
Fowler V. Harper

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This is no great shakes of a book by any accepted library or scholarly standards. And yet, in the light of its obvious purpose, it is an entirely creditable piece of work. The biographical part leaves almost everything to be desired. To be sure, the sub-title of the book indicates that it is “a study in the judicial process.” Nevertheless, the author realizes that judges make the law and she must know that judges are made by a combination of factors, including their environment, training, experiences, and background, most of which, in the case of Mr. Justice Black, is ignored in this book. It is no more possible to write a “study of the judicial process” by considering the work of a single justice except against the background of the man, than to write a biography of the man without considering his behavior as a justice. The influences, experiences and other factors which have made Justice Black what he is are given scant attention in this book.

When the author comes to Black’s achievements on the bench, she is at her best. Her best is pretty good, too, when she discusses the social, economic and political issues involved in the cases. To be sure, she is occasionally, but not often, technically inaccurate. For instance, she cites the International Shoe Company case as a commerce clause issue. It is true, the case did involve a point under the commerce clause, but it was so trivial that it was disposed of by the Court in one sentence. Again, it is pretty clear that she is a bit over her head when she gets into the full faith and credit clause cases, disposing of them all by the simple explanation that Justice Black’s attitude was determined by his concern for the “little man.” Actually, if there is one general criticism of this part of Miss Williams’ book, it is that she oversimplifies everything. Justice Black is a good man, fighting for all the little people who are not palpably wrong, subordinating legal technicalities and precedents, as though they had no proper function, to the ends of democracy as he sees them. He is against

2. An Act of Congress expressly covered the point (28 U.S.C. 1606) and the Court disposed of the issue: “It is no longer debatable that Congress, in the exercise of the commerce power, may authorize the states, in specified ways, to regulate interstate commerce or impose burdens on it.” 326 U.S. 310 (1945).
3. For example she deals with United Commercial Travellers v. Wolfe (381 U.S. 586 [1967]) and Williams v. North Carolina (325 U.S. 226 [1945]) without comment on the fact that the one case dealt with full faith and credit to a statute of a sister state only incidentally and indirectly while the other dealt with a judgment of a sister state.
the big interests and for the little ones. He is for popular govern-
ment when it pinches the rich but he is against it when it fails
to give the underprivileged individual a fair break.

On the other hand, this author, in spite of her easy general-
izations, discloses scrupulous intellectual honesty and critical dis-
 crimination in her treatment of the judicial data. She picks her
subject's strong points and his weak ones. If she tends, pardon-
ably, to stress the former, it cannot be said that she fails to reveal
the latter. She adequately deals with Black's devotion to the Bill
of Rights in cases involving the rights of labor but does not fail
to comment on his dubious search and seizure opinions, his tragic
position on the internment of the Japanese-Americans and his
ambivalent record in church and state. Although her own senti-
ments and reactions to her subject are not concealed, her treat-
ment of his decisions is decently objective.

The political issues involved in the career of Justice Black
are also treated with the utmost candor. The Ku Klux Klan epi-
sode and the Jackson-Black quarrel are handled in a manner
which conforms to the best reportorial traditions. She presents
the facts, so far as they are known, without apology or defense.
It is true, she discloses nothing that informed persons do not
already know. But she presents them in the context of Justice
Black's record and personality which contributes something of
value to the objective of her book.

This book would have been a better one if Miss Williams had
read the best thing yet published about Justice Black, written by
my colleague and former law clerk for Black, John P. Frank.4
The book would have been better had she talked to the justice
and consulted sources other than the New York Times, the Herald
Tribune, Time and Newsweek. It would have been better if she
had not "written down" to her readers even though she obviously
was writing a popular book. Nevertheless, I think that Miss Wil-
liams has done very well. Her work may bring to many people
an awareness of the greatness of Justice Black in the role he has
played in making our country what it is today.

As for the Supreme Court of the United States, that is another
story. It and its decisions will go far to make our country what it
will be tomorrow and it's anybody's guess what that will be. Jus-

4. Mr. Justice Black: The Man and His Opinions. Curiously, the author
cites Frank's article on martial law in Hawaii but apparently she had never
heard of his book on Black or his series of articles in the University of Chi-
cago Law Review on the Supreme Court.
tice Black began his Supreme Court career in dissent, and it looks as though he would end it the same way. But dissents are valuable. They have a habit of never dying even when majority opinions fade away. In any event, whatever truth there is in them does not die. And, although he is certainly not infallible, there is great truth in Justice Black's dissents of which, unfortunately, there are many.

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