysis. One of these is *The Justices of the United States Supreme Court 1789-1969: Their Lives and Major Opinions*, edited by Leon Friedman and Fred L. Israel, 4 volumes, (New York: Chelsea House Publishers in association with R. R. Bowker Co., 1969). This multivolume work includes biographies of ninety-seven Justices by thirty-eight authors, among whom are found

historians, practicing lawyers, law professors, political scientists, and journalists. Each biographical sketch is followed by one to three major opinions of that particular Justice--a feature which has both been criticized by some as unnecessary padding⁵ and justified by the editors as showing "the jurist in action . . ."⁶ The uneven quality of the biographies has also come in for a good deal of criticism, as has the price (originally \$110, now \$130).⁷

With so many contributors and the great diversity in the amount of information available on individual Justices, a marked contrast in the quality of the individual essays is almost inevitable. As to price, the problem of inflation's effect on law book publishing is one that is interesting, but outside the scope of this article. One feature praised by a number of critics⁸ is that portion of the appendix entitled "The Statistics of the Supreme Court." It is interesting in and of itself as a collection of data on ancestry, religion, education, occupational experience, and other areas of background information. At any rate, reviewers of this biographical dictionary almost unanimously agree that such a work was long overdue and that despite its deficiencies it is a valuable addition to the literature on this country's great jurists.⁹

Another work of monumental proportions *and aspirations is the Oliver Wendell Holmes Devise History of the Supreme Court of the United States* (New York: Macmillan).¹⁰ The general editorship of the set has been undertaken by Professor Paul A. Freund of Harvard Law School. Of the proposed twelve volumes (eleven covering the period 1790-1941, and the twelfth containing charts, photographs, biographical data on the Justices, and other materials related to the history of the Court), three have been published. The project was launched by Congress in 1955 (P. L. 84-246) at which time the Oliver Wendell Holmes Devise Fund (consisting largely of Holmes' bequest to the nation of \$263,000 at his death in 1935) and the Permanent Committee of the Oliver Wendell Holmes Devise were established. The Committee consists of the Librarian of Congress *who serves* as chairman *ex officio* and four members appointed by the President. The Committee administers the Fund and the chief project has been the publication of this multivolume set, with each volume being written by a scholar recognized as an expert on the particular time period covered.¹¹

The first volume, Antecedents and Beginnings to 1801 (1971) by Julius Goebel portrays the Court from its beginnings in 1790 up to the time when John Marshall became Chief Justice. One of its major themes is the development of the concept of the judicial review for constitutionality. Leaping forward in time, the next volume *published was volume six, Reconstruction and Reunion 1864-88* (1971) by Charles Fairman. It deals with the struggle between the executive and legislative branches over the reconstruction of the southern states after the Civil War, and the Supreme Court's effect on this struggle. Published three years later, *the fifth volume, The Taney Period 1836-64* (1974) by Carl B. Swisher, covers the years between Marshall's death and the end of the Civil War.^{11a}

The numerous reviews published on each volume make analysis here not only unnecessary but undesirable. The major concern of this review is with the place of this set in the literature on the Supreme Court. However, since it is only one-fourth finished, it would be ill advised to pass judgment on the work as a whole. The idea behind it, "to give a comprehensive and definitive survey of the development of the Court from the beginning of the nation to the present,"¹² is as valuable and worthwhile as *the concept behind the Justices of the Supreme Court of the United States*. Both are reference works in a sense, gathering a wealth of information into a fairly manageable form to provide starting points for future scholars whose research will delve more deeply into the obscure areas. Indeed those who have criticized the volumes published thus far because of their preponderance of detail but lack of analysis seem to overlook this underlying concept.

As John J. Gibbons points out¹³ there are two possible deficiencies in such a large work: 1) a scholar so enmeshed in one era may lose sight of the influence of earlier Court decisions on those of the time period which he covers, unnecessarily breaking the continuity among the volumes; and 2) each volume may reflect too heavily its author's topical interests. As Gibbons

indicates, Swisher's book does suffer somewhat from both deficiencies.¹⁴ It is hoped that the scholars working on the eight volumes to come will take note of their predecessor's weaknesses as well as their strengths. Whatever the ultimate vote on the complete set, its having been undertaken in the first place is laudable and along with the *Justices of the Supreme Court* of the United States, it will provide a major contribution to the scholarship on the Supreme Court.

A third set worthy of note is the trilogy, *Court and Constitution* in the Twentieth Century, (Indianapolis and New York: Bobbs-Merrill) by William F. Swindler. *The first two volumes, The Old Legality, 1889-1932 (1969) and The New Legality, 1932-1968 (1970)* tell the history of constitutional law developed case by case in the Supreme Court from the laissez-faire-dominated late nineteenth century to the end of the civil liberties-oriented Warren era. Skillfully integrated with this legal history is the political, economic, and social background of the times, giving both books a larger focus than one might expect from a treatise on constitutional law. But there is more. Described by one reviewer as "a kind of world almanac of facts of constitutional history,"¹⁵ the five appendices in each volume provide a tremendous reference source in their own right. One appendix in each provides biographical sketches of Justices and other Court personnel during the period covered including also Attorneys General and Solicitors General; another appendix includes proposed constitutional amendments; a third gives the statutes pertaining to the federal judiciary; a fourth includes selected acts of Congress; and a fifth provides annotations of all the major constitutional cases of the era in chronological order. In addition each volume includes an excellent bibliography.

Equally well written, but taking a somewhat different tack, the *third volume of the trilogy, A Modern Interpretation (1974)*, is intended as a general guide to the Constitution. It includes two separate commentaries on the Constitution, the first being a reprint of the text with background notes illustrating the changes in interpretation over more than 200 years; the second part comprises an analysis of each clause of the Constitution based on post-1937 Supreme Court decisions. Considered as a whole, this three-part work marks a very valuable and extremely readable contribution to the literature under consideration here.

A fourth multivolume set to be noted is *The Supreme Court of the United States Nominations 1916-1972* edited by Roy M. Mersky and J. Myron Jacobstein (Buffalo: Hein, 1975). These eleven volumes in twelve books include the Senate Judiciary Committee's hearings and reports on successful and unsuccessful nominees, beginning with Louis D. Brandeis in 1916 and ending with George H. Carswell in 1970. They contain materials which have not been available to the public before now. As one reviewer has noted: "Now Supreme Court scholars can have easier access to materials essential in delineating one of the significant nonjudicial processes relating to American constitutional law."¹⁶ As with the other works considered, there are omissions here,¹⁷ but without doubt, the set is a valuable addition to the needed reference materials of the Supreme Court scholar.¹⁸

Fifth in the line-up of major undertakings is *The Papers of John Marshall* edited by Herbert A. Johnson (University of North Carolina Press, for the Institute of Early American History, 1974). So far, only one volume of the proposed ten has been published. It spans the years 1775-1788 and covers Marshall's early career from his service in the Culpeper Minuteman Battalion to his part in the debates at the Virginia ratifying convention. As noted by the editors, a need for this collection has been felt since 1906 when the project was originally proposed. Over three-fourths of the first volume's papers have never before been published.

Supplementing the paucity of personal correspondence (Marshall did not keep letterbooks or draft copies of his letters) is a wide variety of other papers giving clues to his personal life including muster roles, student law notes, legislative petitions and bills, and letters sent by him to John Adams, James Monroe, and others. Perhaps the most important single document is his Account Book, which records his financial transactions, thus telling much about his private and professional life. With only one-tenth of the series published no final judgment

can be made, but if succeeding volumes follow their predecessor's excellent example, another great contribution to American legal and historical literature is to be anticipated.

A similar effort has been made in *The Correspondence and Public Papers of John Jay 1763-1826*, 4 volumes, edited by Henry P. Johnston (Lenox Hill Pub. & Dist. Co., 1970).¹⁹ The first major biography of Jay, containing portions of his correspondence, was edited by John Jay's son, William Jay.²⁰ Because it has long been out of print and therefore generally inaccessible, the need for the present work is apparent. Fortunately, Jay, unlike Marshall, retained drafts of most of his personal correspondence and these have been carefully preserved by his descendants and in public and private collections. The same praise that was given to the effort to collect Marshall's papers must be bestowed upon this collection of Jay's papers. Both will be invaluable starting points to future historians and legal scholars concerned with the times and lives of our early Chief Justices.

PART THREE

The final part of this review will concern itself primarily with some of the major titles published since 1974. Although a careful attempt has been made to include all major titles, oversights are inevitable. Apologies for any such omissions are extended here in advance. Besides reading these recent books there are other means of maintaining current awareness of the Court's activities. Those *deserving mention* range from *The Docket Sheet*, a bimonthly news bulletin reporting on the "insiders" at the Supreme Court to publications which group and analyze recent cases according to *legal topics*.²¹ Published annually, *The Supreme Court Review*²² contains scholarly articles which discuss recent cases and trends of the Supreme Court. The editor, Philip B. Kurland, has reprinted articles *which* originally appeared in the Review in book form according to topic (e.g., *The Supreme Court and the Judicial Function* (1975) includes seven Review articles on this subject dating from 1960 to 1971).²³ A somewhat similar effort was made in a series of books entitled *The Supreme Court in American Life* published by Free Press under the general editorship of Professor Samuel Krislov of the University of Minnesota. Of the nine books originally planned, six²⁴ have been published dealing with the political, economic, and human implications and effects of recent Supreme Court decisions. These types of projects are relatively rare and when they are bravely launched they often reach too small a portion of the potential audience to make them financially viable.

Monographs, then, are certainly not the only source, and often they are not even the best source, for serious analysis of the Court's work. However, those titles listed below are worthy of consideration from readers who are seriously interested in the Supreme Court. The major emphasis is on description rather than criticism and thus the form chosen as the most appropriate is that of the annotated bibliography.

A few preliminary comments are in order. There are a number of interesting biographical and autobiographical treatments of Supreme Court Justices in this group.²⁵ In addition, several books are written by non-lawyers. These make valuable contributions to the literature as they provide a varied perspective on problems which lawyers may tend to *view too narrowly*. Richard Kluger's *Simple Justice* is one of the most striking examples which can be used to illustrate this idea. Also found in this group are a number of authors with strong political viewpoints who are not at all shy about expressing them (e.g., Robert Macey's *Our American Leviathan Unbound* and Philippa Strum's *The Supreme Court and "Political Questions": A Study in Judicial Evasion*). A final observation is that although this collection of recent books is not lacking in volumes which attempt to explain the conceptual functioning of the Supreme Court (e.g., *David Rhode's and Harold Spaeth's Supreme Court Decision Making*), it does not include any book which really lays bare the internal working of the Supreme Court. Perhaps the one book which *comes closest* is Harvie Wilkinson's *Serving Justice* and yet even with this

volume there seems to be an invisible line beyond which the former clerk to Justice Powell will not go.²⁶ Those who do not know continue the search; those who do know maintain discretion. The mystery of the Supreme Court *remains intact*.

Abraham, Henry J. Justices and Presidents: Political History of Appointments to the Supreme Court. (New York: Oxford University Press, 1974).

As a history of the exercise of one presidential power, i.e., the power to appoint Supreme Court Justices, this book includes parallel accounts of the presidency and of the Supreme Court from the appointment of John Jay to Thurgood Marshall. Heavy use of statistical data without sufficient analysis, poor documentation, too little emphasis on the Senate's power to veto, and too much emphasis on the political aspects of the appointment process deny this title a place on the list of great scholarly contributions, although it does make *interesting reading*.

Baker, Leonard. John Marshall: A Life in Law. (New York: Macmillan, 1974).

This is a very thorough and somewhat idealized treatment of the life of the fourth Chief Justice of the Supreme Court. What it lacks in scholarly analysis is more than compensated for by its easy readability for both *lawyers and non-lawyers*.

Ball, Howard. The Vision and the Dream of Justice Hugo L. Black. (University, Alabama: University of Alabama Press, 1975).

This short work is, in the author's words, a "biography of . . . [the] . . . convictions" of Justice Hugo Black (Preface, p. v). Examining Black's views on substantive and procedural due process and on first amendment freedoms, it serves as a useful introduction to the views of this "judicial `giant.'" (Preface, p. vii).

Barth, Alan. Prophets with Honor: Great Dissents and Great Dissenters in the Supreme Court. (New York: Knopf, 1974).

Giving the facts of the cases, the characters of the litigants and the Justices who dissented, this book details six important dissenting opinions spanning half a century and traces the progress of these dissents until a majority on the Court was persuaded to the original dissenters' views. Such overrulings occurred during the Warren years for five of the six cases and the author certainly gives *that Court due credit*.

Black, Hugo, Jr. My Father, a Remembrance. (New York: Random House, 1975).

Perhaps wishing to be judged solely on the basis of his written opinions, Justice Black requested that, upon his death, all of his judicial notes and memoranda be destroyed. Hugo Black, Jr. fulfilled that request, but he has chosen to reveal much about his father in this largely affectionate memoir which may be used by future historians in passing judgment *on this great jurist*.

Countryman, Vern. The Judicial Record of Justice William O. Douglas. (Cambridge, Massachusetts: Harvard University Press, 1974).

Written by a former law clerk to Justice Douglas, this book covers Douglas' voting record in all major cases covering thirty constitutional issues and gives excerpts from the Justice's opinions.

The Epilogue, "On Judging a Judge," includes some interesting observations on evaluating the performance of a jurist; "Justice Douglas passes the test *with flying colors*" (p. 381).

Cox, Archibald. *The Role of the Supreme Court in American Government*. (New York: Oxford University Press, 1976).

Taken from lectures delivered at All Souls College at Oxford, this very short book makes some interesting and valid points about the Supreme Court and its treatment of the Constitution. Professor Cox does assume a general familiarity *with the topic in his readers*.

Douglas, William O. *Go East, Young Man*. (New York: Random House, 1974).

Covering Douglas' early life up to his appointment to the Supreme Court in 1939, this autobiographical collection of anecdotes has some surprising omissions (e.g., virtually nothing is said about his wives and children), some curious inconsistencies (e.g., after all the praising of egalitarianism, Douglas proposes a very elitist college system), and an amazing surfeit of camping stories. For a discussion of his years on the Supreme Court one must look forward to the second volume of *Douglas' autobiography*.

Elliott, Ward E. Y. *The Rise of Guardian Democracy: The Supreme Court's Role in Voting Rights Disputes, 1845-1969*. (Cambridge, Massachusetts: Harvard University Press, 1974).

Beginning with an overview of voting rights in this country from 1776 to the mid-nineteenth century, the author proceeds to analyze voting rights reforms since that time and the Supreme Court's role in effecting such reforms. Elliot sees the law professors, the deans of law schools, the editors of the national press, and others, all of whom he labels "Guardians," as having a profound influence on the Court starting in the mid-twentieth century, especially in the area of voting rights reforms, and he questions the advisability of allowing *this group to have so much sway*.

Funston, Richard. *Judicial Crises: The Supreme Court in a Changing America*. (New York: Wiley, 1974).

Taking six major problem areas in contemporary American society, from race to crime to obscenity, the author reprints one law review or periodical article or chapter from a book to introduce each section and follows with six to eleven opinions of *recent cases dealing with the topic*.

Goldberg, Dorothy. *A Private View of a Public Life*. (New York: Charterhouse, 1975).

Relating the private life story of a wife of a former Supreme Court Justice, Dorothy Goldberg provides an interesting perspective on Goldberg's career, both on and off the Court. She tells a very human tale, one which may never be told by the former Justice, who "has an *allergy to writing memoirs*" (*Preface, p. v*).

Graglia, Lino A. *Disaster by Decree: The Supreme Court Decisions on Race and the Schools*. (Ithaca and London: Cornell University Press, 1976).

Focusing on busing, this controversial book explores the *history of school desegregation since the landmark decision of Brown v. Board of Education of Topeka in 1954*. According to Graglia, the prohibition of racial discrimination in that case has developed into compulsory integration

which the Court seeks to accomplish by the use of racial discrimination to increase racial mixing. As a result of the Brown decision, the author believes that the Court has become a "seemingly omnipotent instrument for effecting fundamental social changes without obtaining the consent of the American people or *their elected representatives*" (p. 14).

Kluger, Richard. Simple Justice: The History of Brown v. Board of Education and Black America's Struggle for Equality. (New York: Knopf, 1976).

Written by a non-lawyer, this work is both a study of the key lawsuit in one of America's most troubling conflicts, and a history of the mistreatment of America's black population. This thorough and very human account provides an *important volume in American legal history*.

Lash, Joseph P. *From the Diaries of Felix Frankfurter.* (New York: Norton, 1975).

Following a brilliant biographical essay by Lash (another non-lawyer) on a Justice who has been too little written about, this book contains a number of excerpts from Frankfurter's diary, many of which are not flattering to him. (Perhaps one can now better understand Justice Black's command to his son.) Lash has done an *impressive job of annotating these fragments*.

Levy, Leonard. Against the Law: the Nixon Court and Criminal Justice. (New York: Harper & Row, 1974).

Analyzing some three dozen decisions on criminal justice handed down by the Burger Court, this book covers a number of problems relating to civil liberties guaranteed by the Bill of Rights. If the author's disclaimer that the book's title is neutral (p. xiv) seems questionable, it is not hard to accept his statement that this is not a book favorable to the "Nixon Court" (p. xiii). Despite some of Levy's controversial conclusions, the *book is a scholarly contribution to the literature*.

Lushy, Louis. By What Right? A Commentary on the Supreme Court's Power to Revise the Constitution. (Charlottesville, Virginia.: Michie, 1975).

Focusing on the period 1937 to the present, this book interprets a number of Supreme Court decisions dealing with civil liberties guaranteed by the Bill of Rights, most notably in the area of racial equality. The author is especially critical of the Burger Court but is also quick to point out some of the major headaches with which the Court *must deal* (e.g., *an impossibly heavy caseload*).

Macey, Robert L. Our American Leviathan Unbound: The Judicial Perversion of American Freedom. (Brooklyn: Gaus, 1974).

Quoting liberally from the Bible at every turn, this very short book decries the passage by Congress and the upholding by the Supreme Court of the Social Security Act of 1935. According to the author *such evil doings have made America a welfare state*.

MacKenzie, John P. *Appearance of Justice.* (New York: Scribner's, 1974).

According to this author, a legal reporter for the Washington Post, appearing "just" is considered as important for a judge as actually being just. By this he means that they should not be involved in financial dealings which create conflicts of interest with the cases they judge. The author scrutinizes the behavior of a number of judges and Justices and sets out clear, if perhaps unrealistic, *criteria for judging the "appearance of justice."*

Meador, Daniel J. *Mr. Justice Black and His Books*. (Charlottesville: University Press of Virginia, 1974).

Starting with an excellent essay of Justice Black's tastes in literature, this book goes on to give an alphabetical listing *and a listing by subject of the titles in Black's personal collection*.

The Supreme Court and the Religion Education Controversy: A Tightrope to Entanglement. (Durham, North Carolina: Moore, 1974).

Spanning half a century of case law, this short book develops a historical overview of the major decisions of the Supreme Court involving religion and education. The authors emphasize and criticize the development of the "excessive government entanglement" test as it has been applied to *religion-education controversies*.

Rohde, David W., and Spaeth, Harold J. *Supreme Court Decision Making* (San Francisco: Freeman, 1976).

Having presented most of the material in this book in lecture form to large undergraduate classes studying the Supreme Court, the authors put together a good introduction to the United States judiciary in general and to the Supreme Court in particular. The path by which cases go to the Supreme Court and the factors which *play a part in judicial* decisions are thoroughly explored.

Schubert, Glendon. *Judicial Mind Revisited*. (New York: Oxford University Press, 1974).

Using computer science methods and certain psychological theories, this author, a political scientist, has attempted to analyze the political ideologies of the Justices on the Supreme Court under Chief Justices Vinson and Warren using their voting records as a base. *This book is a review of the conclusions reached in its predecessor volume, The Judicial Mind (1965), based on more recent data and more sophisticated techniques*.

Strum, Philippa. The Supreme Court and Political Questions: A Study in Judicial Evasion. (University, Alabama: University of Alabama Press, 1974).

Examining only domestic applications of the political questions doctrine, the author, a political scientist, exhibits great skepticism about the Supreme Court's method of constitutional adjudication and about its avoidance of difficult constitutional issues by labelling them "*political questions*" which are outside the scope of judicial review.

Thomas, William R. *The Burger Court and Civil Liberties*. (Brunswick, Ohio: King's Court Communications, 1976).

Following a brief look at the shaping of the Supreme Court, "Nixon style," the author explores the Court's handling in recent years of the rights of the accused, freedom of expression, and equal protection of the laws. His conclusion is that "*the days of looking to the Supreme Court for the protection of civil liberties are over*" (Preface).

Walker, Mary M. *The Evolution of the United States Supreme Court*. (Morristown, New Jersey: General Learning Press, 1974).

Supplementing the textbook *American Government: The Facts Reorganized* (1974), this short volume traces the development of the Supreme Court, *coordinating it to different periods of American history*.

Wasby, Stephen L. *Continuity and Change: From the Warren Court to the Burger Court*. (Pacific Palisades, California: Goodyear, 1976).

Focusing on the last years of the Warren Court and the early years of the Burger Court the author examines what policies have developed, especially in *regard to civil liberties during this period* of transition.

Wilkinson, J. Harvie, III. *Serving Justice; A Supreme Court Clerk's View*. (New York: Charterhouse, 1974).

Combining a section on the mechanical day-to-day workings of the Supreme Court, an affectionate memoir of Justice Powell, and an analysis of the work of the Burger Court, the author, a former clerk to Justice Powell, has *compiled a most perceptive, if not scholarly, work on the modern Court*.

Wolfman, Bernard. *Dissent Without Opinion: The Behavior of Justice William O. Douglas in Federal Tax Cases*. (Philadelphia: University of Pennsylvania Press, 1975).

Dividing the tax cases in which Justice Douglas participated into four periods, the author makes a statistical analysis of Douglas' voting record in the thirty-four years covered. The conclusion, a bit hastily reached, is that Justice Douglas, by his contradictory **voting record and his dissents without** opinions, has refused to judge in tax cases (p.138).

Endnotes

1 1 Boswell's *Life of Johnson* 463 (Powell's revision of Hill's ed. 1934). The use of the original chauvinistic quotation in full was deemed too inauspicious a way to begin this review.

2 For the sake of space, consideration here is limited to monographs. However, it should be noted that a large amount of material on the Supreme Court is to be found in periodical articles. Two quite different examples of many which could be mentioned *are the excellent* articles on varied aspects of the Supreme Court *irregularly published by American Heritage*, and the first number in each volume (November issue) of the *Harvard Law Review* which is devoted to analysis of the work of the preceding term. Another source of information not covered in this review are reprints of older classics. *Some worthy examples, all of which have been recently reprinted by Da Capo Press, include: The Miscellaneous Writings of Joseph Story (W. Story ed. 1852); The Constitutional Decisions of John Marshall (J. Cotton ed. 1905); Chief Justice John Marshall: A Reappraisal (W. Jones ed. 1956); F. Weisenburger, The Life of John McLean, A Politician on the United States Supreme Court (1937).*

3 *Two other bibliographical sources for books written about the Supreme Court are: A Selected Bibliography on the History of the United States Supreme Court (R. Mersky comp., unpublished); Harvard Law Library. Elihu Root Room. Suggested Reading List (1955-1956).*

4 These two books were: R. Harris and G. Carswell, *Decision (Nomination of G. Harrold Carswell)* (New York: Dutton, 1971); *United States. Congress. Senate Committee on the*

Judiciary., George Harrold Carswell. *Hearings, Ninety-First Congress, Second Session* (New York: *Da Capo*, 1973) .

5 *Ireland*, *Book Review 15 American Journal of Legal History* 224 (1971).

6 *The Justices of the Supreme Court of the United States 1789-1969: Their Lives and Major Opinions* (L. Friedman and F. Israel eds.) (New York: *Chelsea House Publishers* in association with R. R. *Bowker Company*, 1969) I:vi.

7 *Ireland*, *Book Review*, *supra* note 5, at 225; *Murphy*, *Book Review*, 37 *Missouri Law Review* 577-78 (1972).

8 *Kurland*, *Book Review*, 69 *Michigan Law Review* 778, 781 -82 (1971); *Levy*, *Book Review*, *New York Times*, Jan. 11, 1970, ¶ 7, at 30; *Wright*, *Book Review*, 64 *Law Library Journal* 265 (1971).

9 This set by Friedman and Israel is only the latest of a number of *compilations concerning the lives of Supreme Court Justices including the following: G. Van Santvoord. Sketches of the Lives and Judicial Services of the Chief Justices of the Supreme Court of the United States* (New York: *Scribner*, 1854); *Sketches of the Lives, Times and Judicial Services of the Chief Justices of the Supreme Court of the United States* (2d ed. W. Scott, Albany: *Weare C. Little and Company*, 1882); H. Flanders, *The Lives and Times of the Chief Justices of the Supreme Court of the United States* (Philadelphia: *Johnson and Company* 1881); F. Rodell, *Nine Men: A Political History of the Supreme Court of the United States from 1790 To 1955* (New York: *Random House*, 1955).

10 This collection too, has predecessors worthy of mention: H. Carson, *The Supreme Court of the United States: Its History* (Philadelphia: *John Y. Huber Company*, 1891); C. Warren, *The Supreme Court in United States History* (rev. ed.) Boston: *Little, Brown and Company*, 1926 .

11 In addition to the publication of this multivolume history, the Permanent Committee has established and continues to supervise the Oliver Wendell Holmes Devise Lectures, under which a distinguished legal scholar gives two or three lectures in one year at a college or university. This series is not to be confused with the *lecture series honoring Holmes sponsored by the Harvard Law School*. For a bibliographical listing of each, see *Two Lecture Series Honoring "The Great Dissenter," 10 Notes From The Tarlton Law Library* no. 5-6, pp. 1-5 (1975). For a brief history of the *Oliver Wendell Holmes Devise*, see *Mersky*, *Book Review*, 8 *Criminal Law Bulletin* 67 (1972).

12 *J. Goebel*, *Antecedents and Beginnings to 1801* (New York: *Macmillan*, 1971), XI.

13 *Gibbons*, *Book Review*, 75 *Columbia Law Review* 222 (1975).

14 *Id.*

15 *Frank*, *Book Review*, 58 *American Bar Association Journal* 394 (1972).

16 *Powe*, *The Senate and the Court: Questioning a Nominee*, 54 *Texas Law Review* 891 (1976).

17 *Id.*, at 900-01.

18 The delineation of standards for potential Supreme Court Justices, as well as a determination of the boundaries of the Senate's "advice" role under the Constitution in regard to such nominees are points which *were considered in the Symposium on Advice and Consent on Supreme Court Nominations held on November 21, 1975 (Subcommittee on Separation of Power of Senate Committee on the Judiciary, 94th Cong., 2d Sess., Advice and Consent on Supreme Court Nominations (Comm. Print 1976)).* It is to be hoped that this little-explored area of Supreme Court scholarship will be *pursued further.*

19 This title was also reprinted (four volumes in one) *in 1971 by Da Capo Press.*

20 W. Jay, *The Life of John Jay* (1833).

21 When the Court recesses for *the summer*, *The United States Law Week* (Washington, D.C.: Bureau of National Affairs) publishes articles entitled Review of Supreme Court's Work. Each week's installment covers a different field of law and briefly summarizes the opinions from the recent term *pertaining to that field.* *The Lawyer's Cooperative Publishing Company* publishes a bound volume each year entitled *Decisions of the United States Supreme Court* in which the decisions of the recent term are summarized.

22 This has been published since its beginning in 1960 *by the University of Chicago Press.*

23 *Two other titles published by the University of Chicago Press in 1975 are: Free Speech and Association: The Supreme Court and The First Amendment; and Church and State: The Supreme Court and The First Amendment.*

24 *The six titles are: S. Krislov, The Supreme Court and Political Freedom (1968); A. Miller, The Supreme Court and American Capitalism (1968); M. Shapiro, The Supreme Court and Administrative Agencies (1968), R. Scigliano, The Supreme Court and The Presidency (1971); J. Schmidhauser and L. Berg, The Supreme Court and Congress: Conflict and Interaction 1945-1968 (1972); R. Morgan, The Supreme Court and Religion (1974).*

25 Once again it should be noted that periodical and other non-monographic *literature greatly adds to this area, but unfortunately cannot be discussed fully* here. One notable example is: Gossett, My Father the Chief Justice, *Supreme Court Historical Society Yearbook, 1976, pp. 7-15.*

26 Some writers do not recognize the invisible line. See Totenberg, Behind the Marble, Beneath the Robes, *New York Times*, Mar. 16, 1975. ¶ 6 (Magazine), at l5.

27 There were 64 books on "Specific Justices" but two would not fit in this table because they *were on a number of Justices. These were: A. Dunham, Mr. Justice* (Chicago: University of Chicago Press, 1964); *J. Flynn, Famous Justices of The Supreme Court* (New York: Dodd, Mead & Co., 1968).