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IN MEMORIAM
MARVIN SCHICK, PIONEER IN THE STUDY OF COURTS

*Jeffrey B. Morris**

Marvin Schick, an important voice in the Orthodox Community, a devoted and effective advocate for protecting the legal rights of Orthodox Jews and an unusually effective institution-builder of Jewish schools, died last April. I never met Doctor Schick in person, but I did “meet him” through his scholarship on American courts, which also deserves recognition.

At the time Schick wrote his doctoral dissertation in political science at New York University, scholars had devoted very little attention to the study of courts with, of course, the enormous exception of the Supreme Court of the United States. Although studies of other important courts ought to have come from law school professors, historians, and political scientists, they had not. Legal academics tended to have been occupied with discrete legal problems, involving close analysis of judicial decisions, statutes, jurisdiction, and judicial administration.

Lack of technical legal knowledge had the effect of steering historians away from legal history and legal subjects with several notable exceptions. Ventures into America’s legal history had been Supreme Court dominated and legal records used (valuably) by those primarily concerned with social, economic and constitutional history and in judicial biographies.

Until the 1960s, political scientists had contributed little to the study of the lower federal courts. This was just beginning to change around 1960 with the visible resistance of lower courts in the South to school desegregation.¹ Studies of article-length began appearing in

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¹ J.W. PELTASON, FIFTY-EIGHT LONELY MEN: SOUTHERN FEDERAL JUDGES AND SCHOOL DESEGREGATION (1961); *See also* J. W. PELTASON, FEDERAL COURTS IN THE POLITICAL PROCESS (1955).

political science journals on the lower federal courts, although most of the work by political scientists were limited in reach, consisting of attempts to study the relationship of background variables to decision-making, to demonstrate the existence of blocs on those courts, and considering the process of appointment of judges.²

The first political scientist to focus in depth and portray a rounded portrait of a lower federal court was Marvin Schick. His dissertation³ and, then, his book⁴ examined the U.S. Court of Appeals for the Second Circuit during its golden decade, producing a rounded portrait of the court at work.

Schick had chosen to write on what was probably the strongest court in the United States during the period from 1941 to 1950, when its six judges included both Learned Hand, already a legendary figure, Jerome Frank, a leading legal realist, and Charles E. Clark, the central figure in drafting the Federal Rules of Civil Procedure. The three others on that bench—Thomas W. Swan, Augustus Hand, and Harrie B. Chase—were unusually strong judges. Schick mined a treasure trove of primary sources available in the Yale Law School library—the memoranda among the judges of the Court of Appeals and their correspondence with each other. Thus, Schick did a great deal more than regurgitate decisions or focus on a narrow issue. His book offered thoughtful portraits of each of the judges, discussion of the formal and informal decision-making processes of the Court, analysis of the business before the Court and of its major decisions as well as its relationship with the Supreme Court of the United States. Thus, Schick produced a serious study of the work of a major court during a very important decade of its history. He portrayed the work of a court in the round to give the reader insight into the court's history, its internal procedures and their relation to decision-making. While doing so, he also considered some of the Court's major decisions, the intellectual

² Richard J. Richardson & Kenneth N. Vines, *Review, Dissent and the appellate process: A Political interpretation*, 29 J. POLITICS 597 (1967); Kenneth N. Vines, *The Role of the Circuit courts of appeals in the Federal judicial Process: A Case Study*, 7 MIDWEST J. POL. SCI. 305 (1963); Sheldon Goldman, *Characteristics of Eisenhower and Kennedy Appointees to the Lower Federal Courts*, 18 W. POL. Q. 755 (1965); Louis Loeb, *Judicial Blocs and Judicial Values in Civil Liberties Cases Decided by the Supreme Court and the United States Court of Appeals for the District of Columbia Circuit*, 14 AM. U. L. REV. 146 (1965).

³ Marvin Schick, *The United States Court of Appeals for the Second Circuit: A Study of Judicial Behavior* (1965) (Ph.D. dissertation, New York University).

⁴ MARVIN SCHICK, *LEARNED HAND'S COURT* (1970).

conflicts between the judges and produced a judgment as to the influence of the court.

Marvin Schick's work gave heart to others beginning their studies of the lower federal courts—that it was worthwhile to study a court other than the Supreme Court; that there was value in the study of courts as institutions, their history and those who serve on them; that such studies of significant courts helped fill out the picture of the governance of the nation and, further, that not just one, but many, tools ought to be used in such a study. Fifty years after the publication of Schick's book, many books by political scientists, historians, and law professors have limited their studies to a single court or two closely linked courts.⁵ The courts themselves have appreciated the value of such books and have opened themselves up (at least to some degree) to scholars for interviews and oral histories and have played a role in creating historical societies, which have subsidized many of the studies. Thus, Schick's work was not only ahead of its time, it has stood the test of time.⁶

Marvin Schick devoted a very large part of his worthy and productive career to strengthening the community of Orthodox Jews. But he also left a major contribution to the literature on the American judiciary, that should not be forgotten.

⁵ As just one rather personal example, see JEFFREY BRANDON MORRIS, *THE SECOND MOST IMPORTANT COURT: THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT* (Columbia University, 1972); JEFFREY BRANDON MORRIS, *CALMLY TO POISE THE SCALES OF JUSTICE: A HISTORY OF THE COURTS OF THE DISTRICT OF COLUMBIA CIRCUIT* (2001); JEFFREY BRANDON MORRIS, *ESTABLISHING JUSTICE IN MIDDLE AMERICA: A HISTORY OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT* (2007).

⁶ See Richard A. Posner, *Judicial Biography*, 70 N.Y.U. L. REV. 502, 520 n.54 (1995).