



# THE MAKING OF JUSTICE

**The Supreme Court  
in action**

*James E. Clayton*

*"Through this book, the  
ordinary citizen can gain a better  
understanding of the Supreme  
Court than is available in any other work."  
—ERWIN GRISWOLD, DEAN, HARVARD LAW SCHOOL*

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*THE SUPREME COURT IN ACTION*

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## FOREWORD

THE SUPREME COURT OF THE UNITED STATES HEADS WHAT HAS been called the "least dangerous branch" of the government. Certainly it is the smallest branch, in terms of manpower. It is inherently the weakest branch since it has no power to enforce its own determinations.

Through much of its history, the Supreme Court has not been well known or understood by the general public. This is natural enough, since its activity is necessarily technical. Much of its work is essentially "lawyers' stuff" and cast in language which is not familiar to the ordinary citizen.

Yet, over the years, it has ~~often been apparent that the Supreme Court and the federal judicial system, despite their innate weakness, do in fact exercise great power to affect our govern-~~mental structure, and the lives and actions of our citizens. The Supreme Court and its decisions should not be left to lawyers alone. They are too important for that. They should be known and understood by a wide segment of our citizens. Yet there is a dilemma here. When lawyers write about the Supreme Court and its work, they naturally write in professional terms, and what they write is likely to be no more intelligible to the general public than the opinions of the Court itself. On the other hand, when nonlawyers write about the Supreme Court and its work, they often fail to understand what is really involved in the Court's decisions. In putting their writing in popular terms, they may miss the essence of what they are writing about.

Over much of the past, this dilemma has been generally re-

solved by leaving the Supreme Court severely alone, except for technical publications. Popular writing about the Supreme Court has often been of the "now it can be told" variety, on the one hand, or violent denunciation, on the other.

Only recently have there developed some writers who know how to write in nontechnical style, but who also have the knowledge and understanding of the business and procedure of the Court, so that they know with technical accuracy what they are writing about. One of these writers is James E. Clayton, of the staff of *The Washington Post*. He has been writing intelligible and understandable articles about the Supreme Court and its decisions for the past several years. Now he has devoted his talent to the production of this book which makes available to the general reader an understanding of the Supreme Court in action.

The method adopted by Mr. Clayton is to recount the work of an entire term of the Supreme Court, from October to the following June. Thus, one gets a sense of the real flavor of the Supreme Court's business—the cases involving widespread public interest, and the run-of-the-mill and technical cases as well. In the process the reader is given an explanation of the way cases come before the Supreme Court, of the way they are heard and considered there, of the sorts of issues which confront the Court, and of the intellectual processes by which decisions are reached. The justice rendered by the Supreme Court is justice according to law. Yet the Supreme Court Justices are men. Mr. Clayton skillfully shows the important role of the law, and also the influence of the men who participate in the decisions.

With his description of the work of the Court, he interweaves thumbnail sketches of each of the Justices. These are not "exposés"; nor are they what might be called "appreciations." They are vignettes of people, who appear as human beings and yet as men with great technical qualifications and an earnest

desire to meet the vast responsibilities which rest on the shoulders of any Supreme Court Justice.

Through this book, the ordinary citizen can gain a better understanding of the Supreme Court, of its work, of the men who sit on it, and of the place and function of the Court in the American governmental system, than is available in any other work. It is important that our citizens have such an understanding. The Supreme Court is not above criticism. Nor does it ever claim infallibility. Yet it carries heavy burdens, and should not have to submit to thoughtless and irresponsible attack. Thoughtful criticism can come only with an understanding of the nature of the problems before the Court and of the methods by which the Court deals with these problems. For too long a time the Court has been a mystery to most sections of the public. This book will remove much of this mystery, and shed much light and understanding on the functioning of our great tribunal.

In essence, the distinction between civilization and savagery is the willingness to settle disputes by other means than force. We say that we are governed by the rule of law, which means that we accept decisions by impartial courts rather than by force of arms. If we are going to remain civilized, we must continue to accept the decisions of our courts, whether we agree with them or not. We are more likely to be willing to accept judicial decisions if we understand them, and the process by which they are brought about. This book can do much to add to this understanding.

ERWIN N. GRISWOLD

Dean of the Faculty of Law

*Harvard University  
Cambridge, Massachusetts*

## PREFACE

*To the people we come sooner or later; it is upon their wisdom and self-restraint that the stability of the most cunningly devised scheme of government will in the last resort depend.*

James Bryce, 1886

IT IS IN THE HOPE THAT A BETTER UNDERSTANDING OF THE Supreme Court will contribute to that "wisdom and self-restraint" that this book is written.

For as long as I can remember, I have been fascinated by the Supreme Court. My first recollection of it comes from the days of FDR and the court-packing plan when I heard my father talking with visitors to his law office in a small Midwestern town about the "nine old men" in Washington. It has been my good fortune in the last four years to spend most of my time watching the Court in operation, reading its opinions, and talking about its actions. No one can devote that much time to the Court without concurring in Mr. Justice Clark's remark that the Court is seldom understood.

This book is an effort to help the non-lawyer gain a better understanding of the Court's role in American government, of its Justices, and of the problems they face. It is not, and does not purport to be, a definitive work on any single phase of the Court's activities or on all its work in a single term. Dozens of its activities, as well as all its Justices and many of its opinions, merit books of their own. Rather, this is an effort to provide a

quick insight into the goings-on at what John P. Frank has called the "Marble Palace" on Capitol Hill.

The debts of gratitude one owes upon writing a book of this kind are tremendous. None of the Justices has talked with me in terms of this book but many of them have helped me to a better understanding of the Court and of themselves. The same applies to officials of the Department of Justice and to many private practitioners of the law. Over the years, the law clerks and the Court's staff have been helpful within the limits their responsibilities place upon them. My special debts are to my family, who created and fostered my interest in the Court; to the professors at Princeton and Harvard under whom I studied the Court; and to *The Washington Post*, which has made my years at the Court possible. My friends, John and Beth Vanderstar, made many helpful suggestions. To Helen Faust and Marlene Kleine, I am grateful for late evenings and weekends spent typing the manuscript.

JAMES E. CLAYTON

*Arlington, Virginia*

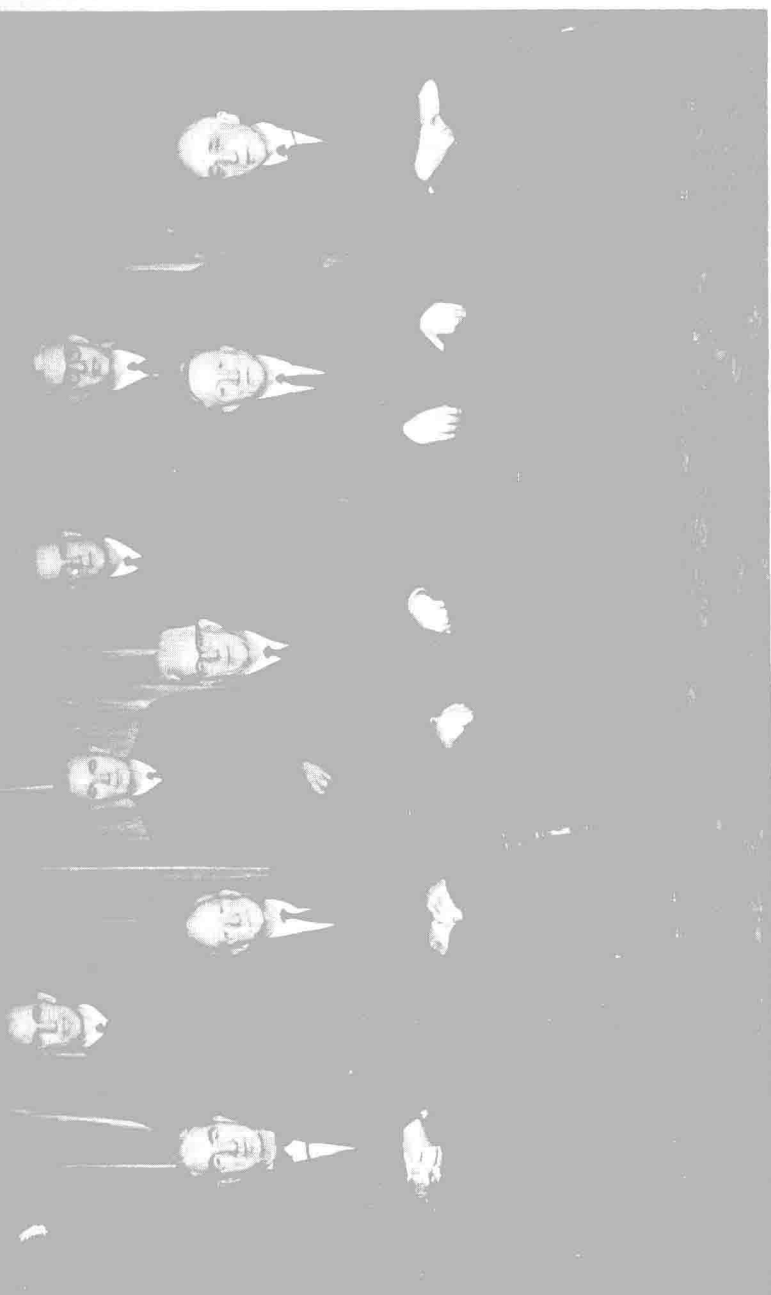


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U.S. SUPREME COURT 1962

Standing left to right: Justices Byron White, William J. Brennan, Jr., Potter Stewart, Arthur Goldberg

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JAMES E. CLAYTON

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