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In 1965, Justice Hugo Black (right) administered the oath of office to Thurgood Marshall for the post of U.S. solicitor general. Two years later, Black swore Marshall in as a Supreme Court justice. At the 1965 ceremony were (from left) Thurgood Marshall Jr., Cecelia Marshall, President Lyndon Johnson.

The legal and personal legacy of the complex Justice Black

HUGO BLACK

A Biography

By Roger K. Newman

*A Cornelia & Michael Bessie Book/
Pantheon Books. 741 pp. \$30*

Reviewed by Paul Sracic

Roger K. Newman is not the first to undertake a biography of Justice Hugo LaFayette Black. But although other noteworthy biographers — including Gerald Dunne and Black's own son, Hugo Black Jr. — focused on particular areas of Black's life, Newman's biography, titled simply *Hugo Black*, is comprehensive.

Newman, a research scholar at the New York University School of Law, shows considerable expertise in constitutional issues as he explains many of the famous legal opinions that Black drafted during his long years on the U.S. Supreme Court. But his investigation is not limited to the considerable legal legacy of Justice Black. Newman interviewed more than a thousand individuals for this

book, and he makes good use of their responses to teach the reader about Black's relationships with his community, his friends and his family. In fact, one of the few criticisms that a reader can justifiably make about this book is that, at times, Newman's point gets lost in myriad quotations from and comments about the views of others. But this is a minor problem, one that is easily outweighed by the benefits gleaned from these diverse perspectives.

The result is a complete and balanced portrait of Justice Black, an Alabaman who served on the court from 1937 until shortly before his death in 1971. In Black's case, balance is absolutely necessary, for he was a man of seemingly endless contradictions, which, by themselves, appear irreconcilable.

We are told that Black liked to portray himself as a down-to-earth country lawyer — "just a Clay County hillbilly" — and yet he was able to quote Virgil. As a young lawyer in Alabama, Black joined the Ku Klux Klan, and yet he became known as a champion of civil liberties. In spite of Black's racist past,

Thurgood Marshall, the first African American appointed to the court, requested that Black administer the oath of office to him in 1967. Marshall was acknowledging the seminal role that Black, who had resigned from the Klan by the time he joined the court, played in desegregation and civil liberties cases throughout the years. But it was also Black who wrote the constitutional opinion upholding the internment of Japanese Americans during World War II.

Although Newman does not make much of an effort to explain these apparent inconsistencies, he does provide clues that one might use for a more extensive synthesis.

The personal and professional portrait of Black that Newman gives us is one of a man driven to succeed. He was born in 1886 and dominated almost every institution, and, perhaps to a lesser degree, every individual he came in contact with. At 25 and only a few years out of the University of Alabama law school, he became a police court judge. Later, he was an almost unbeatable defense attorney, and by the time he was 42 he had been elected to the U.S. Senate. After two terms as an ardent New Deal legislator,

he was appointed to the Supreme Court by President Franklin Roosevelt. He would be a dominant influence over that body for more than 30 years.

Even while serving full-time on the bench, Newman writes, Black read a book a day and often played more than seven sets of tennis, usually beating all opponents. (Although his reading dropped off. He continued to play tennis into his 80s.)

How did Black achieve so much? Newman's biography implies that he was able to combine a steadfast will with an intuitive grasp of strategy. He was quick to do what was necessary in order to ensure his own success — even if it meant joining the Klan. Of all the explanations that he gave throughout his life for his Klan membership, Newman found, the most convincing was that a majority of potential jurors in Alabama at the time were members. Black wanted to win cases, and he thought he could not win unless he was a member of the Klan, so he joined.

When Black accepted Roosevelt's nomination to the Supreme Court, he found himself in a difficult situation. He had been a member of the Senate when Roosevelt attacked the Supreme Court: if the Supreme Court were weakened, Black's ambitions as a justice would be thwarted.

Black was keenly aware that unelected judges had no independent power base within a democracy. Judges borrow their authority from the people, who command through constitutional provisions. When judges appear to read their own Constitution, their authority diminishes. While on the court, Black became an advocate for constitutional "absolutes" — the notion that the Constitution provides certain unambiguous commands that judges must enforce. Since the commands are clear, judges exercise no discretion when they enforce them against the states or against other branches of government.

Thus, Black invented a constitutional jurisprudence that would ensure the power of the institution. As in everything else he did, Black was successful. The achievements of the famed Earl Warren Court depended upon the foundations that Black had been preparing years before.

Black's passion as a trial lawyer for winning cases benefited not only himself but his clients. When he reached the Supreme Court, the American people became his client.

Newman's book makes clear that in trying to secure the success of the Supreme Court, and therefore himself, Justice Black also helped us. Newman's realistic portrayal helps us comprehend and cherish the contribution that Black made to American law and politics. It is necessary reading for anyone interested in either topic.

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