SUPREME COURT SLUGGERS: JAMES IREDELL

Ross E. Davies,
George Mason University School of Law


George Mason University Law and Economics Research Paper Series

14-40

This paper is available on the Social Science Research Network at http://ssrn.com/abstract=2489630
The Supreme Court existed for about a dozen years before John Marshall became Chief Justice in 1801. Until recently, in some instances quite recently, scholars tended to neglect those early years and the judges who served on the Court during them. That is why Supreme Court Sluggers cards of the early Court are good vehicles for saluting – if only partially and imperfectly – some great baseball players who also were neglected until recently (and who suffered treatment worse than neglect in their playing days). Sluggers cards of the original pre-Marshall Court – Chief Justice John

1 Professor of law, George Mason University; editor-in-chief, the Green Bag.

2 See generally Scott Douglas Gerber, Introduction, in SERIATIM: THE SUPREME COURT BEFORE JOHN MARSHALL (1998) (noting the relative inattention to the pre-Marshall Court). Much of the neglect has taken the form of attribution of developments at the Court to the Marshall era even when they in fact preceded or at least began before it. Compare, e.g., Bernard Schwartz, A Presidential Strikeout, Federalism, RFRA, Standing, and Stealth Court, 33 TULSA L.J. 77, 87 (1997) (citation omitted) (erroneously reporting: “In fact, from the Court’s first opinions in 1792, the Justices have followed the practice of issuing opinions to explain their decisions – at first by the English custom of having the Justices deliver individual opinions seriatim, followed until John Marshall established the practice of opinions of the Court stating the rationale behind decisions.”), with WILLIAM R. CASTO, THE SUPREME COURT IN THE EARLY REPUBLIC 110-11 (1995) (accurately reporting: “Before [Oliver] Ellsworth became Chief Justice [in 1796], the Court had not developed a firm tradition regarding the use of either seriatim or majority opinions. . . . After Ellsworth became Chief Justice, a clear pattern emerged in which he would personally deliver short opinions of the Court, infrequently supplemented by dissenting or concurring opinions.”). Things have been changing, though, and for the better. In addition to the work of Gerber and Casto, see, for example, THE DOCUMENTARY HISTORY OF THE SUPREME COURT OF THE UNITED STATES, 1789-1800 (1985-2007) (8 vols.) (Maeva Marcus et al., eds.); DAVID P. CURRIE, THE CONSTITUTION IN THE SUPREME COURT: THE FIRST HUNDRED YEARS 1789-1888, Part One (1985).

Jay and Justices John Rutledge, William Cushing, James Wilson, John Blair, and James Iredell\(^3\) – will be based on negro league stars who were denied (for most of their careers, at least) opportunities to play in the major leagues due to race discrimination.\(^4\)

\[\text{James Iredell}\]

The first Sluggers card of a member of the founding-era Court – the card featured in this little article – portrays Justice Iredell in the batting stance of longtime Homestead Grays first baseman Walter “Buck” Leonard. (The nickname came courtesy of a young sibling who tried to call him “Buddy” but pronounced it “Bucky,” and it stuck for life as “Buck.”\(^5\)) On the statistical side, the Iredell card reflects another similarity between the early Justices and the players on whom their portraits are modeled: the sources of job performance


data are fragmentary (as well as being sometimes hard to parse), at least compared to those for modern Justices and major leaguers.

II.

JUSTICE JAMES IREDELL, ILLUSTRATED

John Sargent painted the full-color portrait of our slugging Justice, which is reproduced in black-and-white on page 174, next to a well-known picture of Leonard taken by renowned photographer Robert H. McNeill (see page 175). Basing the Iredell portrait on a traditional trading card of Leonard was not an option, because U.S. trading card manufacturers did not produce cards of active negro league players. The companies eventually produced cards of the few players who made it to the major leagues after Jackie Robinson broke the color line in 1947. Later, they also produced commemorative cards of some players’ negro league careers. But that was all. Some negro leaguers, including Leonard, spent winters playing on Central American and Caribbean teams, and appeared in Cuban card sets, but we have not found a Leonard card among them.

Why Leonard for Iredell? Because:

- With all due respect for other great baseball players such as Luke Appling, Rick Ferrell, Mark Grace, Catfish Hunter, and Gaylord Perry, Leonard was, and remains, the best ever to hail from North Carolina. His long and successful professional

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7 See Patricia Sullivan, Robert McNeill Dies at Age 87; D.C. Photographer of Black Life, WASH. POST, May 29, 2005.
career – 23 years of sometimes year-round play in various countries and leagues, as well as barnstorming and exhibition games, from 1933 to 1956 – included 17 seasons, 10 Negro National League titles, and 3 Negro World Series titles with the Homestead Grays of Pittsburgh, PA and Washington, DC.\textsuperscript{11} Iredell, who served from 1790 to 1799, enjoys much the same standing among Supreme Court Justices from North Carolina. But he only has to compete with Alfred Moore,\textsuperscript{12} a Justice whose tenure was so short (less than four years, from April 1800 to January 1804) and contributions so slight that he was in the running for the title of “Most Insignificant Justice” on both sides of the dueling studies by Professors David Currie and Frank Easterbrook.\textsuperscript{13}

• In addition, Leonard was a great player not just compared to others from North Carolina or to others from his era, but compared to just about anyone. He was one of the first non-white players elected to the Baseball Hall of Fame, after Ted Williams’s famous Hall acceptance speech prompted (or at least heralded) racial reforms there.\textsuperscript{14} And Leonard has ap-

\textsuperscript{11} For the complete, and beautifully told, history of Leonard’s team, read Brad Snyder’s Beyond the Shadow of the Senators: The Untold Story of the Homestead Grays and the Integration of Baseball (2003).
\textsuperscript{13} David P. Currie, The Most Insignificant Justice: A Preliminary Inquiry, 50 U. CHI. L. REV. 466, 479 (1983) (“In closing this preliminary report I cannot be restrained from making special mention of several other Justices who deserve a high place in the ranks of the insignificant. Prominent among them despite his relatively brief service is Alfred Moore of North Carolina . . . , whom I dismissed in a study of the pre-Marshall era as one who ‘be-long[ed] essentially to the Marshall period’ and in articles about the Marshall Court as a holdover from earlier days.”) (citations omitted); Frank H. Easterbrook, The Most Insignificant Justice: Further Evidence, 50 U. CHI. L. REV. 481, 485-86 (1983) (“On an ex ante approach we might award the honors to Alfred Moore by acclamation. Justice Moore, who delivered one brief opinion during his four placid terms, showed every promise of setting a standard of passive irrelevance for centuries to come; only his resignation prevented him from fulfilling his pledge.”) (citations omitted).
\textsuperscript{14} See BUCK O’NEIL WITH STEVE WULF AND DAVID CONRADS, I WAS RIGHT ON TIME 140 (1996):

It was Ted Williams. On the day he was inducted into the Hall of Fame in 1966, he said, “I hope that some day Satchel Paige and Josh Gibson will be voted into the Hall of Fame as symbols of the great Negro-league players who are not here only because they weren’t given the chance.”
peared on a number of lists of all-time great baseball players. Indeed, his standing in the baseball pantheon is undoubtedly higher than Iredell’s is in the judicial equivalent. Iredell does not have a bad reputation. Rather, he was rated merely “Average,” in one oft-cited poll of scholars, and he failed to make any of the lists of great Justices in a collection of studies of greatness at the Court, though he was rated by one respectable authority as one of the “most impressive” of the Justices of the pre-Marshall Court.

Relatively speaking, then, it is probably more of an honor to Iredell to have his Sluggers portrait based on Leonard than it is an honor to Leonard to be the basis for the Iredell portrait.

People who know more about Iredell and Leonard might well come up with other, more interesting connections and comparisons.

Iredell the Slugger is standing against a backdrop different from the one in the photograph of Leonard because it seemed appropriate to portray Iredell at Greenlee Field in Pittsburgh, where Leonard’s Homestead Grays often played their rivals, the Pittsburgh Crawfords. Those games were interesting not only from a competitive standpoint, but also technologically (for example, some of the earliest night games played under electric lights) and legally (for example, at least one clever challenge to Sunday blue laws).

That got the ball rolling as far as the Hall of Fame was concerned. Satchel was the first one to get in, naturally, in 1971, and after him came Gibson and [Buck] Leonard.

See also Berger, Buck Leonard, SABR BioProject, sabr.org/bioproj/person/231446fd.

See, e.g., THE NEW BILL JAMES HISTORICAL ABSTRACT 359, 365 (2001; pbk. ed. 2003) (ranking Leonard at #65, and noting The Sporting News’s ranking of Leonard at #47); see also THE ESPN BASEBALL ENCYCLOPEDIA 1721-22 (5th ed. 2008) (Gary Gillette and Pete Palmer, eds.) (listing Leonard as one of the twelve “Titans” of the negro leagues).


CURRIE, supra n.1 at 57; see also WILLIS P. WHICHARD, JUSTICE JAMES IREDELL ch. 9-22 (2000).

See generally Geri Strecker, The Rise and Fall of Greenlee Field, 2 BLACK BALL 37 (Fall 2009).
Supreme Court Sluggers  ♦  October Term 2012

*James Iredell*  ♦  1B

*James Iredell by John A. Sargent*  
*(courtesy of the artist).*
Buck Leonard by Robert H. McNeill
(courtesy of the heirs of Robert H. McNeill).
Like Justice Samuel Alito’s Sluggers portrait, Iredell’s features a baseball bat with a unique logo that might prompt you to re-read one of the Justice’s opinions. On Iredell’s bat, the logo is a citation to Ware v. Hylton, a 1796 case in which the Justice did not vote because he had been a member of the circuit court panel whose decision the Supreme Court was reviewing. The report of Ware, however, indicates that in the Supreme Court Iredell was on the bench and actively engaged in the oral argument. In addition, the report includes his reading in the Supreme Court of his circuit court dissent. The Supreme Court reversed the circuit court in Ware.

III.

JUSTICE JAMES IREDELL, QUANTIFIED

Statistics by themselves can never fully portray the accomplishments of anyone, including a ballplayer or a judge, or the quality of anyone’s work. But they are especially ineffective when the per-

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20 3 U.S. 199, 256 n.* (1796); see also Currie, supra n.1 at 37.
21 3 U.S. at 209 n.*; 256-80.
son subject to statistical study is as inconveniently situated as both Iredell and Leonard were. They worked in contexts where records of their work were: (a) incomplete and otherwise inaccurate from the start due to faulty – sometimes downright negligent – contemporary record-keeping, and (b) further eroded and sometimes polluted by the passage of time and the imperfections of human memory. And statistics are, of course, only as accurate as the records on which they are based.

Late in life, Leonard – by then enjoying a well-deserved baseball celebrity – good-naturedly recognized this reality:

At a baseball exhibit in the Smithsonian’s Museum of American History, a youngster asked Buck Leonard how many home runs he hit in his long baseball career. Leonard, still lean and graceful in his seventies, gave a brief smile. “Well,” he said, “in the Negro leagues we didn’t always keep very good records.”

Iredell, who died mid-career and in his prime (at age 48 in 1799) never had a chance to reflect on his version of this problem. But he surely would have said much the same about the Court’s records in his time. As a leading modern expert observed, in a critique of reports of decisions of the Supreme Court during the period when Iredell served,

The dispute, in short, concerns not whether but to what extent [reporter of decisions Alexander J.] Dallas’ three volumes of Supreme Court Reports [covering its sittings from 1791 to 1800] are incomplete. . . . Delay, expense, omission and inaccuracy: these were among the hallmarks of Dallas’ work.

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23 Matthew Schudel, September Nonfiction, WASH. POST BOOK WORLD, Sept. 11, 1983, at 6; see also, e.g., Gary Ashwill, About, NEGRO LEAGUES DATABASE, www.seamheads.com/NegroLgs/about.php (vis. July 13, 2014) (”Box scores and game accounts for Negro league and independent black teams in the U.S. have been drawn from dozens of disparate and sometimes very hard-to-find sources. Negro league statistics are thus almost never complete, and it’s highly unlikely we will ever achieve comprehensive coverage in every season.”), and NEGRO LEAGUE DATA SOURCES, www.baseball-reference.com/about/nlb.shtml (vis. July 10, 2014) (same); WHITE, supra n.4 at 133-34.

24 Craig Joyce, The Rise of the Supreme Court Reporter, 83 MICH. L. REV. 1291, 1303, 1305 (1985); id. at 1304 (“As to accuracy, the verdict on Dallas’ Reports is less certain.”); see also,
Nevertheless, statistics are a place to start, and we have done the best we can for Iredell.

The biggest news about the numbers on the back of the Iredell Sluggers card (and the spreadsheets that back them up) is that we have abandoned the sophisticated and comprehensive processes for gathering and sorting judicial statistics that Adam Aft and Craig Rust developed, and which they describe in earlier articles about the Sluggers. The problem is not with their system. It has worked just fine. The problem is that the database on which their system relied, Washington University’s superb “Supreme Court Database,” does not cover the years during which Iredell served on the Court. This difficulty is compounded by the fact that the obvious fallback — searching in standard databases of judicial decisions – is not always a reliable method for gathering accurate data about which judges participate in which decisions, and how they participate. Moreover, it is a problem that becomes more severe as a study deals with increasingly ancient cases. Obviously, the cases in which Iredell participated are all old. We anticipated this problem, and commented on it at some length, in another article on the Sluggers project. There really is only one solution: get the books containing reports of cases in which the Justice might have participated, and page through them, from cover to cover.

That has been done, as best we could manage it, for Iredell. We used these volumes:

e.g., JAMES HAW, JOHN & EDWARD RUTLEDGE OF SOUTH CAROLINA vii (1997) (discussing “a paucity of personal papers” of the subjects of his book).
25 See, e.g., Ross E. Davies, Craig D. Rust and Adam Aft, Supreme Court Sluggers: Introducing the Scalia, Fortas, and Goldberg/Miller Trading Cards, 2 J.L.: PERIODICAL LABORATORY OF LEG. SCHOLARSHIP (1 J. LEGAL METRICS) 155, 166-70 (2012); Ross E. Davies, Craig D. Rust and Adam Aft, Supreme Court Sluggers: John Paul Stevens is No Stephen J. Field, 13 GREEN BAG 2D 463, 475-80 (2010); Ross E. Davies and Craig D. Rust, Supreme Court Sluggers: Behind the Numbers, 13 GREEN BAG 2D 213, 219-26 (2010).
26 Collection Status, THE SUPREME COURT DATABASE, scdb.wustl.edu/about.php?s=2 (vis. July 14, 2014) (“As we indicate below, the Database now traces back to the 1946 term.”).


Documentary History of the Supreme Court of the United States, vol. 1-8 (1985-2007) (Maeva Marcus et al., eds.)


Griffith J. McRee, Life and Correspondence of James Iredell, vol. 1-2 (1857-58)

If you know of any others that ought to be studied for the next edition of his card, please email editors@greenbag.org.

Poking around in the work of an old-time Justice prompted a few changes in our statistical categories to take account of duties that used to be a big part of the work of the Justices. Jury charges (“JC”) and separate (seriatim, mostly) opinions (“SO”) have been added. Unanimous opinions (“UO”) and citations by name in West’s “Federal” reporters (“CN”) have been removed from the back of the card to make room for the two new categories, but they will still be tracked in the spreadsheets available on the Supreme Court Sluggers website.\textsuperscript{28}

CN trends – which are an attempt to quantify how prominent a Justice has been, by tracking the number of times he or she has been cited by name in federal court opinions\textsuperscript{29} – will continue to appear on some cards, while “CC” trends – a subset of CN limited to citations by name in U.S. Supreme Court opinions – will appear on others,

\textsuperscript{29} Davies & Rust, supra note 25 at 223.
and debuts on the Iredell card. It is hard to know what to make of Iredell’s CC numbers without other Justices’ to compare them to. But we expect to have at least some of the data for comparisons—and for the rest of the statistics on the back of the forthcoming Jay, Rutledge, Cushing, Wilson, and Blair Sluggers cards—soon. For the
citation by name statistics (“CN” and “CC”) we used Westlaw’s “all-cases” database, which seems pretty good for that particular bit of research, notwithstanding the comments above about standard databases.

Finally, and purely coincidentally, our first founding-era Slugger is also our first with a reported history of service on a non-federal court. And so the Iredell card includes one rather sparsely populated line of state court statistics. Future cards both ancient (Cushing, for example) and modern (Justice Sandra Day O’Connor, for example) will have much more.

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