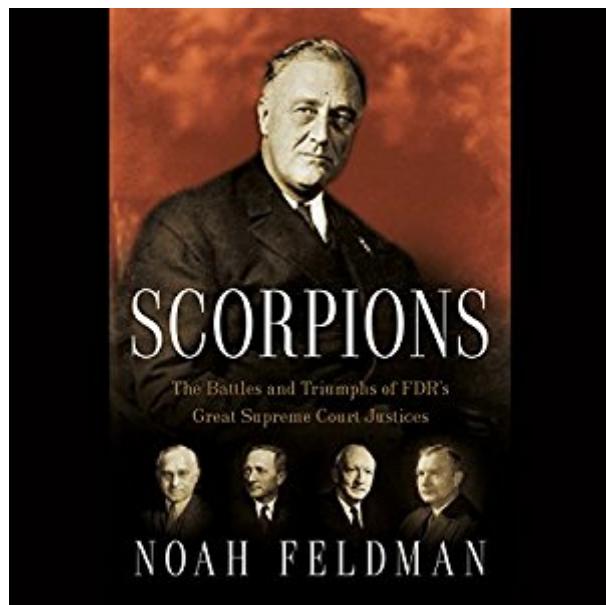


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# Scorpions: The Battles And Triumphs Of FDR's Great Supreme Court Justices



## **Synopsis**

A tiny, ebullient Jew who started as America's leading liberal and ended as its most famous judicial conservative. A Klansman who became an absolutist advocate of free speech and civil rights. A backcountry lawyer who started off trying cases about cows and went on to conduct the most important international trial ever. A self-invented, tall-tale Westerner who narrowly missed the presidency but expanded individual freedom beyond what anyone before had dreamed. Four more different men could hardly be imagined. Yet they had certain things in common. Each was a self-made man who came from humble beginnings on the edge of poverty. Each had driving ambition and a will to succeed. Each was, in his own way, a genius. They began as close allies and friends of FDR, but the quest to shape a new Constitution led them to competition and sometimes outright warfare. Scorpions tells the story of these four great justices: their relationship with Roosevelt, with each other, and with the turbulent world of the Great Depression, World War II, and the Cold War. It also serves as a history of the modern Constitution itself.

## **Book Information**

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## **Customer Reviews**

There are a number of books and articles that discuss conflict between Supreme Court Justices, including the four Justices at the center of this fine study: Felix Frankfurter (1882-1965); Robert Jackson (1892-1954); Hugo Black (1886-1971); and William O. Douglas (1898-1975). Collectively, these Justices served between 1939 and 1975. However this book is unique in several ways that advance our understanding of the Court during this period. At about 500 pages, the author is able to

paint a more complete picture of the Justices and their Court interaction than shorter studies. Each Justice is introduced, in terms both of his pre-Court career and his relationship with FDR. So by the time the author discusses their Court interaction, the reader has a particularly good feel for each Justice as an individual. Unlike most other studies, the author devotes probably most attention to Robert Jackson, an almost forgotten figure today who is soon to be the subject of a major biography by Professor John Q. Barrett. This focus on Jackson, former Attorney General, whom Justice Brandeis considered the finest Solicitor General he had seen, who later served as lead American prosecutor at Nuremberg, and who wrote some of the finest opinions in the Court's history, enhances the study enormously. The book also sheds light on the other three Justices as well. The much criticized Frankfurter, who went from being the leading Court liberal to outright conservative, is assessed in ways that allow the reader to understand why the shift to an activist Court left Frankfurter behind, rather than a shift in his own judicial restraintist philosophy. A perceptive discussion of Black and the development of his incorporation and textual philosophy of interpretation helps fill out an understanding of this key Justice. Equally important as his revival of Jackson is the author's rehabilitative portrait of Douglas, driven by political ambitions until 1948, when he emerges as a "great justice" and theoretician of new constitutional rights (such as privacy) and opponent of the Vietnam war. As a corrective to the "Wild Bill" approach to Douglas, the author's analysis is most welcome. We are reminded of why Douglas was so vital a Justice during his tenure in dealing with issues such as the flag salute cases, Japanese relocation, the HCUA, and the Rosenbergs. On top of all this, the book is a solid analysis of some of the leading cases in our constitutional history during this period. The discussions of "Brown," the Steel Seizure and "Dennis" cases are particularly perceptive. Another focus is the intellectual approach to judging each man employed. Some issues of judicial philosophy are raised, for example Jackson's pragmatic approach (promoting the effective functioning of the government) and Alexander Bickel's "counter-majoritarian difficulty." The bizarre Black-Jackson feud that erupts while Jackson is at Nuremberg is skillfully dissected and explained. There is much more of marked value in the book, supported by 46 pages of helpful endnotes, a 12 page bibliography, and some useful photographs. While one can quibble with the author's perhaps excessive opinions of Douglas and Jackson, and some of his other judgments, in the process one can learn a tremendous amount about these four unique individuals, the Court they made, and our constitutional history.

Noah Feldman has done an outstanding job of demonstrating FDR's legacy on the United States Supreme Court. I note that one reviewer - who gave the book a 2 star rating - said that he found it

dry and it took him months to read. I, on the other hand found it exciting and interesting and finished it within a week. For those who have an interest in FDR and the Supreme Court, this book is extremely readable. It has an excellent bibliography that leads you to other books on the justices, which I intend to read eventually. Feldman's depictions of the justices make them come alive - warts and all. He explains their judicial philosophy in a way that lawyers and non lawyers - students of constitutional history and non students can understand. Feldman makes the point that the legacy of a president lives on in his Supreme Court appointments. He shows how the court changed for the decades of these justices and how their decisions changed America. I would point out one difference of opinion that I have with the author. He says on page 398 that Eisenhower promised Warren the position of Chief Justice in exchange for his support for the presidency. My research has shown that Warren anticipated a position on the ticket with Ike in 1952 but was out maneuvered by his fellow Californian Richard Nixon. In exchange for Warren's support, Ike promised him the first seat on the Supreme Court. In anticipation of an appointment to the Court, Ike had appointed Warren to the position of solicitor general. However, Warren had not had an opportunity to take office, before the untimely death of Chief Justice Vinson. Ike's only promise to Warren was the next seat on the court and fate made the next seat that of the Chief Justice. There is some authority that Ike offered the position of Chief Justice to John Foster Dulles, but Dulles turned him down, wanting to stay in the State Department. It's also interesting to note how political the justices were. Most had not been judges before their appointments and Jackson, Black and Douglas were on the fringes of presidential politics for most of their terms. By today standards, when candidates for the Supreme Court are judged on their judicial record and writings, justices who came directly from the senate or cabinet positions seem totally out of line. These justices were far more political figures at the time of their appointments than current candidates. For students of the history of the Supreme Court, this book is a must read!

Good in depth analysis of the personalities and the politics involved as well as the evolving doctrines of constitutional philosophy amongst the justices. The title of the book comes from a quote attributed to a former clerk of Justice Frankfurter that the Supreme Court is "Nine scorpions in a bottle." Turns out to be very true. I am a trial court judge (which may skew my analysis), but I found it to be an excellent read, and in parts, absolutely fascinating. The four justices who are the focus of the book could be petty and mean spirited, but when the occasion demanded, they generally rose to needed heights.

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