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The All-Time All-Star All-Era Supreme Court

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THE ALL-TIME ALL-STAR

ALL-ERA

SUPREME COURT
A lot of people have come up with lists of “great” judges. Here’s the list to end all lists: a distillation of everyone’s choice for the greatest justices of the United States Supreme Court.

The line-up:
Oliver Wendell Holmes, Jr., c
John Marshall, p
Joseph Story, 1b
Benjamin N. Cardozo, 2b
Charles Evans Hughes, ss
Hugo Black, 3b
Earl Warren, If
Louis D. Brandeis, cf
Roger B. Taney, tf

Prophetic vision
Ability is defined by Currie as proficiency in the law, the power of persuasion, the power to reason logically and write well, and the capacity to “rise above prior political or economic views” to decide an issue objectively. Prophetic vision enables a judge to discern the impact of a decision both on future legal development and on the social order. Judicial statesmanship includes the power to draft an opinion dictated by prophetic vision but placed on the proper legal and constitutional grounds. The enduring character of a judge’s legal contributions was counted as proof that a particular judge possessed these qualities.

The third survey of best judges was tallied from a questionnaire sent to 65 law school deans and professors of law. Compiled by Roy M. Mersky and Albert P. Blaustein, “Rating Supreme Court Judges” appears in 58 American Bar Association Journal 1183 (1972). The respondents to the questionnaire evaluated all justices who had sat on the Supreme Court on a one-to-five scale, from “great” to “failure.” No selection criteria were suggested. From this survey, 12 justices qualified as “great.”

A more recent roster of greatest judges has been drafted by Bernard Schwartz, “The Judicial Ten: America’s Greatest Judges,” 1979 Southern Illinois University Law Journal 405. Schwartz discusses the reasons why each particular judge was chosen and near the end of the article generalizes about what characteristics the selected judges share. His conclusions are that all the judges can be distinguished by “their more affirmative approach to the judicial role.” Each judge held rather strong views and “did not hesitate to employ judicial power to meet the time’s necessities.” “All of those on our list used the power of the bench to the full.” Other shared traits are long tenures on the bench and serving during “creative” periods of American law.

Blue ribbon rosters
These four lists vary in their scope, the criteria for selection, and the number of judges chosen. The Mersky-Blaustein and Currie lists have only United States Supreme Court justices; the Pound and Schwartz lists also have candidates from the various state benches. Neither Pound nor Mersky-Blaustein discusses criteria for selection, while Currie elaborates on selection standards, and Schwartz draws conclusions about shared traits from the judges chosen. Mersky’s and Blaustein’s survey produced 12 justices termed “great.” The Schwartz and Pound tallies contain ten names, while Currie limited himself to an all-star nine.

The dates at which the various lists were published also vary widely. The Pound list was the first, released in 1938, followed by the Currie list in 1964, Mersky's and Blaustein's in 1972, and Schwartz's in 1979. The 40-year lapse between Pound's roster and that of Schwartz accounts for the last four names in Schwartz's roster being different.
Both Schwartz and Pound list:

John Marshall, Chief Justice of the United States, 1801-35
James Kent, Justice, New York, 1798-1823
Joseph Story, Justice, United States Supreme Court, 1811-45
Lemuel Shaw, Chief Justice, Massachusetts, 1830-60
Oliver Wendell Holmes, Jr., Justice, Massachusetts, 1882-1902; Justice, United States Supreme Court, 1902-32
Benjamin Nathan Cardozo, Justice, New York, 1914-32; Justice, United States Supreme Court, 1932-38.

The other four on Pound’s tally are:
John Bannister Gibson, Justice, Pennsylvania, 1816-53
Thomas Ruffin, Justice, North Carolina, 1827-53
Thomas McIntyre Cooley, Judge, Michigan, 1864-85
Charles Doe, Justice, New Hampshire, 1861-76.

Pound drew only four of his ten names from the ranks of the United States Supreme Court: Marshall, Story, Holmes, and Cardozo. The other six all sat on their respective state benches.

Judicial M.V.P.’s


Currie’s all-star nine consists only of United States Supreme Court justices. His nine include three of the four that both Pound and Schwartz selected: John Marshall, Joseph Story, and Oliver Wendell Holmes, Jr. Cardozo did not make the cut. The others are:
William Johnson, 1804-34
Roger B. Taney, 1836-64
Samuel Freeman Miller, 1862-90
Joseph P. Bradley, 1870-92
Louis Dembitz Brandeis, 1916-39
Charles Evans Hughes, 1910-16 and 1930-41.

The Mersky-Blaustein list, like Currie’s, is made up only of United States Supreme Court justices. The three names that appeared on the three other lists also appear here: Marshall, Story, and Holmes. Cardozo, cut from the Currie roster, reappears on the Mersky-Blaustein list. The two additional justices picked by Schwartz—Black and Warren—also are in the line-up. Three from Currie’s tally also make the Mersky-Blaustein list: Taney, Brandeis, and Hughes. The final three Supreme Court justices honored are:
John M. Harlan, 1877-1911
Harlan F. Stone, 1925-46
Felix Frankfurter, 1939-62.

Hall of fame trio

No matter what selection criteria were used or whether the lists included state as well as United States Supreme Court justices, three people are always present: John Marshall, Joseph Story, and Oliver Wendell Holmes were all rated among the greatest by both Currie and Mersky-Blaustein. The remaining two positions are filled by Hugo Black and Earl Warren, whose names are on both the Mersky-Blaustein and Schwartz rosters.

A synthesis of these four lists provides a new roster of the all-time, all-star, all-era, Supreme Court nine:
John Marshall
Joseph Story
Roger B. Taney
Oliver Wendell Holmes, Jr.
Benjamin Nathan Cardozo
Louis Dembitz Brandeis
Charles Evans Hughes
Hugo Black
Earl Warren.

This catalogue of greats represents the elite of all the justices who have sat on the Supreme Court. It is the definitive list until someone else draws up an all-star line-up.

(James E. Hambleton is director of the Texas State Law Library.)
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