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FEDERAL JUDGES AND THE HEISMAN TROPHY

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FEDERAL JUDGES AND THE HEISMAN TROPHY

STEVEN GOLDBERG*

Choi and Gulati propose selecting as Supreme Court Justices those federal circuit court judges who are outstanding at their job.¹ They note that “differences exist” between “the job of a circuit judge and that of a Supreme Court Justice,” but they ask whether “the current system” of selecting Justices does a better job than their proposal, and they conclude, “We do not see how it could.”²

They are mistaken. If we look at highly successful Supreme Court Justices of the past, we find only one with lower federal court experience of any kind. Many distinguished federal circuit judges served with no distinction on the Supreme Court. It is those who served as governors, Senators, Attorneys General, judges on the highest state courts, and in private practice who show up on the lists of great Justices. I will provide the basis for this assertion below, and I will also point out the assertion is entirely unoriginal: numerous scholars have observed that prior federal judicial service is not correlated with success as a Justice.

Of course, this does not prove that Choi and Gulati are wrong. Perhaps if they had been around generations ago, they would have identified federal judges who would have turned out to be great Justices, or perhaps federal judges today are more talented than their predecessors. Moreover, the information I am going to provide is essentially anecdotal. Not only is there wide disagreement about who was, or is, a great Justice, there is a small database, the jobs of judges and Justices, as well as their reputations, are always evolving, and the opportunity for any kind of controlled experiment is lacking.

Nonetheless, it is pretty clear that Choi and Gulati are looking in a strange place if they are trying to find outstanding Justices. Given the historical record that I will survey, it is hard to explain why they have chosen to analyze the decisions of federal circuit judges. At times, they hint at one possible explanation: they are trying to give life-tenured lower judges an incentive “to work harder at their jobs.”³ Yet, not many people would trade harder-working lower court judges for a less capable Supreme Court. And, most of the time, Choi and

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1. Stephen J. Choi & G. Mitu Gulati, *Choosing the Next Supreme Court Justice: An Empirical Ranking of Judge Performance*, 78 S. CAL. L. REV. 23 (2004).

2. *Id.* at 31 n.11.

3. Stephen Choi & Mitu Gulati, *A Tournament of Judges?*, 92 CAL. L. REV. 299, 304 (2004).

Gulati frankly say that they are trying to assemble a better Supreme Court.⁴

Perhaps Choi and Gulati are counting something as important just because it is countable. It is harder to compare quantitatively the qualifications of an Attorney General and a Senator than it is to compare quantitatively two lower federal court judges. Even looking at the pool of state high court judges (who have a hint of the Supreme Court's power in that they have the final say on state law) may have been too difficult, since state courts do not cite each other in any uniform way.

But whatever the reason, Choi and Gulati are spending a good deal of effort in an unpromising area. Here is the historical record.

Prior to the current nine, ninety-nine Justices had served on the Supreme Court.⁵ Twenty-four of these Justices had previously served on lower federal courts,⁶ including such respected federal circuit court judges as William Woods,⁷ Howell Jackson,⁸ Willis Van Devanter,⁹ and Fred Vinson.¹⁰

4. *Id.* at 304; Choi & Gulati, *supra* note 1, at 26-32.

5. See TIMOTHY L. HALL, SUPREME COURT JUSTICES: A BIOGRAPHICAL DICTIONARY vi (2001). I exclude from analysis the currently sitting Justices, since one cannot fairly evaluate a Justice's career until it has ended.

6. Those twenty-four Justices are Robert Trimble, Philip Barbour, Peter V. Daniel, William B. Woods, Samuel Blatchford, David J. Brewer, Henry B. Brown, Howell E. Jackson, Joseph McKenna, William R. Day, Horace Lurton, Willis Van Devanter, John H. Clarke, William H. Taft, Edward T. Sanford, Wiley B. Rutledge, Fred M. Vinson, Sherman Minton, John Harlan (the Younger), Charles E. Whittaker, Potter Stewart, Thurgood Marshall, Warren E. Burger, and Harry A. Blackmun. See ALBERT P. BLAUSTEIN & ROY M. MERSKY, THE FIRST ONE HUNDRED JUSTICES: STATISTICAL STUDIES ON THE SUPREME COURT OF THE UNITED STATES 119-21 tbl.5 (1978). Although the federal courts of appeals were not established until 1891, Justices were appointed to the Supreme Court from the federal district courts as early as 1826. See THE SUPREME COURT JUSTICES: ILLUSTRATED BIOGRAPHIES, 1789-1995, at 98 (Clare Cushman ed., 2d ed. 1995) [hereinafter ILLUSTRATED BIOGRAPHIES].

7. Prior to his appointment to the Supreme Court, Justice Woods had served for two years on a state chancery court and for eleven years on the Court of Appeals for the Fifth Circuit. HALL, *supra* note 5, at 179. During his service on the Fifth Circuit, Woods earned a reputation as a "fair and hardworking judge." *Id.*

8. In addition to brief service on lower state courts, Justice Jackson had served for seven years on the Court of Appeals for the Sixth Circuit, where he was known for his "diligence and patience." ILLUSTRATED BIOGRAPHIES, *supra* note 6, at 268.

9. Justice Van Devanter had served shortly on a state high court and for seven years on the Court of Appeals for the Eighth Circuit. *Id.* at 313-14. When being considered for elevation to the Supreme Court, Van Devanter was recognized for his vast judicial experience and understanding of complex issues. See *id.*

10. Justice Vinson had served on the United States Court of Appeals for the District of Columbia for six years, during which time most of his decisions were upheld by the Supreme Court. *Id.* at 423. Vinson, who was known as "powerful and resolute," "was effective enough as judge in a circuit court of appeals to have President Roosevelt select him to serve at the same time as head of an emergency court to decide OPA appeals." SIDNEY H. ASCH, THE SUPREME COURT AND ITS GREAT JUSTICES 194 (1971).

Which of the ninety-nine Justices were highly successful? I looked at eleven leading lists that have been compiled over the years.¹¹ Some are based on surveys of experts,¹² while others reflect only the views of the scholar compiling the list.¹³ In an effort to reduce the biases, ideological and otherwise, that inevitably accompany the creation of lists like these,¹⁴ I compiled my own list of those Justices ranked as “great” on at least two of the prior lists.

It turns out that twenty-three Justices show up on my composite list of the greatest to have served on the Supreme Court.¹⁵ These

11. See ASCH, *supra* note 10, at 13-228; BLAUSTEIN & MERSKY, *supra* note 6, at 37; JOHN P. FRANK, MARBLE PALACE: THE SUPREME COURT IN AMERICAN LIFE 43-44 (1958); CHARLES EVANS HUGHES, THE SUPREME COURT OF THE UNITED STATES: ITS FOUNDATION METHODS AND ACHIEVEMENTS 58 (1928); JAMES E. LEAHY, FREEDOM FIGHTERS OF THE UNITED STATES SUPREME COURT: NINE WHO CHAMPIONED INDIVIDUAL LIBERTY 5-375 (1996); MAX LERNER, NINE SCORPIONS IN A BOTTLE: GREAT JUDGES AND CASES OF THE SUPREME COURT 87-176 (Richard Cummings ed., 1994); William D. Pederson & Norman W. Provizer, *Foreword* to GREAT JUSTICES OF THE U.S. SUPREME COURT: RATINGS AND CASE STUDIES, at x (William D. Pederson & Norman W. Provizer eds., 1993) [hereinafter GREAT JUSTICES]; George R. Currie, *A Judicial All-Star Nine*, 1964 WIS. L. REV. 3; Felix Frankfurter, *The Supreme Court in the Mirror of Justices*, 105 U. PA. L. REV. 781, 783 (1957); Stuart S. Nagel, *Characteristics of Supreme Court Greatness*, 56 A.B.A. J. 957 (1970); Bernard Schwartz, *Supreme Court Superstars: The Ten Greatest Justices*, 31 TULSA L.J. 93 (1995).

12. See BLAUSTEIN & MERSKY, *supra* note 6; GREAT JUSTICES, *supra* note 11.

13. See ASCH, *supra* note 10; FRANK, *supra* note 11; HUGHES, *supra* note 11; LEAHY, *supra* note 11; LERNER, *supra* note 11; Currie, *supra* note 11; Frankfurter, *supra* note 11; Nagel, *supra* note 11; Schwartz, *supra* note 11.

14. See, e.g., William G. Ross, *The Ratings Game: Factors That Influence Judicial Reputation*, 79 MARQ. L. REV. 401 (1996).

15. The following list identifies each of the twenty-three Justices as well as the sources that ranked each Justice as “great”:

John Marshall: ASCH, *supra* note 10, at 25-39; BLAUSTEIN & MERSKY, *supra* note 6, at 37; FRANK, *supra* note 11, at 43; HUGHES, *supra* note 11, at 58; LERNER, *supra* note 11, at 89-108; Norman W. Provizer, *John Marshall and the Foundations of Judicial Power*, in GREAT JUSTICES, *supra* note 11, at 33-48; Currie, *supra* note 11, at 4-7; Frankfurter, *supra* note 11, at 783; Nagel, *supra* note 11, at 957; Schwartz, *supra* note 11, at 94-98.

William Johnson: FRANK, *supra* note 11, at 43; Currie, *supra* note 11, at 7-9; Frankfurter, *supra* note 11, at 783; Nagel, *supra* note 11, at 957.

Joseph Story: BLAUSTEIN & MERSKY, *supra* note 6, at 37; FRANK, *supra* note 11, at 43; HUGHES, *supra* note 11, at 58; F. Thornton Miller, *Joseph Story's Uniform, Rational Law*, in GREAT JUSTICES, *supra* note 11, at 49-72; Currie, *supra* note 11, at 9-11; Frankfurter, *supra* note 11, at 783; Nagel, *supra* note 11, at 957; Schwartz, *supra* note 11, at 98-102.

Roger Taney: ASCH, *supra* note 10, at 40-52; BLAUSTEIN & MERSKY, *supra* note 6, at 37; FRANK, *supra* note 11, at 43; Kenneth M. Holland, *Roger B. Taney: A Great Chief Justice?*, in GREAT JUSTICES, *supra* note 11, at 73-100; Currie, *supra* note 11, at 11-13; Frankfurter, *supra* note 11, at 783; Nagel, *supra* note 11, at 957; Schwartz, *supra* note 11, at 102-08.

Benjamin Curtis: FRANK, *supra* note 11, at 43; HUGHES, *supra* note 11, at 58; Frankfurter, *supra* note 11, at 783; Nagel, *supra* note 11, at 957.

John Campbell: FRANK, *supra* note 11, at 43; Frankfurter, *supra* note 11, at 783; Nagel, *supra* note 11, at 957.

Samuel Miller: ASCH, *supra* note 10, at 55-70; FRANK, *supra* note 11, at 43; HUGHES, *supra* note 11, at 58; Currie, *supra* note 11, at 13-16; Frankfurter, *supra* note 11, 783; Nagel, *supra* note 11, at 957.

twenty-three Justices cover a large swath of American judicial history, from John Marshall, Joseph Story, and Roger Taney to Robert Jackson, Earl Warren, and William J. Brennan, Jr. Only one of these

Stephen Field: FRANK, *supra* note 11, at 43-44; HUGHES, *supra* note 11, at 58; Frankfurter, *supra* note 11, at 783; Nagel, *supra* note 11, at 957; Schwartz, *supra* note 11, at 108-15.

Joseph Bradley: FRANK, *supra* note 11, at 43; HUGHES, *supra* note 11, at 58; Currie, *supra* note 11, at 16-18; Frankfurter, *supra* note 11, at 783; Nagel, *supra* note 11, at 957.

John Harlan (the elder): ASCH, *supra* note 10, at 71-82; BLAUSTEIN & MERSKY, *supra* note 6, at 37; FRANK, *supra* note 11, at 43; LEAHY, *supra* note 11, at 5-40; Linda C.A. Przybyszewski, *The Evolution of John Marshall Harlan the Elder*, in GREAT JUSTICES, *supra* note 11, at 101-23; Nagel, *supra* note 11, at 957.

David Brewer: FRANK, *supra* note 11, at 43-44; HUGHES, *supra* note 11, at 58; Nagel, *supra* note 11, at 957.

Oliver Wendell Holmes: ASCH, *supra* note 10, at 83-99; BLAUSTEIN & MERSKY, *supra* note 6, at 37; FRANK, *supra* note 11, at 43; LERNER, *supra* note 11, at 109-31; Patrick Garry, *Oliver Wendell Holmes and the Democratic Foundations of the First Amendment*, in GREAT JUSTICES, *supra* note 11, at 125-45; Currie, *supra* note 11, at 19-23; Frankfurter, *supra* note 11, at 783; Nagel, *supra* note 11, at 957; Schwartz, *supra* note 11, at 115-22.

William Moody: FRANK, *supra* note 11, at 43; Frankfurter, *supra* note 11, at 783; Nagel, *supra* note 11, at 957.

Charles Evans Hughes: ASCH, *supra* note 10, at 117-27; BLAUSTEIN & MERSKY, *supra* note 6, at 37; FRANK, *supra* note 11, at 43; LEAHY, *supra* note 11, at 41-72; Roger W. Corley, *How Liberal Was Chief Justice Hughes?*, in GREAT JUSTICES, *supra* note 11, at 167-84; Currie, *supra* note 11, at 27-31; Frankfurter, *supra* note 11, at 783; Nagel, *supra* note 11, at 957; Schwartz, *supra* note 11, at 126-32.

Louis Brandeis: ASCH, *supra* note 10, at 103-16; BLAUSTEIN & MERSKY, *supra* note 6, at 37; FRANK, *supra* note 11, at 43; LEAHY, *supra* note 11, at 73-105; LERNER, *supra* note 11, at 132-48; Marguerite R. Plummer, *Louis D. Brandeis: Pioneer Progressive*, in GREAT JUSTICES, *supra* note 11, at 147-55; Currie, *supra* note 11, at 23-27; Frankfurter, *supra* note 11, at 783; Nagel, *supra* note 11, at 957; Schwartz, *supra* note 11, at 122-26.

Harlan Stone: ASCH, *supra* note 10, at 128-39; BLAUSTEIN & MERSKY, *supra* note 6, at 37; FRANK, *supra* note 11, at 43; Nagel, *supra* note 11, at 957.

Benjamin Cardozo: ASCH, *supra* note 10, at 143-59; BLAUSTEIN & MERSKY, *supra* note 6, at 37; FRANK, *supra* note 11, at 43-44; Marguerite R. Plummer, *Benjamin Cardozo: Pathfinder for Progress*, in GREAT JUSTICES, *supra* note 11, at 157-66; Frankfurter, *supra* note 11, at 783; Nagel, *supra* note 11, at 957.

Hugo Black: ASCH, *supra* note 10, at 189-203; BLAUSTEIN & MERSKY, *supra* note 6, at 37; LEAHY, *supra* note 11, at 107-46; LERNER, *supra* note 11, at 149-60; Henry J. Abraham, *Hugo L. Black as a Great Justice*, in GREAT JUSTICES, *supra* note 11, at 249-59; Nagel, *supra* note 11, at 957 & n.4; Schwartz, *supra* note 11, at 132-36.

Felix Frankfurter: ASCH, *supra* note 10, at 160-71; BLAUSTEIN & MERSKY, *supra* note 6, at 37; LERNER, *supra* note 11, at 161-66; Pederson & Provizer, *supra* note 11, at x; Nagel, *supra* note 11, at 957 & n.4.

William Douglas: ASCH, *supra* note 10, at 204-17; LEAHY, *supra* note 11, at 147-86; LERNER, *supra* note 11, at 172-76; Nagel, *supra* note 11, at 957 & n.4.

Robert Jackson: ASCH, *supra* note 10, at 172-85; LERNER, *supra* note 11, at 167-71; Nagel, *supra* note 11, at 957 & n.4.

Earl Warren: ASCH, *supra* note 10, at 218-28; BLAUSTEIN & MERSKY, *supra* note 6, at 37; LEAHY, *supra* note 11, at 217-58; Norman W. Provizer & Joseph D. Vigil, *The Earl of Justice: Warren's Vision for America*, in GREAT JUSTICES, *supra* note 11, at 261-78; Nagel, *supra* note 11, at 957 & n.4; Schwartz, *supra* note 11, at 136-42.

William J. Brennan, Jr.: LEAHY, *supra* note 11, at 259-313; Rodney A. Grunes, *Justice William J. Brennan, Jr.*, in GREAT JUSTICES, *supra* note 11, at 279-302; Schwartz, *supra* note 11, at 142-50.

Justices—David Brewer, the author of *Church of the Holy Trinity v. United States*¹⁶—had ever served on a lower federal court.¹⁷

I am not going to attempt to build a statistical argument on a small sample that turns on a vague term like “great.” But, when you have ninety-nine Justices, twenty-four of whom were lower federal court judges, you might expect that the twenty-four would be reasonably well-represented in a long, composite list of great Justices. When you find only one of them on such a list, you begin to suspect that lower federal court judges are not the best group to study when you are trying to identify successful Justices.¹⁸

The paucity of federal judges who were highly successful on the Supreme Court would not surprise anyone who has examined this matter. Indeed, many commentators have observed that prior judicial service of any kind is not a good predictor of Supreme Court success.¹⁹ It is easy to pile up the quotations: “[H]istory proves that the best Supreme Court Justices are likely to be those who have *not* been judges before”;²⁰ “Oblivion has overtaken almost all” of the Justices who had served on lower courts;²¹ scholars have found “a generally negative correlation between a justice’s ranking and prior judicial service.”²²

This is not the place to examine why lower federal court service does not appear to prepare one for great success on the Supreme Court. Obviously, the jobs are different in many ways: having the fi-

16. 143 U.S. 457 (1892). *Church of the Holy Trinity* is famous for its approach to statutory construction and for its reference to the United States as “a Christian nation.” *Id.* at 471. Brewer, the son of Congregational missionary parents, believed Christianity had been a great influence on American history, but he also believed American government was independent of any religion. STEVEN GOLDBERG, *SEDUCED BY SCIENCE: HOW AMERICAN RELIGION HAS LOST ITS WAY* 115-16 (1999).

17. Justice Brewer, who served five years on the Eighth Circuit Court of Appeals, also spent eighteen years on state courts where he issued two pioneering decisions that expanded the rights of women. *ILLUSTRATED BIOGRAPHIES*, *supra* note 6, at 252.

18. Moreover, Ross debunks the notion that Justices are viewed as “great” because they had prominent jobs like Attorney General before serving on the Supreme Court. Ross, *supra* note 14, at 418 (“With the exception of Cardozo and possibly Hughes, however, it is unlikely that the pre-Court careers of the ‘great’ justices influenced their rankings.”).

19. However, service on the highest court in a state has certainly produced some well-regarded Justices. Justice Holmes, for example, appears on nine lists of “great” Justices, *see supra* note 15, and served for twenty years on state courts, HALL, *supra* note 5, at 232. Consider as well Justice Cardozo, who appears on six lists of “great” justices, *see supra* note 15, and served for eighteen years on state courts, HALL, *supra* note 5, at 300.

20. FRANK, *supra* note 11, at 43.

21. Frankfurter, *supra* note 11, at 788.

22. Ross, *supra* note 14, at 419 (citing Thomas G. Walker & William E. Hulbary, *Selection of Capable Justices: Factors to Consider*, in BLAUSTEIN & MERSKY, *supra* note 6, at 52, 66). Another scholar who analyzed the results of the 1992 Pederson and Provizer survey concluded that prior judicial experience “is no guarantee of great success on the Supreme Court.” Robert C. Bradley, *Who Are the Great Justices and What Criteria Did They Meet?*, in GREAT JUSTICES, *supra* note 11, at 1, 9.

nal say,²³ always sitting en banc, the certiorari process, the political nature of many Supreme Court decisions, and many other variables may come into play.²⁴

One reason why we cannot be confident about the reasons lower federal judges have not been notably successful on the Supreme Court is that we know relatively little about the ingredients of such success. These ingredients are hard to pin down, and they are not the object of intensive study. More has been written about the parole evidence rule than about what makes a great Supreme Court Justice. Fortunately, there is an analogous area that has been the subject of broad public concern and careful analysis. That area is professional football, and the analogy suggests that Choi and Gulati are, indeed, barking up the wrong tree.

Applied to professional football, the Choi and Gulati thesis suggests that if you find the best college football player you will find a highly successful professional player. This thesis is far more likely to be true for football than it is for the judiciary. With the judiciary, Choi and Gulati have to contend with all of those other prominent people who were not federal judges but might become great Justices. Furthermore, they have to contend with a Supreme Court that plays by very different rules than the lower federal courts: it sits in groups of nine rather than three, it has certiorari power, and so on. No such problems exist in the football world. College football provides essentially all of the players in the National Football League,²⁵ and college teams play by roughly the same rules as professional teams: each put eleven men on the field, have four downs to gain ten yards, and so on.²⁶

23. "We are not final because we are infallible, but we are infallible only because we are final." *Brown v. Allen*, 344 U.S. 443, 540 (1953) (Jackson, J., concurring in the result).

24. The differences may, in fact, be subtler than are usually supposed. For example, Judge Harry T. Edwards of the U.S. Court of Appeals for the D.C. Circuit departs from many scholars in stressing the importance of collegiality in a federal circuit court, yet Edwards notes that "collegiality on the [Supreme] Court operates very differently from the collegial process at work in the lower appellate courts." Harry T. Edwards, *The Effects of Collegiality on Judicial Decision Making*, 151 U. PA. L. REV. 1639, 1644 (2003). Edwards points out that the Supreme Court hears many more "very hard" cases and that it always sits en banc. *Id.*

Not everyone is pleased that the Supreme Court is different from other federal courts. For an argument that the Supreme Court is increasingly unlike other federal courts in a fundamental way and that this is troubling, see Ashutosh Bhagwat, *Separate but Equal?: The Supreme Court, the Lower Federal Courts, and the Nature of the "Judicial Power,"* 80 B.U. L. REV. 967, 968 (2000).

25. Thomas R. Kobin, Comment, *The National Collegiate Athletic Association's No Agent and No Draft Rules: The Realities of Collegiate Sports Are Forcing Change*, 4 SETON HALL J. SPORT L. 483, 513 (1994) ("[I]t is the rare exception or fluke when an NFL player does not come out of a collegiate football program.").

26. Mike Preston, *It's No-Win for Clarett, but NFL Vulnerable*, BALT. SUN, Aug. 13, 2003, at 1C ("College football pretty much has the same rules and routine of the pro game . . .").

Yet the Choi and Gulati thesis is wrong as applied to football. It is not as far off base as it is for the judiciary, but it is wrong nonetheless. There is a highly respected award for the best college football player each year. It is called the Heisman Trophy.²⁷ And yet “Heisman Trophy winners often fail in [the] NFL.”²⁸ Indeed, of the sixty-eight winners in the history of the award, only eight have been inducted into the Professional Football Hall of Fame.²⁹

Of course, not everyone agrees that the winner of the Heisman Trophy is, in fact, the best college football player in the land. There are inevitably extraneous factors, such as playing for a prominent school.³⁰ Not everyone agrees with the winner of the Nobel Prize in Physics each year either. But keep in mind that only one person wins the Heisman Trophy each season. Whether or not the winner is always the best college player, it is clear that he is a very good college football player. Yet, “[i]nstead of dominating as professionals, most recent [Heisman] winners haven’t even been able to get into a game.”³¹ Of the ten Heisman Trophy winners between 1993 and 2002, seven, all of whom are offensive players, failed to gain a single yard in the 2003 NFL season.³²

Once again, it is hard to be sure why great success at one level does not guarantee great success at the next. With the Heisman Trophy, the consensus seems to be that “[a] different type of player is successful at the college level as opposed to the pro level.”³³ Appar-

27. The Downtown Athletic Club of New York City has been awarding the Heisman Trophy, “college football’s most coveted and prestigious award,” since 1935. Ray Parrillo, *All Leaders Are Worthy of Heisman*, MACON TELEGRAPH, Dec. 10, 2002, at C3. The winner is chosen based on the votes of over 900 electors, including members of the media and former winners of the trophy. *Id.*

28. Associated Press, *Heisman Trophy Winners Often Fail in NFL: Crouch, Weinke, Wuerffel, Salaam Among Busts* (Dec. 13, 2003), available at <http://msnbc.msn.com/id/3695898> [hereinafter *Heisman Trophy Winners Often Fail in NFL*]. NFL is the acronym for the National Football League.

29. *Compare Heisman Trophy Winners*, KAN. CITY STAR, Dec. 14, 2003, at C7 (listing all Heisman winners); *with Hall of Fame Classes*, SUNDAY ADVOC. (Baton Rouge, La.), Feb. 1, 2004, at C12 (listing all Hall of Fame inductees).

30. Mark Stewart, *Free Fall: Heisman Winners Fizzle in NFL*, MILWAUKEE J. SENTINEL, Dec. 8, 1999, at C1 (“Heisman Trophy winners usually have a few things in common: they play in a major conference, are members of highly successful teams, have name recognition at the beginning of the season and almost always play high-profile offensive positions—quarterback or running back.”).

31. *Heisman Trophy Winners Often Fail in NFL*, *supra* note 28.

32. *Id.* Charlie Ward, the 1993 winner, chose to play basketball over football; Danny Wuerffel and Rashaan Salaam, the 1994 and 1996 winners respectively, left the NFL after short careers; Chris Weinke (2000), Ron Dayne (1999), and Carson Palmer (2002) were on NFL team rosters in 2003 but failed to produce a single yard among them; and Eric Crouch, the 2001 winner, “quit football before his career started.” *Id.* Only Eddie George (1995), Charles Woodson (1997), and Ricky Williams (1998) had any real impact in 2003. *Id.*

33. *Id.* (quoting Gil Brandt, the former personnel director of the Dallas Cowboys and the NFL’s senior draft consultant).

ently in professional football, speed, size, and strength count for more than they did in college.³⁴ But whatever the reason, the evidence suggests that the effort by Choi and Gulati to find a Heisman Trophy winner among federal circuit court judges is unlikely to lead to uncovering great Supreme Court Justices.

34. See *id.* (stating that NFL players require skills plus speed, height, and weight).