

2-1957

## Recent Judicial Biographies: A Composite Review

Otis P. Dobie

Follow this and additional works at: <https://scholarship.law.vanderbilt.edu/vlr>



Part of the [Judges Commons](#), and the [Supreme Court of the United States Commons](#)

---

### Recommended Citation

Otis P. Dobie, *Recent Judicial Biographies: A Composite Review*, 10 *Vanderbilt Law Review* 403 (1957)  
Available at: <https://scholarship.law.vanderbilt.edu/vlr/vol10/iss2/12>

This Article is brought to you for free and open access by Scholarship@Vanderbilt Law. It has been accepted for inclusion in *Vanderbilt Law Review* by an authorized editor of Scholarship@Vanderbilt Law. For more information, please contact [mark.j.williams@vanderbilt.edu](mailto:mark.j.williams@vanderbilt.edu).

## RECENT JUDICIAL BIOGRAPHIES: A COMPOSITE REVIEW

OTIS P. DOBIE\*

An English wag of the last century remarked that Death, for judges, had acquired a new terror—inclusion in Lord Campbell's biographical series. Obviously, a facetious quip, as it is well known that thespians on the public stage, Their Honors included, savor publicity, preferably of the cloyingly sweet variety. Currently, many Campbells have been active.

### *Charles Evans Hughes*

The great Chief Justice of our time has been considerably recalled in the period under review. Pusey,<sup>1</sup> in a lengthy readable treatment that does not emphasize the legal, views Hughes as a liberal of circa 1910 who was uncomfortable but acquiescent amid the 1930's progressions. Interesting tidbits include a moving account of Hughes' mission to Holmes to request his resignation; bar letters to White complaining of the vagueness of Holmes' opinions; the friendship of Hughes with White and Harlan; Hughes' concern over the tendency of the New Deal brethren to expansively construe statutes and approve state taxes on interstate commerce movements. Pusey accepts, with some reservation, Hughes' denial of pressuring Roberts at the height of the Court-FDR crisis. Mason<sup>2</sup> warns that the Pusey book was much prepared under the Hughes eye. Mason sees Hughes as basically conservative and playing along with McReynolds & Co. as long as possible. Perkins,<sup>3</sup> in a single volume, also not emphasizing the legal, paints Hughes as an early century liberal trying to correlate the New Deal with its forerunners. Rodell<sup>4</sup> believes that Hughes got a tip-off of the FDR court plan, and actively generalised the opposition. He suspects that Hughes was embittered by his presidential defeat and the mudslinging of the confirmation as Chief Justice.

All writers give Hughes high marks as an administrator who kept trials and court conferences running smoothly and tautly.<sup>5</sup> Frankfurter<sup>6</sup> compares Hughes to Toscanini. Looking at the portraits of

---

\*Professor of Law, University of Louisville.

1. CHARLES EVANS HUGHES. By Merlo J. Pusey. New York: MacMillan, 1951. Pp. 741.

2. Mason, *Charles Evans Hughes: An Appeal to the Bar of History*, 6 VAND. L. REV. 1 (1952).

3. CHARLES EVANS HUGHES AND AMERICAN DEMOCRATIC STATESMANSHIP. By Dexter Perkins. Boston: Little, Brown & Co., 1956. Pp. xii, 190.

4. NINE MEN. By Fred Rodell. New York: Random House, 1955. Pp. xii, 332. This volume, ostensibly a work on the Supreme Court *qua* institution, is equally, and more joyously, biographical.

5. However, note some comment, HARLAN FISKE STONE: PILLAR OF LAW. By Alpheus T. Mason. New York: Viking Press, 1956. Pp. xiii, 809.

6. Frankfurter, *Chief Justices I Have Known*, 39 VA. L. REV. 883 (1956).

Hughes, one is reminded of Charles James Fox' statement that "no man could possibly be as wise as Lord Chancellor Thurlow looked."

*Oliver Wendell Holmes, Jr.*

Holmes' law may fade, as some of it has already, but he doubtless will long remain a favorite of biography, thanks to his "character" and his off-court quotables. There is endless fascination in the august Justice who punctured pomposities, read French novels, and went to burlesque shows; the stalwart of the old order who benignly fraternized with the Figaro-ish young trumpeters of the new; the superb writer so endearing to the literateurs who write biography. Moreover, akin to Thomas Jefferson, George Santayana, and Bernard Shaw, Holmes said something for everybody, epigrams of such vagueness and diversity as to seemingly link with any doctrine (the writer recently read of him linking to existentialism). This last, some years back, brought charges that Holmes was linked to political totalitarianism and legal and moral anarchy. Much of recent writing on Holmes has been disciple refutation. For instance, Rodell<sup>7</sup> explains that, in his Hobbesian, analytical, cynical passages, Holmes is merely recognizing what is, not what he thinks ought to be. Wyzanski<sup>8</sup> regards Holmes' whole life as reflecting democratic faith in man's capacity to resolve his problems. Mendelson<sup>9</sup> applauds Holmes for bringing scepticism and humility to spark needed change in a dogmatic age. Biddle<sup>10</sup> traces Holmes' scepticism and pragmatism to his upbringing in the period of the flowering of New England. Hofstadter<sup>11</sup> praises Holmes' recognition of the relativity of time, place, legal relations, and of forces spiritual, material, and political. Lucey,<sup>12</sup> one of the earlier critics, confirms his thesis that much in Holmes smacks of dominant force, brutal Darwinism, and uncharted pragmatism.

The Holmes-Laski Letters<sup>13</sup> have been extensively reviewed elsewhere. This writer merely records his own dominant impression which was one of pathos—the tragedy of an ancient who, more than most, had isolated himself in a world of books save for a few young "intellectuals" who paid him disciple-like court and amused him with their ideas and talk. As one reviewer put it, Laski was one of these few remaining windows on the world. His letters inundate

7. Rodell, *Justice Holmes and His Heeklers*, 60 YALE L.J. 620 (1951).

8. Wyzanski, *The Democracy of Holmes*, 7 VAND. L. REV. 311 (1954).

9. Mendelson, *Holmes: Humility, Scepticism, and Democracy*, 36 MINN. L. REV. 343 (1952).

10. Biddle, *Mr. Justice Holmes*, in MR. JUSTICE (a composite of Supreme Court vignettes, handsomely bound and portraited). Edited by Dunham and Kurland. Chicago: University of Chicago Press, 1956. Pp. 229.

11. Hofstadter, *Justice Holmes: Exponent of Relativity*, 42 A.B.A.J. 19 (1956).

12. Lucey, *Holmes: Liberal, Humanitarian, Democratic?* 39 GEO. L.J. 523 (1951).

13. HOLMES-LASKI LETTERS. Edited by M. deWolfe Howe. Cambridge: Harvard University Press, 1952. Pp. xvi, 1481.

Holmes with book reviews, travelogues, gushing praise and tart comment on personages, and somewhat exhibitionist accounts of the doings of Harold Laski. Holmes is appreciative and amused, but hard pressed to rejoin by refurbishing old thoughts and recollections. Neither displayed the letter-writing verve of Holmes' old favorite, Horace Walpole.

Finally, Konefsky,<sup>14</sup> whose volume struck this reader as somewhat over-long and repetitious, essays the formidable task of dealing with three principal questions: the explanation of the team of Holmes and Brandeis; the legal legacy of the pair; the endurance of the legacy. He gives more or less the stock answer to the team query: that Holmes' detachment, scepticism, "constitutionally, the electorate can go to hell if it wants to" could join Brandeis' crusading zeal for social justice to uphold the legislation of the time. To this, Konefsky, clearly a Brandeis partisan, adds the implication that Brandeis was the stronger character of the two and persuaded Holmes. He sees Holmes' primary legacy in his judicial respect for legislation and his reluctance to judicially interdict natural political and economic developments, while Brandeis' is his belief in the efficacy of legislation to achieve social justice and his urgency of constant modernizing of legal fundamentals. Konefsky finds the legacy effective since New Deal days, but under going some re-orientations recently. In economic thinking, Holmes is related to Adam Smith and Brandeis to John Stuart Mill.

#### *Louis D. Brandeis*

Brandeis' centenary has just been observed, but the memorial material was not available for this review. However, Frankfurter<sup>15</sup> recently saluted the moral grandeur of Brandeis, his compassionate devotion to the mass of mankind and his implementation of American democracy with his insights into political and economic institutions. Freund<sup>16</sup> observes that while Brandeis upheld modern social legislation generally, perhaps he had personal qualms, as his philosophy tended to prefer private rather than state action. Goldman<sup>17</sup> has collected the "sayings" of Brandeis on various subjects. In the preface, Goldman, a rabbi, suggests that Brandeis correlated the traditions of American democracy and Judaism. Rodell<sup>18</sup> marks Brandeis as an austere and ruthless liberal of the early century.

---

14. *THE LEGACY OF HOLMES AND BRANDEIS*. By Samuel J. Konefsky. New York: Macmillan, 1956. Pp. ix, 307.

15. Frankfurter, *The Moral Grandeur of Justice Brandeis*. N.Y. Times, Nov. 11, 1956, Magazine Section, p. 26.

16. Freund, *Mr. Justice Brandeis*, in *MR. JUSTICE*, *op. cit. supra* note 10.

17. *THE WORDS OF JUSTICE BRANDEIS*. By Solomon Goldman. New York: H. Schuman, 1956. Pp. xxi, 185.

18. See note 4 *supra*.

*John Marshall*

The great Chief Justice was widely memorialized in 1955. The President and the Chief Justice urged the application of Marshall principles of ordered liberty and freedom with stability to the ideological conflicts of today.<sup>19</sup> Corwin<sup>20</sup> was intrigued by the conservative Marshall framing theories of federal power for the use of latter-day "radicals." Rodell<sup>21</sup> sees Marshall as a self-made man who boldly moulded law to make an America congenial to his kind.

Marshall's alma mater, William and Mary, has published a composite volume of anniversary comment.<sup>22</sup> The Chief Justice hails Marshall's contributions to international law and economic federalism. Carl Swisher reminds that Marshall's conservatism accurately reflected the prevailing views of his time, and that his neglect of common law precedents was due, not to ignorance, but to the dispute over the application of the common law to American law; David Mays discusses the precedents for *Marbury v. Madison*. Author N. Holcombe wonders if Marshall was conservative or liberal; he had no great respect for existing institutions; he indicated little faith in popular government, relying on the separation of powers for protection against tyranny; he sat out the drive for a bill of rights. Joseph Dorfman examines Marshall's economic views: Marshall favored paternalistic state aid to western settlement; he was a hard money man who frowned upon public debt and debtor relief legislation. Donald Morgan doubts that the Marshall Court was the one-man affair of legend, especially after 1824 when the Jacksonian appointees dissented and made Marshall compromise his views.

This last point dovetails with Crosskey<sup>23</sup> who advances the thesis that, contrary to legend, Marshall did not lead his court to strong Federalist results, but rather fought a rear guard retreat in the face of advancing anti-Federalist views, and that, again contrary to legend, the Federalists wished a strict construction of the Constitution, whose nationalistic terms they had procured, while the anti-Federalists wished a loose construction to read in their tenets. Frankfurter<sup>24</sup> hails Marshall for his radiating nationalism.

*Spencer Roane*

Whether by accident or design, the *Harvard Law Review*, in

19. Eisenhower, *The Spirit of John Marshall: Crusader for Ordered Liberty and Justice*, 41 A.B.A.J. 1005 (1955); Warren, *Chief Justice John Marshall: A Heritage of Freedom and Stability*, 41 A.B.A.J. 1008 (1955).

20. Corwin, *John Marshall, Revolutionist in Spite of Himself*, 104 U. PA. L. REV. 3 (1955).

21. See note 4 *supra*.

22. CHIEF JUSTICE MARSHALL, A RE-APPRAISAL. Williamsburg: College of William and Mary, 1956. Pp. xxi, 185.

23. Crosskey, *John Marshall and the Constitution*, 23 U. CHI. L. REV. 377 (1956).

24. Frankfurter, *Chief Justice Marshall*, 69 HARV. L. REV. 217 (1956).

the general period of a Marshall anniversary, appropriately published a note on his great foil, the Jeffersonian Chief Justice of Virginia who matched the great Marshall decisions almost case by case with cogent decisions to the contrary.<sup>25</sup> As the note points out, had Adams not made his midnight appointment of Marshall, Jefferson probably would have appointed Roane Chief Justice of the United States.

*John Marshall Harlan*

The recent race cases, and the appointment of his grandson to the high court, have sparked interest in Harlan I. Abraham<sup>26</sup> pictures Harlan as an emotional man of strong feelings who put his all into his opinions, and often read them dramatically. Conservative in economics, liberal in civil rights.

*Robert H. Jackson*

Writing after the untimely death of Jackson, Frankfurter<sup>27</sup> has Jackson reflecting his native small city America with its easy prosperity, tolerance, distrust of authority. Rodell<sup>28</sup> dubs Jackson, in Galsworthian terms, the man of property who, after a career in political "radicalism," on reaching the court reverted to his basic conservatism. Fairman<sup>29</sup> enumerates the primary characteristics of Jackson as an easy writing style, insistence on adequate records from the lower courts, concern for accurate statutory interpretation, fear of the search power, federalism in economics but not in criminal law. Jaffe<sup>30</sup> airs Jackson's use of the commerce and full faith and credit clauses to further economic nationalism. Freund,<sup>31</sup> after reference to Jackson's latter-day remarks derisive of "judicial activism," recalls his own activism in certain fields such as equal protection and freedom of religion. Weidner<sup>32</sup> finds Jackson more "restraintist" than "activist." McDonough<sup>33</sup> laments Jackson's failure to clarify the foreign divorce muddle, despite valiant effort.

*Roger B. Taney*

Swisher<sup>34</sup> classifies the Jacksonian Chief Justice as a product of

25. Note, 66 HARV. L. REV. 1242 (1953).

26. Abraham, *Harlan, a Justice Neglected*, 41 VA. L. REV. 371 (1955).

27. Frankfurter, *Justice Jackson*, 55 COLUM. L. REV. 435 (1955), 68 HARV. L. REV. 937 (1955).

28. See note 4 *supra*.

29. Fairman, *Justice Jackson*, 55 COLUM. L. REV. 445 (1955).

30. Jaffe, *Justice Jackson*, 68 HARV. L. REV. 940 (1955).

31. Freund, *Individual and Commonwealth in the Thought of Justice Jackson*, 8 STAN. L. REV. 9 (1955).

32. Weidner, *Justice Jackson and the Judicial Function*, 53 MICH. L. REV. 567 (1955).

33. McDonough, *Justice Jackson and Full Faith and Credit to Divorce Decrees*, 23 U. CHI. L. REV. 860 (1956).

34. Swisher, *Mr. Chief Justice Taney*, in MR. JUSTICE, *op. cit. supra* note 10.

states rights and provincialism, which makes him anathema to moderns. Rodell<sup>35</sup> tilts a lance for Taney, praising him for decisions favorable to the small citizens of the day. But, relative to Negroes, his plantation rearing made him reactionary.

*Felix Frankfurter*

"Liberals" have tended to deplore Frankfurter in recent years. Rodell<sup>36</sup> paints Frankfurter somewhat darkly as a sometime liberal who has retreated into form, etiquette, and continental dialectics, from robust American statesmanship. Frank<sup>37</sup> believes that some justices of the high court were thrown into a trauma of hesitation by the Court crises of the 30's. Mendelson<sup>38</sup> regards Frankfurter as making a sincere across-the-board effort to apply the Holmes policy of giving rein to legislative solutions, and having considerable respect for history and precedent. This policy, in Holmes' era of liberal legislation, made Holmes appear liberal. The same policy, in Frankfurter's era of relatively conservative legislation, makes Frankfurter appear conservative. Fortunately, Frankfurter is exceedingly able to take care of himself in any battle of publicity. In a memorial to Marshall,<sup>39</sup> Frankfurter analyzed himself, in Bagehotian terms, as an old-fashioned liberal who believes in the application of our humane and gradualist traditions to problems not amenable to quick and precipitate solutions.

*William O. Douglas*

Rodell,<sup>40</sup> most sympathetic to Douglas, highlights his expanding concept of civil rights and his continuation on the high court of the Brandeis flair for unravelling economic complexities. Any impatience with the details of law is excused as justified. Regret is expressed that Douglas' superb executive talents are somewhat wasted on the Court. Epstein,<sup>41</sup> likewise, applauds Douglas' civil rights dynamics.

*James Wilson*

Smith,<sup>42</sup> in a concise, popularly written biography, traces Wilson from his native Scotland to his unfortunate end as a Supreme Court justice fleeing his creditors. Along the way, however, this uncanny

35. See note 4 *supra*.

36. *Ibid.*

37. Frank, *Court and Constitution: the Passive Period*, 4 VAND. L. REV. 400 (1951).

38. Mendelson, *Justice Frankfurter and the Process of Judicial Review*, 104 U. PA. L. REV. 295 (1954).

39. See note 24 *supra*.

40. See note 4 *supra*.

41. Epstein, *Justice Douglas and Civil Liberties*, 1951 WIS. L. REV. 125.

42. JAMES WILSON: FOUNDING FATHER. By Charles P. Smith. Chapel Hill: University of North Carolina Press, 1956. Pp. xiii, 394.

Scot had enjoyed a remarkable career: trumpeter of the Revolution, founding father, pioneer American law teacher whose jurisprudence lectures were attended by the great of the day, unfortunate speculator in western lands.

*Harlan Fiske Stone*

Mason,<sup>43</sup> the sometime biographer of Brandeis, has just released a fat and interesting volume on Stone. Early in the book, Mason pictures Stone circa 1912 as a Columbia law professor, Republican conservative, and lawyers' lawyer ardently defending the courts against charges by men such as Brandeis that they were using outworn legal theories to emasculate needed social legislation, the professor deriding the dogooders, sociologists, and political fadists. By the 1920's, Stone is ready to acknowledge social justice as one test of good law. But, only on reaching the high court was Stone ready to embrace rather cautiously the tenets of modern liberalism. Mason tends to contribute the conversion to Holmes. However, by 1937, Stone, unlike the arch-New Deal brethren, was ready to call a halt to the progression.

The book rather interestingly takes the reader behind the scenes of the high court to view human foibles; the occasional flare-ups over opinion assignments; the difficulty of fashioning opinions that could muster a majority; the deletion of some of Holmes' more imaginative flights; the alertness of the Justices to bar any impugment of their own previous formulations; occasional repercussions from the Justices' off-court disclosures to intimates (Stone, apparently, was a frequent offender prior to becoming Chief Justice); justices' concern over the professional and public reception of their decisions. Stone's tendency to write special opinions when voting with Holmes and Brandeis is explained: he often found Holmes' opinions too cryptic and Brandeis' too ruthless and involved.

On becoming Chief Justice, Stone introduced a town meeting atmosphere in the court conferences. This permitted greater consideration of cases, but also made for discursiveness and development of strong differences of opinion. Apparently, Stone thought that Hughes had tended to favor certain Justices in opinion assignments, and he attempted a more equitable distribution, but soon reverted to the Hughes pattern, favoring Douglas, Frankfurter, and Roberts. The Court evidently had great difficulty with the Communist and the Military Tribunal cases. Fear for the erosion of civil rights is said to have prompted Stone's controversial footnote in the *Carolene Products* case, urging a preferred position for civil rights *vis-a-vis* economic rights.

Rodell<sup>44</sup> suggests that there was a bit of rivalry between Stone and

---

43. See note 5 *supra*.

44. See note 4 *supra*.

Frankfurter for the role of the Holmes-Brandeis mantle. Dunham<sup>45</sup> notes Stone's sincere attempt to avoid "personal predilections" in the New Deal cases, some of which he regretted.

*Owen J. Roberts*

Recent writing on Roberts centers on the much-discussed question of whether he was pressured to change his approach at the height of the Court-FDR contest. Frankfurter,<sup>46</sup> in a memorial to Roberts, after characterizing Roberts as a modest, retiring, lawyers' lawyer who purposely wrote narrowed, unprovocative opinions, relays an explanation from Roberts himself that he was not pressured; that he had resolved to change his approach prior to the crisis, and that the *Parrish* case was delayed in release by the illness of Stone. Griswold<sup>47</sup> notes that Roberts was a long-time lawyer's lawyer who deprecated the introduction of social science materials into the law. Griswold also concludes that the court records relative the dates of the *Tipaldo* and *Parrish* cases lend support to the Roberts story relayed to Frankfurter, above.

*The Cousins Hand*

This formidable pair, who wrote so much of the outstanding lower federal court law of our time, were fulsomely saluted as they approached retirement. At an American Law Institute dinner honoring Learned, Judge John J. Parker read the Hand opinions as not only laying down great law but reflecting the greatness qualities of honesty, courage, kindness, and a deep sense of justice. Whitney North Seymour posed civilization itself as the boundary of Hand's intellectual horizon. Frankfurter warned against losing the man in the legend.<sup>48</sup> Lancaster<sup>49</sup> stresses Learned's distrust of the "judicial activism" concept. Clark<sup>50</sup> distinguishes Learned and Augustus: Learned as brilliant, eloquent, speculative, and dramatic; Augustus as wise, unswerving, less emotional or dramatic. Dilliard<sup>51</sup> has collected some of the choicer writings of Learned in a concise, handsomely bound volume.

*Hugo L. Black*

The progress of Black from controversial newcomer to senior justice of the high court has been hailed by several writers. Douglas<sup>52</sup> attrib-

45. Dunham, *Mr. Justice Stone*, in *MR. JUSTICE*, *op. cit. supra* note 10.

46. Frankfurter, *Mr. Justice Roberts*, 104 U. PA. L. REV. 311 (1955).

47. Griswold, *Mr. Justice Roberts*, 104 U. PA. L. REV. 332 (1955).

48. Note, 37 A.B.A.J. 502 (1951).

49. Lancaster, *Learned Hand and the Limits of Judicial Discretion*, 9 VAND. L. REV. 427 (1955).

50. Clark, *Augustus Noble Hand*, 68 HARV. L. REV. 1113 (1955).

51. *THE SPIRIT OF LIBERTY*. Edited by Irving Dilliard. New York: Knopf, 1952. Pp. xxvii, 262.

52. Douglas, *Mr. Justice Black*, 65 YALE L.J. 449 (1956).

utes to Black a passion for facts, a diligent scholar's distrust of general propositions, and a liberal's respect for civil rights. Rostow<sup>53</sup> observes the following stars in the "constitutional universe" of Black: leaving application of interstate commerce controls to the legislatures, especially, Congress; and "activist" Court monitoring of legislation relative to civil rights; close scrutiny of executive action. Frank,<sup>54</sup> after opining that Black had amply fulfilled Senator Norris' prediction that he would represent the common man on the Court, finds Black occupying a somewhat lonely position on the Court today as a "liberal" of the 1930's vintage. Rodell,<sup>55</sup> a Black fan, hails him as the intellectual leader of the present Court, capable of super-Holmesian eloquence, but at times tending to become too academic.

#### *Fred Vinson*

The Truman Chief Justice has been under some attack by "liberal" commentators for his court's re-orientation of free speech law and its more cautious appeals policy in procedural due process cases. Rodell<sup>56</sup> is vigorously critical on these scores. However, he credits Vinson with a broad concept of federal power, an heritage from his long pre-court federal career. Frank<sup>57</sup> also notes Vinson's strong federal government slant, and that, generally, he wrote curt, practical, conciliatory opinions. Frank doubts that information is yet available on how far Vinson influenced his Court.

#### *George Sutherland*

Paschal<sup>58</sup> poses Sutherland as the intellectual leader of the conservative wing of the Supreme Court in the 20's-30's. His conservatism derived from his personal temperament, his formative years in the period West, and his devotion to the teachings of Herbert Spencer and Thomas Cooley. On occasion, when he could recall from his Senate days investigatory facts on a subject, he could be "modern." Relative to foreign affairs and war, he was ready to concede broad powers to the federal government.

#### *Joseph P. Bradley*

Fairman<sup>59</sup> gives Bradley, rather than Waite, credit for the Court result in the Granger cases of the 1870's such as *Munn v. Illinois*.

53. Rostow, *Mr. Justice Black*, 65 YALE L.J. 451 (1956).

54. Frank, *Mr. Justice Black*, 65 YALE L.J. 454 (1956).

55. See note 4 *supra*.

56. *Ibid.*

57. Frank, *Fred Vinson and the Chief Justiceship*, 21 U. CHI. L. REV. 212 (1954).

58. Paschal, *Mr. Justice Sutherland*, in MR. JUSTICE, *op. cit. supra* note 10. See also MR. JUSTICE SUTHERLAND: A MAN AGAINST THE STATE. By Joel F. Paschal. Princeton: Princeton University Press, 1951. Pp. xii, 265.

59. Fairman, *Mr. Justice Bradley*, in MR. JUSTICE, *op. cit. supra* note 10.

*Frank Murphy*

Fahy<sup>60</sup> notes that Murphy came to the high court without much academic or judicial experience, but with a well-formed political philosophy of liberalism acquired during a long and varied political career. Specifications of his liberalism included broad protection of citizen civil rights, strict construction of subpoenas of all types, judicial scrutiny of police procedures. Weiss<sup>61</sup> distinguishes Murphy's opinions by their feel for the human, individual or group, equations and interests involved.

*Mahlon Pitney*

Levitan,<sup>62</sup> noting that Pitney was assigned many of the great labor union cases of his time, the decisions being against the unions, concludes that Pitney was not against unions per se, but merely, like many lawyers of his time, concerned over their power potential *qua* giant organizations and their susceptibility to "radical" action. He was sympathetic to workman's compensation legislation.

*Horace Gray*

Davis and Davis<sup>63</sup> portray Gray as a learned Boston lawyer, aloof, highly analytical, a stickler for cohesion and manners who was a terror to fuzzy or breezy counsel. At times an upholder of federal power, at other times an upholder of state power. He once coldly heard President Arthur castigate one of his opinions.

*Wiley Rutledge*

Stevens<sup>64</sup> depicts Rutledge as a slow, careful thinker and writer, his opinions being thorough and, more than most, exploratory of the opinions of the courts below. A composite memorial Note in the *Iowa Law Review* has the Chief Justice, the Attorney-General, and the Solicitor-General speaking of Rutledge as a careful, painstaking craftsman who saw constitutional problems as accommodations of power conflicts.<sup>65</sup>

*Lemuel Shaw*

Levy<sup>66</sup> emphasizes the pioneer work in carrier law of the eminent Nineteenth-Century Chief Justice of Massachusetts. Inevitably, in a

60. Fahy, *The Judicial Philosophy of Justice Murphy*, 60 YALE L.J. 812 (1951).

61. Weiss, *Justice Murphy and the Welfare Question*, 53 MICH. L. REV. 541 (1955).

62. Levitan, *Mahlon Pitney—Labor Judge*, 40 VA. L. REV. 733 (1955).

63. Davis and Davis, *Mr. Justice Gray: Some Aspects of His Judicial Career*, 41 A.B.A.J. 421 (1955).

64. Stevens, *Mr. Justice Rutledge*, in MR. JUSTICE, *op. cit. supra* note 10.

65. *Memorial Remarks in the Supreme Court*, 36 IOWA L. REV. 591 (1951).

66. Levy, *Chief Justice Shaw and the Formative Period of American Railroad Law*, 51 COLUM. L. REV. 327 (1951). See also *THE LAW OF THE COMMONWEALTH AND CHIEF JUSTICE SHAW*. By Leonard W. Levy. Cambridge: Harvard University Press, 1957. Pp. viii, 383.

time when the primary concern was to get the roads built, Shaw conferred considerable powers on the railroads, but he entered caveats which could be used as basis for the later needed regulations of the roads.

#### CONCLUSION

The reviewer wishes to offer excuses to any biography writers of the period covered whose material is omitted. Such omission may be due to unavailability, cumulativeness, or doubt of the biographical nature of the material. The reviewer also humbly apologizes in advance to any writer who may feel that his work has been wrongly summarized due either to the reviewer's denseness or his excessive condensation. Finally, in all respectfulness, the reviewer promises any judges "covered" that, so far as he is concerned, they may sit or rest in peace for some time to come.