

Tulsa Law Review

Volume 1 | Issue 1

1964

Book Reviews

Steven P. Frankino

James L. Sneed

Follow this and additional works at: <https://digitalcommons.law.utulsa.edu/tlr>



Part of the [Law Commons](#)

Recommended Citation

Steven P. Frankino, & James L. Sneed, *Book Reviews*, 1 Tulsa L. J. 103 (2013).

Available at: <https://digitalcommons.law.utulsa.edu/tlr/vol1/iss1/17>

This Book Review is brought to you for free and open access by TU Law Digital Commons. It has been accepted for inclusion in Tulsa Law Review by an authorized editor of TU Law Digital Commons. For more information, please contact megan-donald@utulsa.edu.

BOOK REVIEWS

AN AUTOBIOGRAPHY OF THE SUPREME COURT

Edited and with an introduction by Alan F. Westin.
New York: The Macmillan Co. 1963. PP 475. Price \$7.50.

Mr. Justice Frankfurter put it this way: "You cannot tell the quality or the importance of a man on the Supreme Court solely from his opinions." Alan Westin has applied the same principle to the Court as an institution. This "autobiography" is an anthology of out-of-Court commentary by United States Supreme Court Justices. The Justices speak out on legal questions, politics, other members of the Court, broad movements in law and society, and on the Court itself. No matter what the subject might be, the Supreme Court as a part of our political and judicial tradition is the primary object of elucidation. This collection, then, is an attempt to tell the quality and importance of the Supreme Court apart from its opinions.

We read an autobiography not so much to get at the truth of facts or events, but to discover attitude, viewpoint, character, belief and other indications of the subjective man. While an autobiography can be crucial in understanding a man, corporate "autobiographies" are seldom helpful. The Supreme Court is an exception. Its internal management, functioning, and the genesis of its opinions are hidden from public view. They are locked in *sanctum sanctorum* of the conference room. This collection of comments by members of the Court speaking off the bench during their tenure is important in that it allows us to enter the conference room. The institution cannot write its own autobiography but its constituent members, the Justices from Jay to Warren, have painted a penetrating and oftentimes entertaining portrait of this "storm centre."

When the lawyer lays aside the United States Reports, texts on Constitutional Law, and legal and political treatises he has an incomplete picture. To add another aspect to our understanding we can look to this "informal account of the growth and development" of the Court. These out-of-Court comments have

been available before. The value of this book is that Mr. Westin has organized and presented them with skill and discrimination.

In his introduction Mr. Westin traces the history of commentary by Justices and the attitudes of the Justices to such comments. This is a fascinating account of means taken to solve the dilemma of speaking freely in the public forum without violating the essentials of judicial discretion. In the early years Federalist judges campaigned from the stump for candidates of their choice and used charges to grand juries on the circuit to comment on important political and legal matters. The most important count in the impeachment of Mr. Justice Chase was his inflammatory charge to a Baltimore jury upholding the Alien and Sedition Acts and condemning the Jeffersonians. Reaction to this dragging of the ermine in political mire resulted in what has been styled as "judicial lockjaw". Yet the most discrete of Justices has a boiling point as is demonstrated in two selections by Chief Justice Marshall defending his decision in *McCulloch v. Maryland*.

Mr. Westin concludes his analysis of the conflict between free speech and judicial lockjaw with this comment on the recent Court:

" . . . Justices Douglas, Brennan, and Frankfurter spoke often and in substantively important fashion. Justices Black, Whitaker, and Stewart spoke less often. Justice Clark speaks primarily about the formal internal practices of the Court when he discusses judicial affairs. Justice Harlan speaks occasionally, in sober and guarded fashion. Mr. Chief Justice Warren is a constant speaker, but generally in the tradition of the broad, ceremonial commentator rather than in the Douglas-Brennan-Frankfurter manner."

The collection itself consists of thirty-eight selections from the writings and speeches of such as John Marshall, Joseph Story, David Brewer, Charles Evans Hughes and such contemporary Justices as Jackson, Clark, Frankfurter, Brennan, Douglas, Black and Chief Justice Warren. The selections are divided into three parts: comments by Justices of the historic period from 1790-1941, biographical comments on fellow Justices by other members of the Court, and, finally, comments by members of the contemporary Supreme Court.

In the historical selections are some fascinating materials. Chase's invective charge to grand jurymen in a Baltimore inn and Iredell's charge on liberty and sedition are interesting comments on controversial political matters. Brewer's "The Nation's Safeguard" represents the floodtide of the Court's protection of property and capital. For example, noting that an Englishman's home could not be violated even by the King, Justice Brewer turned his attention to the United States:

"Here, there is no monarch threatening trespass upon the in-

dividual. The danger is from the multitudes—the majority, with whom is the power; and if the passage quoted is the grandest tribute to the liberty which existed in England, I would thus paraphrase it to describe that which should prevail under this government by the people: The property of a great railroad corporation stretches far away from the domicile of its owner, through State after State, from ocean to ocean; the rain and the snow may cover it; the winds and the storms may wreck it; but no man or multitude dare touch a car or move a rail. It stands secure in the eye and in the custody of the law, as the purposes of justice in the thought of God.”

This is one of many interesting examples of the judicial omniscience which gave rise to the era of rule by injunction. The historical section ends with excellent selections by Chief Justice Hughes and Justices John Clarke and James Byrnes on the judicial crises of the New Deal.

Part Two contains several biographical sketches of Justices by their fellow Justices. There is a warm personal tribute to Chief Justice Marshall by his friend Joseph Story, a fascinating eulogy by Benjamin R. Curtis on the death of Chief Justice Taney which is a welcome commentary on the stature and contribution of a great jurist who is too often solely associated with his unfortunate decision in the *Dred Scott* case. There are also tributes to the first Justice Harlan by Brewer, to Holmes by Frankfurter, Hughes by Roberts, and Brandeis by Justice Jackson. The most interesting of the pieces in this section is “Justice Roberts and the ‘Switch in Time.’” In this selection Justice Frankfurter comments on the celebrated reversal of decisions on the constitutionality of New Deal legislation.

“To have known ‘what really happened’ while many historians and political scientists were weaving elaborate myths about the Court’s switch in 1937 must have been a heavy burden. Justice Frankfurter laid a bit of this load down with an address printed here, certainly one of the most fascinating and revealing “disclosures” in out-of-Court commentary.”

The final 225 pages of this “autobiography” are by far the most valuable to the practising lawyer and the student of our constitutional processes. Entitled simply “Part Three/The Contemporary Supreme Court” the fifteen selections are out-of-Court comments by Warren, Frankfurter, Black, Douglas, Clark, Jackson and Justice Brennan. Here are collected important statements on the very fundamentals of our judicial process by the men charged with the responsibility of decision. These selections alone make Mr. Westin’s anthology an important addition to every lawyer’s library. The titles recite their scope but it would be dif-

ficult to adequately express their depth and significance. Mr. Westin has summarized it this way:

“Partly to dispel the myths about the Court’s practices and partly to give listeners an inside feeling (without violating proprieties), the Justices today have developed a rather uniform word portrait of how a case is decided from application for certiorari until announcement of opinion in open court.”

Not only does this remarkable collection present an invaluable aid to the lawyer’s theorizing about or “second guessing” the Court, but it also lays bare the great cleavage in the contemporary Court. The so-called “liberals” and “conservatives” are presented and the massive collision between the two positions is sharply drawn. These differences, which reached such impassioned and eloquent airing in *Baker v. Carr*, should not give critics of the Court any succor. When the last page of Mr. Westin’s collection is closed it is well to recall Mr. Chief Justice Hughes’ admonition:

“The history of scholarship is a record of disagreements. And when we deal with questions relating to principles of law and their application, we do not suddenly rise into a stratosphere of icy certainty.”

Whether an individual Justice spoke often out of Court as did Justices Brewer and Douglas, or whether they declined to speak as did Justices Cardoza and Brandeis, or spoke seldom, as Justices Story, Holmes and Chief Justice Marshall, Mr. Westin finds that the comments made are significant. I feel certain the reader will agree.

Steven P. Frankino

Assistant Professor of Law
Catholic University of America

CORPORATION LAWYER: SAINT OR SINNER?

By Beryl Harold Levy. New York: Chilton. 1961. PP. 175. Price \$4.00.

Corporation Lawyer: Saint or Sinner? is not a law book; it is a sociological analysis of contemporary practitioners of the law. It does not concern law; it is about lawyers. As such, the book must be categorized with such social studies as Vance Packard’s *Status Seekers*, David Riesman’s *Lonely Crowd* and William Whyte’s *Organization Man*.

Like Packard, Riesman and Whyte, Beryl Harold Levy explores an area of modern life in an attempt to formulate a general explanation of certain patterns and habits of professional behavior which he has observed among lawyers. Like Packard, Riesman and Whyte, Levy constructs a stereotyped man to personify the

general characteristics of a group, in this case, a professional group. Unlike Packard who ridicules his Status Seeker, Riesman who pities his "other directed" man and Whyte who scorns his Organization Man, Levy neither praises or condemns his Corporation Lawyer.

The book's title presents an excellent summary of its contents since the author first draws a portrait of the corporation lawyer—who he is, what he does and how he does it—and then presents grounds on which the reader, if he chooses, may formulate his own opinions and pass his own judgment.

Using the literary method of contrast and juxtaposition, Levy outlines his picture of the corporation lawyer by a comparison between the Illinois lawyer of Lincoln's time who spent his time in the courtroom and the contemporary metropolitan lawyer whose practice centers around the conference room in his office. Whereas the Illinois lawyer often concerned himself with jury cases regarding the ownership of farm animals, the "big league" urban lawyer is seen counselling corporate clients in intricate problems of business organization, financial arrangements, taxation and security regulation. The 19th century lawyer speaks a simple language as contrasted to the office lawyer's vocabulary which reflects the complexities of federal legislation and rules and regulations of numerous alphabetized government agencies.

With the IRS, the FTC, the ICC, the SEC, etc. and the Delaware General Corporation Law the office lawyer has little time or interest left for torts, criminal law and domestic difficulties, the result being that much of the legal service once handled by lawyers like the Illinois lawyer is now handled by Public Defenders and Legal Referral Services. Yet, criminal law and torts form the foundation of individual rights and liberties. Levy seems to wonder if the individual has been forgotten by the modern lawyer.

The corporation lawyer "belongs" to the large firm and much of the book is devoted to an analysis of such major New York "law factories" as Sullivan and Cromwell, Davis Polk and Cravath with their dozens of partners and scores of associates. Against a background of the inevitable specialization and departmentalization Levy's main concern is with the men in the firms and here the thoughts of Riesman and Whyte become quite noticeable.

Biographical sketches of the founders and builders of the firms illustrate how much these men resemble the founders and builders of giant corporations—men of dynamic vigor and ambition as well as professional competence. Like Whyte's corporate executive, the heads of the large firms are seen as men able to run the organization without becoming tied to the organizational way of life. These are the "inner directed" men. On the other hand, the men on the lower rungs of the firm's ladder resemble the organization men of the corporations by whom the firm is retained—personally and professionally conforming and "other

directed". This makes sense since the law firm's associate's best friends are probably corporate junior executives.

Levy, as a student of Professor Elliott Cheatham, is naturally concerned with the state of the legal profession, yet he neither portrays the corporation lawyer as a saint or as a sinner. If judgment is to be passed, the reader must do it himself and the reader should see that an absolute and unqualified application of either label would be without justice for the corporation lawyer is both a saint and a sinner—he is a saint in his professional competence but he is a sinner in his neglect of the lawyer's traditional responsibility as the protector of individual rights and liberties.

*Attorney at Law
Tulsa, Oklahoma*

James L. Sneed