

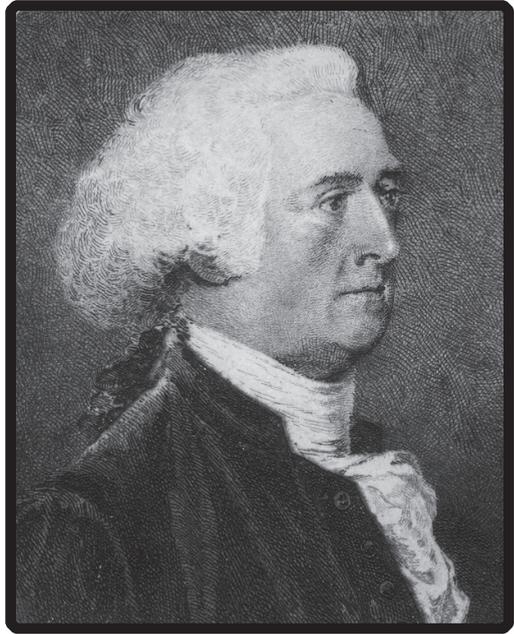
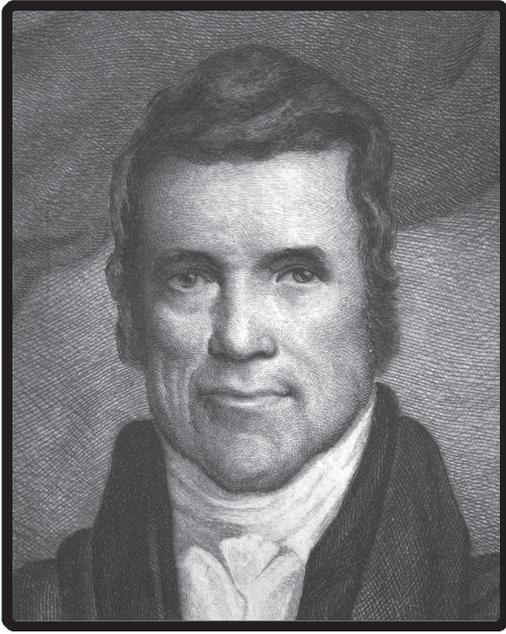
108 & Counting

WHEN BLAUSTEIN AND MERSKY'S "The First One Hundred Justices" appeared in 1978 it was a compact yet comprehensive collection of useful data and timely and trenchant commentary on the Supreme Court and its membership. It is, however, both the problem and the promise of such works that new membership and changed circumstances necessitate new editions. So now we have Bader and Mersky's "The First One Hundred Eight Justices," with updated data and new commentary, including the pleasingly pointed Chapter Four, "Politically Correct Legal Culture and the Vicissitudes of Judicial Reputation." And, as the arrival of #109 (Chief Justice John Roberts) at the Court this fall portends, someday there will surely be "The First One Hundred _____ Justices." In the meantime, "The First One Hundred Eight" is the best thing going, filled with the likes of the following:

FAMILY DATA

While the Supreme Court membership has its share of "rags to riches" stories, it has had more than its share of those "to the manor born" and even to the profession born. Twenty-seven of the 108 had judges in the family – and 12 of those 27 had judges as fathers. Cushing (3), Moore (12), Waite (43), L.Q.C. Lamar (49), E.D. White (55), Peckham (56), Day (59), Pitney (65), Clarke (68), Taft (69), Cardozo (75), and Stewart (92) had judges as fathers. The other 15 with relatives who were judges were Marshall (13), Livingston (15), Todd (16), Thompson (19), Barbour (25), Campbell (33), Harlan I (44), Gray (47), Fuller (50), Brewer (51), Shiras (53), Holmes (58), Moody (60), J.R. Lamar (64), and Harlan II (89).

One hundred of the first 108 justices were married to total of 132 spouses, with four of the justices having had more than two wives: Douglas (79) mar-



John Marshall and John Rutledge, the Supreme Court's most productive Chief Justices. From Hampton L. Carson, *THE HISTORY OF THE SUPREME COURT OF THE UNITED STATES* (1891).

ried four times and Livingston (15), Curtis (32), and Chase (39) each married three times. The eight justices who remained or remain bachelors include Baldwin (23), Blatchford (48), Moody (60), McReynolds (66), Clarke (68), Cardozo (75), Murphy (80), and Souter (105).

Nearly one-fifth of the justices fathered five or more offspring. Two had ten children, one had nine, five had eight, and eight justices had seven sons and daughters. As Table 8 indicates, the 16 chief justices had 87 children.

Eleven associate justices fathered 81 children. These more prolific associate justices include Antonin Scalia (103) father of nine; William Johnson (14), Thomas Todd (16), and Stanley Matthews (46), each of whom fathered eight children; James Wilson (4), Joseph Story (18), Smith Thompson (19), John McLean (21), Philip Barbour (25) and William Strong (40), each of whom had seven children, and the first John M. Harlan (44) who fathered six. Two of the

Table 8: Breakdown By Number of Children

Jay	7	Fuller	8
Rutledge	10	White	4
Ellsworth	9	Taft	3
Marshall	10	Hughes	4
Taney	7	Stone	2
Chase	6	Vinson	2
Waite	5	Warren	5
Burger	2	Rehnquist	3

justices are mothers. Justice Sandra Day O'Connor (102) has three sons, and Justice Ruth Bader Ginsburg (107) has a son and a daughter.

William D. Bader & *Roy M. Mersky*, *THE FIRST ONE HUNDRED EIGHT JUSTICES 12–13* (Hein 2004).

Dropping the *U.S. News* Fig Leaf

THE LION'S SHARE (40%) of a law school's position in the annual *U.S. News* rankings table is determined by the columns labeled "Peer assessment score" and "Assessment score by lawyers/judges" – scores that are derived from responses to surveys mailed by *U.S. News* to "peers" (meaning "law school deans, deans of academic affairs, the chair of faculty appointments, and the most recently tenured faculty members") and "lawyers/judges" (meaning "hiring partners of law firms, state attorneys general, and selected federal and state judges"). Or so says *U.S. News*. The whole survey distribution-response-analysis business is thoroughly cloaked in secrecy, making it a black box susceptible to manipulation by anyone with illicit knowledge of its inner workings, or by the magazine itself. For a sample of the survey sent to "peers," see *U.S. Blues*, 6 GREEN BAG 2D 121 (2003). (*U.S. News* spreads the remaining 60% of a school's ranking over eight apparently less important measures, such as whether graduates pass the bar and get good jobs, and how much schools invest in teachers and teaching resources. The magazine makes no effort to rate the quality of teaching in law schools.)

Thus it should come as no surprise that every law school in the country struggles mightily in the dark to influence survey respondents to give it high marks. A large part of that struggle consists of an ongoing expensive gamble, in which almost every law school is betting a bundle on the following chain of wishful thinking: (1) that the rising *U.S. News* prominence