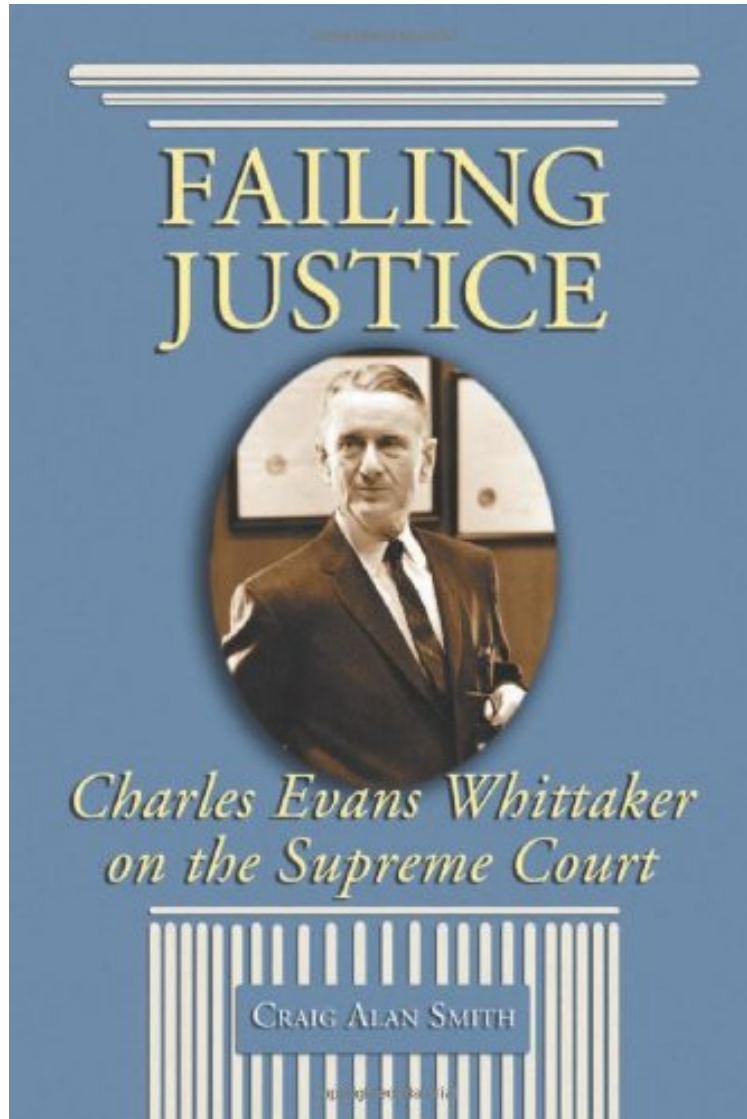


## Failing Justice: Charles Evans Whittaker On The Supreme Court

*Craig Alan Smith*

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**Craig Alan Smith : Failing Justice: Charles Evans Whittaker On The Supreme Court** before purchasing it in order to gage whether or not it would be worth my time, and all praised Failing Justice: Charles Evans Whittaker On The Supreme Court:

7 of 7 people found the following review helpful. A fine man, but indeed a failed JusticeBy Daniel E. EatonThe author of this book attempted to move Justice Charles Evan Whittaker from the ranks of failed Supreme Court Justices to the ranks of mediocre Justices. The author failed, even while helpfully correcting some factual inaccuracies in the record made by other more critical biographers.Justice Whittaker wrote no notable opinions, developed and expressed no

coherent theory of judging, and was not respected by his colleagues as a Justice except at the margins. The author seems to think that some of Whittaker's opinions were significant because they have been cited by lower courts. A Supreme Court opinion that addresses a point under consideration is always going to be cited when a lower court addresses the same issue. That does not make the opinion noteworthy. On the steep curve that applies to evaluating Supreme Court Justices, Whittaker was indeed a relative if not an absolute failure. Yet the book does demonstrate that Justice Whittaker was a fine lawyer and, most important, a very fine man. The book is about 25% too long and often repetitious, even within paragraphs. As a former Whittaker clerk, who is cited as a source in the book, said in an otherwise positive review in the *Journal of Supreme Court History*: "The editor of 'Failing Justice' could have done a better job . . . . A good, stiff, final editing was in order." Amen. A great Supreme Court Justice is not necessarily a great person and a failure as a Supreme Court Justice is not necessarily a failure as a man. This book rehabilitates Justice Whittaker in the only way his record can support and, perhaps, in the only way that really matters. 4 of 5 people found the following review helpful. A Vigorous Defense of Justice Whittaker By Ronald H. Clark Most every student of the Supreme Court who has evaluated Justice Charles Evans Whittaker has found his performance seriously lacking in substance. In fact, he is often included in the group of "failure" Justices when surveys are taken of academic court watchers. The author has undertaken in some 300 pages, to defend Whittaker and refute many of the allegations made against him. As such, this is an unusual judicial biography, since it is as equally concerned with the attacks upon Whittaker as it is with his life and service on the Court (1957-62). The author is particularly determined to refute Richard Lawrence Miller's "Whittaker: Struggles of a Supreme Court Justice" (published in 2002) (also reviewed on ). This dual approach leads to several problems, but also results in as thoroughly researched a study of Whittaker as we are ever likely to have. The author spends much of his time generating excuses for aspects of Whittaker's service as a U.S. district judge, Court of Appeals Judge, and Supreme Court Justice, as well as his post-Court period when he made a number of controversial statements. It is not clear how many of the reasons that the author suggests for an action were the reasons that actually motivated Whittaker. It is difficult to see the book as manifesting scholarly detachment and objective analysis--rather it reads like a very effective brief in Whittaker's defense. However, there are good dimensions to the book as well. For example, the research is extraordinary in its comprehensiveness and must reference everything ever written by or about Whittaker. Also, the author's excellent research allows him to reconstruct some important private interactions between the Justices on several important cases. At the end, one is left with a pretty thorough grasp of Whittaker. He surely did suffer detriment from a short tenure on the Court. And his performance was impaired by his own demons which ultimately resulted in a nervous breakdown and retirement from the Court. But it is clear that even without these disadvantages, he was at best a modest judge on a Supreme Court with some pretty powerful figures. So, the book earns praise as a valuable document for those interested in studying the Warren Court and its interpersonal dynamics. It also affords us a unique and valuable perspective on this ambiguous figure about whom little that is positive has been written.

In the history of the U.S. Supreme Court, Associate Justice Charles Evans Whittaker (1957-1962) merited several distinctions. He was the only Missourian and the first native Kansan appointed to the Court. He was one of only two justices to have served at both the federal district and appeals court levels before ascending to the Supreme Court. And Court historians have routinely rated him a failure as a justice. This book is a reconsideration of Justice Whittaker, with the twin goals of giving him his due and correcting past misrepresentations of the man and his career. Based on primary sources and information from the Whittaker family, it demonstrates that Whittaker's life record is definitely not one of inadequacy or failure, but rather one of illness and difficulty overcome with great determination. Nine appendices document all aspects of Whittaker's career. Copious notes, a selected bibliography, and two indexes complete a work that challenges the historical assessment of this public servant from Missouri.

About the Author Craig Alan Smith earned his Ph.D. in history and political science from the University of Missouri-Kansas City. He teaches American History and Social Studies Education at Missouri State University.