FEDERAL BUREAU OF INVESTIGATION

SUPREME COURT

PART 4 OF 14

FILE NUMBER : 62-27585

FILE DESCRIPTION

BUREAU FILE

SUBJECT Supreme Court

FILE NO. 62-27585 (Part 4)

Release 3

WASHINGTO[illegible]Y NEWS SER[illegible]

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CHARLES EVANS HUGHES TODAY ENDS A DECADE OF SERVICE AS CHIEF JUSTICE.

THE 77-YEAR-OLD JURIST, WHO ASCENDED THE BENCH FOR THE SECOND TIM FEB. 24, 1930, AS AN APPOINTEE OF PRESIDENT HOOVER, PLANNED NO CEREM TO MARK HIS ANNIVERSARY. HE ADHERED RIGIDLY TO HIS CUSTOM OF ISSUIN NO PUBLIC STATEMENTS.

62-75585-A

FEB

Third Circuit Court's Batting Average: .000

By United Press

A Justice Department survey revealed today that all of the 16 cases of the Third Circuit Court of Appeals at Philadelphia which reached the Supreme Court during the 1937-38 term were reversed.

The figures revealed that only one Circuit Court—the second at New York—had been sustained more times than it had been reversed. It received 11 reversals and was upheld 12 times.

The Third Circuit Court for several years has been the subject of Administration criticism as "the most reactionary in the country." Until three retirements this spring, all of its members were more than 70 years old. Its senior and presiding judge, Joseph Buffington, appointed in 1906, will be 83 in September. He retired May 14. Judges J. Whitaker Thompson, 71, and Victor B. Wooley, 77, retired in April.

The complete record:

Court	Reversed	Affirmed	Dismissed
First (Boston	5	5	1
Second (New York)	11	12	
Third (Phila'phia)	16	..	
Fourth	3	3	
Fifth	8	2	
Sixth	3	2	
Seventh	11	3	
Eighth	2	1	
Ninth	14	3	
Tenth	1	..	
U. S. Court of Appeals For D. of C	1	1	

Among major cases in which the Philadelphia court was rebuffed were:

The Metropolitan Edison Co. case—the Supreme Court held that it had acted outside its jurisdiction in enjoining the progress of a hearing before the Federal Power Commission.

The Pennsylvania Greyhound case—the Supreme Court sustained a National Labor Relations Board order directing the company to withdraw all recognition from a company-dominated union.

The National Grocery Co. case—a 50 percent penalty tax on the company was sustained.

Helvering V. Freedman—the Supreme Court sustained the power of the Federal Government to impose an income tax upon an attorney employed by the Pennsylvania banking department in liquidating banks.

The Republic steel case—it was held that the NLRB was entitled to vacate an order holding the company guilty of law violation.

Mr. Edson
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Mr. Clegg
Mr. Coffey
Mr. Crowl
Mr. Dawsey
Mr. Egan
Mr. Foxworth
Mr. Glavin
Mr. Harbo
Mr. Lester
Mr. McIntire
Mr. Nichols
Mr. Tracy
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62-21585-A
WASH NEWS

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High Court Gets Power to Regulate Procedure

President Roosevelt yesterday signed a bill giving the Supreme Court power to regulate criminal procedure in Federal courts. He said he hoped the measure would achieve uniformity and simplicity in the administration of Federal justice in criminal cases.

The measure supplements a 1934 law which gave the Supreme Court authority to establish uniform procedure in civil cases.

"This legislation is a far-reaching and important step in the reform of the law," Mr. Roosevelt said. "It is hoped that this grant of power will result in introducing uniformity and simplicity in the administration of criminal justice in the Federal courts and eliminating some of the archaic technicalities which at times hamper or delay the progress of cases thru the courts."

62-27585A

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Enclosure

JUL 2 - 1940

WASH. NEWS

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Power Given High Court On Criminal Procedure

Bill to End Technical Delay in Lower Tribunals Signed

WASHINGTON, July 1 (AP).—President Roosevelt signed legislation today empowering the Supreme Court to regulate criminal procedure in Federal courts. A statement issued by the White House, describing the legislation as a "far-reaching and important step in the reform of the law," follows:

"It was announced at the White House that the President today signed a bill to confer on the Supreme Court the power to regulate criminal procedure in the Federal courts. This legislation is a far-reaching and important step in the reform of the law.

"It is hoped that this grant of power will result in introducing uniformity and simplicity in the administration of criminal justice in the Federal courts and eliminating some of the archaic technicalities which at times hamper or delay the progress of cases through the courts.

"In 1934, similar authority was conferred on the Supreme Court in respect to civil cases. The Supreme Court thereupon appointed an advisory committee of eminent members of the bench and bar and teachers of the law, which drafted a set of simple rules of procedure.

"With some modifications, these rules were adopted and promulgated by the Supreme Court. They have met with general acclaim and have made an important contribution to reducing law's delays and diminishing the cost of litigation.

"It is reasonable to expect a similar result in criminal cases from the legislation just enacted."

62-21584-A

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~~Bill to~~ Simplify Federal Criminal Procedure Signed

A bill to pave the way for simplification of criminal procedure in Federal courts, which a White House statement hailed as "a far-reaching and important step in the reform of the law," was signed yesterday by President Roosevelt.

The legislation grants to the Supreme Court the power to regulate criminal procedure along the lines of an earlier measure that brought about reforms in civil procedure.

"It is hoped," the White House statement said, "that this grant of power will result in introducing uniformity and simplicity in the administration of criminal justice in the Federal courts and eliminate some of the archaic technicalities which at times hamper or delay the progress of cases through the courts."

When the regulatory authority for civil cases was conferred on the Supreme Court in 1934 the court appointed an advisory committee of eminent members of the bench and bar which drafted rules of procedure which, with some modifications, later were adopted and promulgated by the Supreme Court. These, the White House statement said, "have met with general acclaim and have made an important delays and diminishing the cost of contribution toward reducing law's litigation. It is reasonable to expect a similar result in criminal cases from the legislation just enacted."

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Legislation Signed To Expand Power Of Supreme Court

President Roosevelt signed legislation yesterday empowering the Supreme Court to regulate criminal procedure in Federal courts.

A statement issued by the White House, describing the legislation as a "far-reaching and important step in the reform of the law," said:

"It is hoped that this grant of power will result in introducing uniformity and simplicity in the administration of criminal justice in the Federal courts and eliminating some of the archaic technicalities which at times hamper or delay the progress of cases through the courts.

"In 1934, similar authority was conferred on the Supreme Court in respect to civil cases. The Supreme Court thereupon appointed an advisory committee of eminent members of the bench and bar and teachers of the law, which drafted a set of simple rules of procedure.

"With some modifications, these rules were adopted and promulgated by the Supreme Court. They have met with general acclaim and have made an important contribution to reducing law's delays and diminishing the cost of litigation.

"It is reasonable to expect a similar result in criminal cases from the legislation just enacted."

62-27552-A

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WASH. POST

Legislating By Court Assailed

Supreme Tribunal Said to Have Put Missing Words in Law

By DAVID LAWRENCE.

Five justices of the Supreme Court of the United States—all of them appointed by President Roosevelt—have united in a decision which may well revive the Nation-wide controversy over the court which developed in 1937.

David Lawrence.

The charge then was that the old court "legislated" and that it was, therefore, not liberal. Today the new court, packed by the present administration, has undertaken more boldly than the old court or any other court in history to supply words and text to a statute which were never approved by Congress.

The effect of the decision may be epoch-making in American history. For five justices—a majority of the court—say, in effect, that an employer must hire anybody who claims he was discriminated against because of union affiliation when applying for a job. If the Labor Board rules that the employer refused to hire for one reason or another, it does not matter what the evidence really shows—the Labor Board's word is final. More than this, even though the Wagner law specifies what are or are not unfair labor practices and permits the board to issue an order to cease and desist from such practices, the statute did not give the board power to think up any kind of punishment it cared to apply.

But the Supreme Court now says a governmental board or commission—not merely the Labor Board but any governmental agency—can apply punishments of their own irrespective of whether such punitive action is specified by Congress.

This form of administrative autocratism caused a revolt in the House of Representatives and the Senate in the last session when the Logan-Walter bill was passed by an overwhelming vote only to be vetoed by President Roosevelt. The usurpation of the law-making power by the highest court in the land comes at a time when the Nation is engaged in a debate on the importance of combatting the Fascist system of government-imposed law without recourse to a national legislature.

Stone Praised for Dissent.

The latest instance, known as the Phelps-Dodge case, revolved around the refusal of the company to hire two men who had been union agitators. They were not employes of the company when applying for jobs and yet the Labor Board ordered the company to hire them and ordered also that back pay be awarded to these non-employes from the date of their application to the time the board ordered them taken on by the company.

Nothing in the Wagner law authorizes any such order by the Labor Board. The law speaks of "reinstating" employes, who are discharged because of union activity or connections. But this covers an employe already at work. The chairman of the Labor Board told a committee of Congress last year that he thought the Congress intended to make the law read "instate" as well as "reinstate" but just forgot.

It now develops that the five justices of the Supreme Court appointed by President Roosevelt decided to supply the missing word and it is a mark of credit to that great liberal Harlan Fiske Stone, Associate Justice, that he did not concur in what the New Deal justices endeavored to do. This is one of the rare occasions when Justice Stone has been found disagreeing with the New Dealers. In his dissenting opinion, which is also concurred in by Chief Justice Hughes, the following declaration is made by Justice Stone:

"We agree that the petitioner's refusal to hire two applicants for jobs, because of their union membership, was an unfair labor practice within the meaning of the act, even though they never had been employes of the petitioner (the company), and that under section 10c the board was authorized to order petitioner to cease and desist from the practice and to take appropriate proceedings under section 10 to enforce its order. But it is quite another matter to say that Congress has also authorized the board to order the employer to hire applicants for work, who have never been in his employ and to compel him to give them 'back pay'."

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Supplying Missing Words

If the Supreme Court of the United States can supply missing words in Federal statutes, not merely by contortion of existing language, but actually supplementing the text itself, then the historic form of government which America has enjoyed for 150 years will have vanished.

The extreme of administrative autocracy and absolutism, however, has been reached in another case—doubtless soon to be upheld by the New Deal's Supreme Court—where the Labor Board ordered an employer to hire workers who had not even applied for a job or asked to be hired. The board supported its fantastic conclusion by the theory that the workers' failure to apply for a job was caused by a belief that even if they did apply they would probably be discriminated against. This is known as the Nevada Consolidated Copper Corp. case, decided on August 26, 1940. Here is a decision based on a conjecture. But what the Supreme Court has just done is to uphold the absolute powers of such governmental agencies. The court now affirms the Fascist doctrine proclaimed not so long ago by Herr Hitler, namely that judicial decisions should not be based on written constitutions or specific statutes but on policy and "public sentiment." It is not what Congress said when it wrote the law but what Justice Frankfurter and his colleagues say Congress should have or might have said which is now the supreme law of the land. There doubtless will be a diminishing enthusiasm in America for a war to save this kind of democracy.

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WASHINGTON STAR
Page

WASHINGTON CITY NEWS SERVICE

JUN 2 6 21 PM '41

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ADD HUGHES, HYDE PARK

MR. ROOSEVELT INDICATED HE WOULD ACQUIESCE IN HUGHES'S REQUEST.

UNDER DATE OF JUNE 2, HUGHES WROTE MR. ROOSEVELT ASKING APPROVAL OF HIS RETIREMENT FOR "CONSIDERATION OF HEALTH AND AGE."

MR. ROOSEVELT REPLIED THAT THOUGH HIS "EVERY INCLINATION IS TO BEG YOU TO REMAIN" HIS "DEEP CONCERN FOR YOUR HEALTH AND STRENGTH MUST BE PARAMOUNT."

6/2--JE757P

ADD HUGHES

HUGHES WAS AN ASSOCIATE JUSTICE FROM 1910 TO 1916. HE RESIGNED THEN TO RUN FOR THE PRESIDENCY ON THE REPUBLICAN TICKET BUT LOST OUT TO THE LATE WOODROW WILSON.

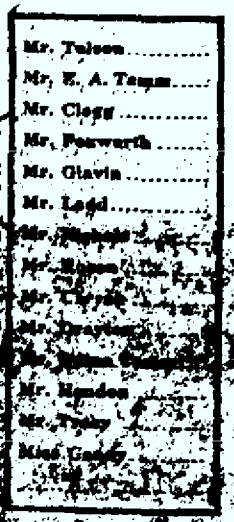
THE CHIEF JUSTICE HAS BEEN WANTING TO RETIRE FOR A LONG TIME, DUE TO ADVANCED AGE AND POOR HEALTH, BUT DEFERRED THE STEP UNTIL TODAY WHEN THE COURT COMPLETED ITS 1940-41 TERM.

HIS HEALTH HAS BEEN NONE TOO GOOD FOR MORE THAN A YEAR. LAST SPRING HE UNDERWENT A SERIOUS ABDOMINAL OPERATION AND THERE WAS SOME DOUBT THAT HE WOULD RETURN TO THE BENCH.

IMMEDIATE SPECULATION ON HIS SUCCESSOR CENTERED AROUND ATTORNEY GENERAL ROBERT H. JACKSON. THERE HAVE BEEN RECURRING REPORTS FOR NEARLY TWO YEARS THAT MR. ROOSEVELT WOULD NAME JACKSON AS CHIEF JUSTICE WHEN AND IF HUGHES RETIRED.

6/2--JE808P

WASHINGTON CITY NEWS SERVICE



ADD HUGHES, HYDE PARK

THE EXCHANGE OF LETTERS OBVIOUSLY WROTE THE END TO MR. ROOSEVELT'S SUPREME COURT BATTLE. WITH THE VACANCY CAUSED BY THE RESIGNATION THIS SPRING OF JUSTICE MCREYNOLDS STILL UNFILLED, MR. ROOSEVELT, UPON ACCEPTING HUGHES RESIGNATION, WILL HAVE TWO COURT VACANCIES TO FILL. THE ADMINISTRATION ALREADY HAS A SOLID MAJORITY ON THE SUPREME BENCH.

HUGHES' LETTER TO THE PRESIDENT SAID:

"MY DEAR MR. PRESIDENT:

"CONSIDERATIONS OF HEALTH AND AGE MAKE IT NECESSARY THAT I SHOULD BE RELIEVED OF THE DUTIES WHICH I HAVE BEEN DISCHARGING WITH INCREASING DIFFICULTY. FOR THAT REASON I AVAIL MYSELF OF THE RIGHT AND PRIVILEGE GRANTED BY THE ACT OF MARCH 1, 1937, AND RETIRE FROM REGULAR ACTIVE SERVICE ON THE BENCH AS CHIEF JUSTICE OF THE UNITED STATES, HIS RETIREMENT TO BE EFFECTIVE ON AND AFTER JULY 1, 1941.

"I HAVE THE HONOR TO REMAIN,

"RESPECTFULLY YOURS,

"CHARLES EVANS HUGHES."

6/2--JE820P

HUGHES, HYDE PARK

TO THIS LETTER, MR. ROOSEVELT REPLIED BY TELEGRAM:

"MY DEAR MR. CHIEF JUSTICE:

"I AM DEEPLY DISTRESSED BY YOUR LETTER OF JUNE 2 TELLING ME OF YOUR RETIREMENT ON JULY 1 FROM ACTIVE SERVICE AS CHIEF JUSTICE OF THE UNITED STATES. THIS COMES TO ME, AS I KNOW IT WILL BE TO THE WHOLE NATION, AS A GREAT SHOCK FOR ALL OF US HAD COUNTED ON YOUR CONTINUING YOUR SPLENDI SERVICE FOR MANY YEARS TO COME. MY EVERY INCLINATION IS TO BEG YOU TO REMAIN; BUT MY DEEP CONCERN FOR YOUR HEALTH AND STRENGTH MUST BE PARAMOUNT. I SHALL HOPE TO SEE YOU THIS COMING WEEK IN WASHINGTON.

"SINCERELY AND AFFECTIONATELY YOURS,

"FRANKLIN D. ROOSEVELT."

6/2--JE823P

Mr. Tolson
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Hughes Quits Supreme Court; Hull or Jackson Rumored as Successor to Chief Justice

Retirement Shock To Nation—Roosevelt; Two Vacancies Exist

By G. W. STEWART Jr.

Chief Justice Charles Evans Hughes, who guided the Supreme Court through the turbulent depression era and later helped block the Administration's famous court reorganization plan, last night advised President Roosevelt that he will retire from active duty on July 1.

The 79-year-old jurist who was named Chief Justice by President Hoover in 1930, wrote Mr. Roosevelt at the temporary White House at Hyde Park, N. Y., starting:

"My Dear Mr. President:

"Considerations of health and age make it necessary that I should be relieved of the duties which I have been discharging with increasing difficulty. For that reason I avail myself of the right and privilege granted by the Act of March 1, 1938, 28 U. S. Code, Section 375a, and retire from regular active service on the bench as Chief Justice of the United States, this retirement to be effective on and after July 1, 1941.

"I have the honor to remain,

"Respectfully yours,

(Signed)

"CHARLES EVANS HUGHES."

President's Acceptance

Mr. Roosevelt in a telegram of acceptance, said:

"The Honorable the Chief Justice of the United States.

"Washington, D. C.

"My Dear Mr. Chief Justice:

"I am deeply distressed by your letter of June 2 telling me of your retirement on July 1 from active service as Chief Justice of the United States. This comes to me, as I know it will to the whole nation, as a great shock for all of us had counted on your continuing your splendid service for many years to come. My every inclination is to beg you to remain; but my deep concern for your health and strength must be paramount. I shall hope to see you this coming week in Washington.

"Sincerely and affectionately yours,

"FRANKLIN D. ROOSEVELT."

Hughes' retirement leaves two vacancies on the court. The other resulted from retirement this spring of Associate Justice James Clark McReynolds."

Hughes was an Associate Justice from 1910 to 1916. He resigned then to run for the presidency on the Republican ticket, but lost out to the late Woodrow Wilson due to the famed last-minute switch of California to the Democratic column.

The Chief Justice has been wanting to retire for a long time, due to advanced age and poor health, but deferred the step until yesterday, when the court completed its 1940-41 term.

His health has been none too good for more than a year. Last spring he underwent a serious abdominal operation, and there was some doubt that he would return to the bench.

Expected Successor

Immediate speculation on his successor centered around Atty. Gen. Robert H. Jackson. There have been recurring reports for nearly two years that Mr. Roosevelt would name Jackson as Chief Justice when Hughes retired.

Another report in circulation is that Mr. Roosevelt will offer the chief justiceship to Secretary of State Cordell Hull, the latter to be succeeded by Undersecretary of State Sumner Welles, who reportedly is a more ardent sup-

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WASHINGTON TIMES-HERALD
Page 1

I.N.P. Photo

Long Service on Highest Tribunal Nears End

Giving reasons of health, Chief Justice Charles Evans Hughes, above, has notified President Roosevelt he will retire July 1.

porter of the President's anti-axis policies.

Leading candidate to succeed McReynolds is Senator James F. Byrnes (D), of South Carolina, who has been the Administration's chief legislative spokesman this year in connection with vital foreign policy legislation such as the British aid program and important defense measures.

Retirement of Hughes will leave only two jurists still in active service who were on the high bench when Mr. Roosevelt took office in 1933. They are Associate Justices Harlan Fiske Stone, 68, appointed by President Coolidge, and Owen J. Roberts, 66, appointed by President Hoover.

Jackson Only 49

Mr. Roosevelt already has appointed Associate Justices Hugo L. Black, Stanley F. Reed, Felix Frankfurter, William O. Douglas and Frank Murphy.

It is reported that Mr. Roosevelt is seeking to persuade Murphy to return to his old position of high commissioner of the Philippine Islands because of the importance of that insular outpost in the war crisis. The present commissioner is Francis Sayre. Murphy served as the high commissioner from 1933 to 1936 and knows the islands well, although he was unpopular in some quarters.

Jackson is 49 and a native of Jamestown, N. Y. He came to Washington at the outset of the Roosevelt Administration and rose to power step by step—general counsel for the Internal Revenue Bureau, Assistant Attorney General in charge of the Justice Department's tax division, Assistant Attorney General in charge of the anti-trust division, and finally, in January 1940, Attorney General.

"Middle-of-Roader"

Hughes, whose white beard is known far and wide, was the most potent voice in charting the high court's policies through the 1940's when it outlawed so many New Deal programs and incurred the bitter wrath of the Administration.

In general he is regarded as a middle-of-the-roader with liberal tendencies. He voted with the majority in several anti-Administration decisions during Mr. Roosevelt's first term but, according to widely-credited reports, he did so several times only to avoid 5-to-4 divisions.

When Mr. Roosevelt proposed his famous court reorganization program in 1937—a plan that divided Congress into bitterly hostile camps—Hughes took an active but undercover part in the fight to block its passage.

Defended Court Speed

The only occasion when he came into the open was when in the midst of hearings before the Senate Judiciary Committee, he wrote a letter to Senator Burton K. Wheeler (D.), of Montana, citing statistics to show that the court was abreast of its docket and that the advanced age of the jurists was not slowing down its work.

Mr. Roosevelt had cited congested dockets and the advanced age of the jurists as reasons why the tribunal should be enlarged and infused with younger blood.

Wheeler, a leader of the opposition, read Hughes' letter to an open session of Judiciary Committee and it was widely regarded as one of the opposition's most effective moves.

After defeat of the so-called "court packing" plan, the Chief Justice resumed his hermit-like forbearance of non-judicial public life.

Retires at Full Pay

Although the court bill was defeated, Mr. Roosevelt actually won his objectives as a result of retirements under the Supreme Court Retirement Act which was slipped through Congress during the reorganization fight.

The measure permits retirement on full pay of any justice who has served on the bench for 10 years and reached the age of 70 years.

Three Justices who voted solidly against New Deal measures retired in accordance with the law—the late Willis Vandevanter, George Sutherland, and McReynolds. One pro-New Deal jurist—Louis D. Brandeis—stepped down Hughes becomes the fifth jurist to take advantage of the retirement law.

Notable Attendance Record

One anti-Roosevelt Justice—Pierce Butler—died, as did one pro-Administration jurist, Benjamin N. Cardozo.

The result is that five Roosevelt appointees already are on the bench—a clear majority—and two more will be chosen when the President replaces Hughes and McReynolds.

Hughes has compiled a notable attendance record, never missing a single session from the time he took office in 1930 until he fell ill in 1938. When the court met, he was the first Justice to file into the bench, striding forcefully beneath the heavy plush drapes at the rear of the imposing chamber.

WASHINGTON CITY NEWS SERVICE

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FORTY-NINE-YEAR-OLD ATTORNEY GENERAL JACKSON WAS GENERALLY UNDERSTOOD TODAY TO BE PRESIDENT ROOSEVELT'S CHOICE TO BECOME THE 12TH CHIEF JUSTICE OF THE U.S.

APPOINTMENT OF JACKSON TO SUCCEED CHARLES EVANS HUGHES WOULD PUT NEW DEALERS IN THE TOP POSITIONS IN ALL THREE BRANCHES OF THE GOVERNMENT AND REINFORCE THE PRESENT MAJORITY OF ROOSEVELT-APPOINTED JUSTICES ON THE SUPREME COURT.

6/3--R854A

62-27585-A

Stone for Chief Justice

President ROOSEVELT's roster of appointments to the United States Supreme Court is certainly more discreet than it might have been. It likewise illustrates Mr. ROOSEVELT's peculiar genius in the art of politics. Ever since Chief Justice HUGHES announced his intention to retire on July 1 speculation has centered on the likelihood that either Senator BYRNES or Attorney-General JACKSON would be named to succeed him. Instead, the President has nominated HARLAN F. STONE for Chief Justice, the Senator and the Attorney-General for Associate Justices.

Justice STONE is a Republican, a former member of President COOLIDGE's Cabinet. He and Justice ROBERTS will remain the only survivors in active service of a day when the court's personnel was of great distinction. Of the two, Justice STONE is senior in service by five years. His reputation for judicial temperament and for learning in the law is excellent. In the twelve New Deal decisions which brought Mr. ROOSEVELT's wrath upon the old court and led to the notorious court-packing scheme, he voted with the majority in seven instances, dissented in five. In the Schechter case invalidating the National Industrial Recovery Act, he associated himself with Justice CARDOZO's famous "delegation-running-riot" separate concurring opinion. In February of this year he wrote the opinion upholding the court's validation of the wage-hour law. Those who like their libels precise say of him that in his thinking he is liberal without being loose.

Senator BYRNES is a man of considerable ability and vast political experience. Before the third-term car ran over everybody last year he had prospects as Democratic nominee for President. He nevertheless remained loyal to Mr. ROOSEVELT; his loyalty now receives not only deserved recognition but also something to soothe whatever disappointment he may have felt at the Chicago convention. He stands well with his Republican colleagues as well as with those on the Democratic side of the Senate. No wonder he was confirmed instanter!

For some years Mr. JACKSON has been one of Mr. ROOSEVELT's fair-haired boys. There was a time when Mr. ROOSEVELT was supposed to have him in mind as a future Governor of New York, if not as a future candidate for President. Some who recall the biting and splenetic nature of his campaign speeches last year will have their doubts about his possession of that most important of qualities in a judge, judicial temperament. Yet, whatever may be the politics involved in the designations of BYRNES and JACKSON, much of the sting is removed therefrom by the naming of HARLAN F. STONE to be Chief Justice.

CLIPPING FROM THE
N. Y. SUN.
DATE JUN 13 1941
FORWARDED BY N.Y. DIVISION.

Harlan Fiske Stone.

The wheel has made a full turn since the era when "Holmes, Brandeis and Stone dissenting" was a commonplace on decision Mondays in the Supreme Court.

Today Holmes is gone and Brandeis is in retirement. But many of the doctrines set forth in their minority opinions have come to prevail, and now their younger colleague in nonconformity, Harlan Fiske Stone, is nominated to be Chief Justice.

Mr. Roosevelt has well served the interests of national unity by going over the heads of all the New Deal's legal galaxy to tap the broad shoulder of a Coolidge-named Republican who owes him no personal or political fealty—but whose devotion to real liberalism is writ large in the record.

It was Justice Stone, indeed, who last year read a lecture in liberalism to the five Roosevelt appointees on the bench. These New Deal Judges had decreed, in an opinion written by Justice Frankfurter, that a certain pair of school children must salute the flag, in violation of their religion, or else forego their education. Justice Stone, dissenting, called the decision "a surrender of the constitutional protection of the liberty of small minorities."

In the troubled times that lie ahead it may be that patriotic fervor will tend to boil over into a brutalizing hysteria of the 1917-18 sort or worse. If so, we will have a restraining influence in the new Chief Justice.

So much for civil liberties. It was in another field, in the struggle of social and economic forces against a status quo defended by the court majority, that Justice Stone really laid about him with a prophetic bludgeon of dissent. When his colleagues knocked out the New York Minimum Wage law he accused them of interpreting, not the Constitution but their own "personal economic predilections." When the first agricultural adjustment act was outlawed he called the decision "a tortured construction of the Constitution."

Justice Stone does not have Cardozo's gift for written eloquence; he is too good a mixer to rival the austerity of Hughes; he lacks the color of a Holmes. But he is learned in the law, he is abreast of what goes on in the world and he is profoundly conscious of the court's once-forgotten duty to leave the legislating to Congress.

The President filled the two remaining vacancies on the court with two loyal lieutenants, Attorney General Jackson and Senator Byrnes. They are able men.

CLIPPING FROM THE
NEW YORK WORLD-TELEGRAM

DATE JUN 13 1941

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Miss Gandy

The New Supreme Court

The three Supreme Court appointments which President Roosevelt has sent to the Senate come as an encouraging omen. They suggest a respect for the continuity and juristic quality of that body which may mean much for the future stability of the nation.

The promotion of Mr. Justice Stone to the high post of Chief Justice comes as a reward for a long and devoted career of public service. From the outset Justice Stone showed an open-mindedness toward growth and a liberal outlook upon constitutional problems. This newspaper happens to believe that he was right in these early years of his service, and while it has been unable to agree with all his later opinions in support of New Deal legislation, it is glad to record its complete faith in his integrity of mind and his conscientious devotion to the cause of constitutional government.

The violent changes wrought by New Deal laws put a heavy strain upon the courts of the nation. Destruction has outrun construction in the development of constitutional interpretation. The need is strong for a new unity in Supreme Court doctrine, based on a clearer philosophy of government than has yet been expressed in the swift succession of decisions rendered by a court standing in the shadow of political change.

It will be in Chief Justice Stone's power, as the head of a virtually new bench, to take the directing lead in this new labor. The country has made abundantly clear its loyalty to the court as an independent branch of the government. The moment is an auspicious one for the restoration of its ancient prestige.

The two new justices added to the court are of unquestioned ability. Senator Byrnes has long been rated one of the best minds in the upper chamber. If his career has held more politics than law, his independence and courage and statesmanlike approach to basic governmental issues stand beyond doubting. While Mr. Jackson has yet to demonstrate a judicial temperament, he will bring to the court vigor and experience in both the law and in administration. We congratulate the President on his appointments and applaud the spirit in which they have been made.

CLIPPING FROM THE
N.Y. HERALD TRIBUNE
DATE JUN 13 1941
FORWARDED BY N.Y. DIVISION

APPOINTMENTS TO THE COURT

The President's choice of Harlan F. Stone as Chief Justice of the United States, to succeed Mr. Hughes, is a fine appointment which will maintain the prestige and dignity of the Court. A Chief Justice has, like each of his colleagues, only one vote. He does have a function in seeing to it that the Court operates smoothly and expeditiously. Beyond that, his position gives him an influence which is not written into any law or any clause in the Constitution. Though President Roosevelt's nomination of Justice Stone to head the Court may not affect the voting on any future decision, it properly recognizes unique qualities of learning, intelligence and leadership. It is high praise to predict that Mr. Stone will rise to the stature of Charles Evans Hughes, but every line in his record, as a teacher, as a private practitioner, as a Cabinet member and as a judge, promises that he will do so.

The nominations of Senator James F. Byrnes of South Carolina (already confirmed by the Senate as a "Senatorial courtesy") and of Attorney General Robert H. Jackson to fill existing vacancies on the Court occasioned no surprise and should be cordially received. Though regarded as an "Administration man," Senator Byrnes has shown a considerable degree of independence. Attorney General Jackson is an able lawyer and administrator who has not had to display judicial qualities, but who will certainly bring to the Court an incisive mind.

The responsibility of these nominations must have weighed heavily upon the President, for their influence will extend far beyond his own term of office. They strengthen the hope that the Court will have the flexibility as well as the stability that will be needed in years to come to hold us true to basic principles and freedoms during an era of mighty change.

Mr. Tolson .....
Mr. E. A. Tamm ...
Mr. C[illegible] .....
Mr. E[illegible]worth .....
Mr. [illegible] .....
Mr. [illegible] .....
Mr. [illegible] .....
Mr. Nease .....
Mr. Carson .....
Mr. [illegible] .....
Mr. [illegible] .....
Mr. [illegible] .....
Mr. [illegible] .....

CLIPPING FROM THE
N. Y. TIMES

DATE JUN 13 1941
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New Supreme Court Shifts ikely to Be Well Received

In elevating Justice Harlan F. Stone to the post of Chief Justice of the Supreme Court of the United States, President Roosevelt has made probably the best choice possible. The new Chief Justice has the confidence of all shades of opinion, has proved himself a jurist of the highest distinction, a man of fearless devotion to the law.

Although appointed to the high court by the conservative President Coolidge, Justice Stone has become known as a consistently liberal thinker on the bench, and, although a Republican, he constantly upheld the constitutionality of the New Deal legislation introduced by President Roosevelt.

His outstanding activity in political life before his elevation to the Supreme Court was as Attorney General of the United States, a post he occupied a little less than a year before he donned the black robe of the highest court. As Attorney General, he had the job of restoring to the Department of Justice the repute it had lost during the administrations of A. Mitchell Palmer and Harry M. Daugherty. Although his reorganization of the department was not spectacular, it was effective and proved his ability as an administrator.

He now must fill the place of retiring Chief Justice Hughes, probably the greatest Chief Justice the Court has had in generations. His record, his character and ability indicate that the choice could hardly go to one better fitted for the task.

The nominations of Attorney General Robert H. Jackson and Senator James F. Byrnes were more or less expected, as both had been prominently mentioned for appointments in the last several months. Senator Byrnes has been a consistent Roosevelt supporter, allowing for the deviations which his Southern origin might impose.

Unless his elevation to the Supreme Court bench causes a change in his thinking—something that frequently happens when men find themselves in the independent, secure atmosphere of the Court—he can be expected to be found with the majority.

Attorney General Jackson, if confirmed—and there is little reason to think he will not be—now will take his seat beside his predecessor in the Department of Justice, Frank Murphy, who also was elevated to the Court from the Attorney Generalship just as Chief Justice Stone so was elevated sixteen years ago. Of an active, aggressive cast of mind, which often aroused the ire of those of opposing beliefs, Attorney General Jackson can be depended upon to bring energy and resolution to the Court.

Bearing in mind Mr. Roosevelt's politics and predilections, it is hard to see how he could have bettered the selections he transmitted to the Senate. We predict they will be generally well received.

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CLIPPING FROM
BROOKLYN DAILY EAGLE
DATE JUN 13 1941
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BIDDLE MENTIONED FOR JACKSON POST

Solicitor General Believed a Favorite for Attorney Generalship

Special to THE NEW YORK TIMES.

WASHINGTON, June 12—The accession of Attorney General Jackson to the Supreme Court means that a new chief law enforcement officer of the Federal government must soon be chosen and today speculation centered around the name of Francis Biddle, now Solicitor General.

An ardent New Dealer, and a member of a famous American family, Mr. Biddle was expected by many to be the Administration's choice.

In official circles it was widely thought also that Charles Fahy, former general counsel of the National Labor Relations Board and now assistant solicitor general, would step into Mr. Biddle's place.

Ben Cohen of the celebrated team of Corcoran-and-Cohen also was mentioned as a possible choice for Solicitor General as was Dean Acheson, now in the State Department.

The speculation followed the disclosure of Mr. Jackson's elevation to the court in which the only two surprises were those of rank and date.

When the news reached the department, Mr. Jackson was showered with congratulations by his staff. In a formal statement he said:

"I am glad, the Senate willing, to turn to work of an exclusively legal character. I am also glad to go on a bench over which Harlan Stone presides. His experience, his record and his character make his choice so obviously fitting that it should meet with universal approval."

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N. Y. TIMES
DATE JUN 13 1941
FURNISHED BY N. Y. Div

THREE GOOD APPOINTMENTS

We like all three of the President's appointments to the Supreme Court—Associate Justice Harlan Fiske Stone to become Chief Justice; Attorney General Robert Houghwout Jackson and Senator James Francis Byrnes (D-S. C.) to be Associate Justices.

Chief Justice-designate Harlan F. Stone.

We especially like Justice Stone's elevation to the Chief Justiceship. This is a promotion on merit, earned by Mr. Stone's long and able service on the high court.

Too often, some outsider has been given the Chief Justiceship because he has deserved well of his political party. Though we've had some excellent Chief Justices who were appointed in that manner, the retiring Charles Evans Hughes among them, it is not the best or fairest way to go about it.

Messrs. Jackson and Byrnes are both good men. Jackson is young and forward looking; Byrnes has been the real New Deal spearhead in the Senate, though dear Alben Barkley has had the title of majority leader. Nevertheless, we feel that these gentlemen would make better Supreme Court Justices if they had each served on some federal district court or Circuit Court of Appeals.

We'll never take to appointing Supreme Court justices from the lower federal courts, however, until and unless it is required by law. A federal judge normally swings little political power. And we'll probably never get a Supreme Court merit system into the law, because too many Senators have hopes of some day leaping from Senate floor to big bench by act of a grateful President.

* * *

Unpacked, Or Packed?

And so, Franklin D. Roosevelt rounds out the job, begun Feb. 5, 1937, with his sensational message to Congress demanding drastic federal court reforms, of "unpacking" the Supreme Court. Dispute still simmers over whether he has unpacked the court or packed it.

The fact remains that the Supreme Court as then constituted had killed the NRA, the first AAA, the Railroad Retirement Act, the New York State Minimum Wage Law, and other New Deal measures, and seemed to be an immovable obstacle in the path of social welfare legislation. It is no longer such an obstacle—though the new Supreme Court, too, will in all probability outlive its usefulness some day.

For having yelled and booted the Supreme Court of the '30's into catching up with its times, we think President Roosevelt deserves the lasting gratitude of the American people.

Mr. Tolson
Mr. Rosen

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NEW YORK DAILY NEWS
JUN 14 1941
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WASHINGTON CITY NEWS SERVICE

Mr. Tolson
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Mr. Foxworth
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen

Aug 27 10 02 AM '41

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SUPREME COURT OFFICIALS TODAY WERE CONSIDERING ASKING CONGRESS TO PERMIT THE RETURN OF A RETIRED JUSTICE TO THE BENCH SO THAT A FINAL DECISION CAN BE REACHED IN THE GOVERNMENT'S WAR CONTRACT CASE AGAINST BETHLEHEM SHIPBUILDING CORPORATION.

IF SUCH A MOVE IS MADE, THE COURT FOR A SHORT TIME WOULD HAVE 10 ACTIVE JUSTICES FOR THE FIRST TIME SINCE CIVIL WAR DAYS.

THE REASON FOR CONSIDERING SUCH ACTION IS THAT CHIEF JUSTICE STONE AND JUSTICES ROBERTS AND MURPHY HAVE DISQUALIFIED THEMSELVES FROM SITTING IN JUDGMENT ON THE LITIGATION, AND JUSTICE JACKSON IS LIKELY TO TAKE SIMILAR ACTION. THUS, A QUORUM OF SIX PROBABLY WILL NOT BE OBTAINABLE WITHOUT EXTRAORDINARY MEASURES.

VETERAN COURT ATTACHES BELIEVE THE SITUATION IS WITHOUT PRECEDENT. IT WILL BE PRESENTED TO STONE WHEN HE RETURNS TO THE COURT IN OCTOBER.

AN ALTERNATIVE REMEDY WOULD BE LEGISLATION TEMPORARILY MAKING FIVE A QUORUM FOR THE COURT.

8/27--R917A

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Mr. Hendon
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Mr. Quinn Tamm
Mr. Nease
Miss Gandy

U.S. Supreme Court Now More Zealous Than Ever Protecting Liberty, Bar Is Told

National Leader Tells Lawyers of Stiffening Trend

YOSEMITE, Sept. 19.—(AP)—The United States Supreme Court probably is more zealous now than ever before in protecting personal liberty, Walter P. Armstrong, president-nominee of the American Bar Association, told the California Bar Association today.

This has come about, Armstrong said, despite the "latitudinarian" trends of Supreme Court decisions.

Armstrong, who is a widely known Memphis, Tenn., lawyer, cited the famous Scottsboro case in which seven Negroes, accused of rape, were convicted in the Alabama courts but eventually were given a new trial on the basis of a United States Supreme Court decision.

RIGHT DEFINED

That decision, Armstrong asserted, established as a federally guaranteed right the opportunity of a person accused of a felony to have the benefit of counsel. This right has been specifically guaranteed in many State constitutions but was not a clear-cut matter so far as Federal law was concerned until the high court held that denial of counsel was not in conformity with the "due process" amendment to the Constitution.

The speaker asserted that a free and independent bar was as necessary to the survival of democracy as a free press.

He urged that the Nation take the "long view" and do whatever is best for the National welfare in the long run, regardless of how that course might affect the present. This was done, he added, when the opinion of Thomas Jefferson prevailed over that of Alexander Hamilton in the addition of the Bill of Rights to the Constitution.

WOULD REVISE RULES

A revision of court rules which would permit a judge to hear all evidence logically pertaining to a case, even though it might be technically inadmissible, was suggested by William G. Hale, dean of the University of Southern California Law School.

He also suggested limiting the privilege of witnesses to refuse to testify and relaxing the provision against man and wife testifying against each other.

Dean Hale asserted that expert evidence had been "a stench in the nostrils of all reputable members of the legal profession." He said the rules were designed primarily to insure the utilization only of experts appointed by the court and to have their reports available when the case is called to trial.

OAKLAND TRIBUNE

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CHAIRMAN VAN NUYS OF THE SENATE JUDICIARY COMMITTEE CRITICIZES SUPREME COURT JUSTICES WHO RECENTLY HAVE MADE ADDRESSES URGING SUPPORT OF PRESIDENT ROOSEVELT'S FOREIGN POLICY.

"THE TRADITIONAL PLACE OF SUPREME COURT JUSTICES IS ON THE BENCH AND NOT ON POLITICAL ROSTRUMS," HE SAID. "I DO NOT LIKE TO SEE THE COURT ABANDON ITS TRADITION OF IMPARTIALITY."

JUSTICES FRANK MURPHY, OWEN J. ROBERTS AND HUGO L. BLACK RECENTLY INDORSED THE ADMINISTRATION'S FOREIGN POLICY IN SPEECHES.

9/19--R933A

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Mr. Tolson ✓
Mr. E. A. Tamm ✓
Mr. Clegg
Mr. Glavin
Mr. Ladd ✓
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Mr. Pendon
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Louis D. Brandeis

The most reliable keys to the truly remarkable career of former Justice Louis D. Brandeis may be found in the words social justice, democracy and human liberty. When this great statesman of the bar and bench died yesterday he had given us a new conception of the ideals summed up in these words. To be sure, those ideals have always, in some degree, guided the American experiment in self-government. Too often, however, they have been overshadowed by selfishness, corruption and class distinctions. The monument which stands already erected to former Justice Brandeis is a lifetime of work devoted to the successful adaptation of political, social and economic agencies to those guiding principles.

In his more recent years the great jurist had come to be regarded in many circles as a social philosopher best known to the public by his scholarly dissenting opinions. But that view fails to do him justice. Mr. Brandeis was a crusader long before he became a distinguished expounder of the Constitution. And from first to last his interest lay in the human problems behind all legislation and all social systems. Once he declared, "I have no rigid social philosophy; I have been too intent on concrete problems of practical justice." Throughout his 23 years of service on the Supreme Bench his approach to public issues followed this trend. And even since his retirement in 1939 he had been preoccupied with such basically practical questions as how employment can be assured for everyone in this complicated age without the surrender of liberty. Nor did he retire into an ivory tower to give his reflections free rein. Much of his energy in the last two years was devoted to the Zionist movement of which he was head before he ascended the bench.

In attacking "the curse of bigness" he had not invented a social theory. Rather he had observed that exploitation usually follows the concentration of vast powers into a few hands. His crusades as "the people's lawyer" were aimed at specific abuses that tended to make a mockery of individual rights. Out of this actual experience came his clear understanding of the public interest as well as his zeal in fighting for adjustments that give meaning to social justice. Many of those who fought his confirmation as an associate justice doubtless feared that his aim was to destroy free enterprise. They were grossly misled. His primary interest was in preserving those qualities of democracy which enable it to survive in a changing world.

He was ready to protect the weak against the strong whether the oppressor were big business, big labor or an overreaching government. No doubt that is one reason why he joined his colleagues of the Supreme Court in overturning the NRA and refused to sign the dissent in the "hot oil" case. For Mr. Justice Brandeis was a true liberal both in the period of feeble conservatism and in the later period of slap-dash legislation. His aim was not to create a new system but to establish a larger measure of fairness, honesty and social justice within the broad pattern of constitutional democracy created by the founding fathers.

So it would be a real mistake to dis this great American as merely a brill dissenter. It is true that his dissents, those of Justice Oliver Wendell Ho in which he so frequently joined, poi the way to a truly liberal interpret of our basic laws. But aside from t minority opinions, he has exerted posi force in bringing about a more de cratic approach to our social probl No mere dreamer or ascetic philoso could have influenced our thinking conduct as Justice Brandeis has d It was not enough for him to plead cause of social and economic experim tation within the limits of a bro interpreted Constitution, as he did dissenting from the court's opinion in Oklahoma ice case. In his younger he helped to give form and directio many such experiments, and his clai distinction rests upon that record as as upon his judicial efforts to ho balance between authority and lib He takes his place in history as a lawyer for the public, jurist and man because he brought jurisprud into closer relationship to human we That is a tribute which can fade with the decay of democracy itself.

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Mr. Tolson
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Brandeis Was Champion Of Liberal Causes in Court

Wilson Appointee Became Famous For Dissenting Opinions in Tribunal

Louis Dembitz Brandeis was appointed to the Supreme Bench in 1916 by President Wilson, and his nomination touched off an epic battle in the Senate during which William Howard Taft and seven former presidents of the American Bar Association attacked the crusading Boston lawyer as "a dangerous radical" and foe of private property.

It was only after Wilson exerted all possible pressure that the Senate confirmed the son of Bohemian Jewish immigrants who fled from Germany in 1848, along with Carl Schurz, the grandparents of Wendell Willkie and thousands of other Germans of liberal convictions.

Brandeis, frail of physique and with the sensitive face of the philosopher, was denounced by his foes in the Senate and throughout the country as lacking the "judicial temperament."

His Dissents Famous

Notwithstanding, he adapted himself so perfectly to the rarefied atmosphere of the supreme bench that on his retirement in 1939 he was the subject of tributes from public men of all parties and political philosophies. With the late Oliver Wendell Holmes, he was the co-author of dissents from the majority opinions of the conservative block on the high court which for so many years interpreted ultimately the nation's laws; dissents which since have become milestones in the annals of American jurisprudence.

Born in Louisville, Kentucky, November 13, 1856, Brandies was early exposed to liberal ideas in the home of his parents, and was named for an uncle who had voted for Lincoln at the Chicago convention in 1860.

The son of well-to-do parents, young Brandeis was sent to Dresden, Germany, for two years to round out his education, and returned to this country to enter Harvard. While he was studying at Harvard, his parents lost their fortune, and young Brandeis worked his way through the university by tutoring.

Saves $1,000 at Age of 20

So successful was he that he was graduated at the age of 20—under a special relaxation of the rules—with the sum of $1,000 in the bank.

Brandeis first began to practice law in St. Louis, Mo., but the austere charm of New England culture had entered into his bones and he returned to Boston to set up the law firm of Warren and Brandeis.

Almost immediately he entered upon the pursuit of "unpopular" causes, spurred on by his wife, the former Alice Goldmark, a woman of passionate liberal sympathies.

Such trail-blazing social crusades as the minimum-wage laws, anti-trust legislation, opposition to freight-rate increases, public ownership of utilities, woman suffrage, and workmen's compensation found in Brandeis a doughty champion.

At first the reorganized law firm of Brandeis, Dunbar and Nutter amassed a lucrative practice in corporation law. As its senior partner began tilting lances for the oppressed, however, the big fees declined and more and more Brandeis began to take cases in which the fee was a secondary consideration to the primary good of relieving the condition of the less fortunate of his fellow men.

During this period Brandeis was the principal factor in the establishment of Massachusetts' savings bank insurance system, which made life insurance possible for

WASHINGTON TIMES-HERALD

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thousands of working people at rates 20 per cent lower than those of the commercial companies. This he always considered the major achievement of his life.

Always the champion of the small merchant against "big business," Brandeis in 1913 wrote his first book, "Other People's Money," an arraignment of the current financial practices which later came to be regarded almost as a prophecy of the giddy speculative spiral which suddenly crashed in the debacle of 1929.

Ideas which Brandeis expressed in this book held the germ of much of the New Deal legislation in the field of securities reform which was later written upon the statute books.

Nomination of Brandeis to the supreme bench by Woodrow Wilson in 1916 threw a bombshell into conservative legal and business circles. He was looked on as a "Socialist," a wild-eyed radical and a portent of the revolution by the submerged and inarticulate millions of whom the "economic royalists" of that day lived in dread.

Once on the lofty pinnacle of the high court, however, Brandeis quickly formed a profound friendship with the patrician Holmes, scion of entrenched "Back Bay" families. The two great liberal jurists lived to see the principles of jurisprudence laid down in their famous dissents become the dominating influence of a regenerated Supreme Court.

Far From a "Yes Man"

Often called the "first New Dealer," Brandeis nevertheless was far from being a mere "yes man" on the high court after President Roosevelt took office in 1933.

He concurred in the unanimous outlawing of NRA by the Supreme Court in the first year of the New Deal—the decision which provoked the President's bitter "horse and buggy" rejoinder—and he expressed himself strongly in private against the proposal to enlarge the Supreme Court in 1937.

Brandeis retired from the Supreme Court in 1939 to devote the rest of his life to study and contemplation. During his long period on the bench he was known for his impeccable courtesy to lawyers arguing cases before the nine justices, and until the end he was loved by the small group of personal friends who had entree to his apartment here.

First Jew ever to serve on the country's highest court, Brandeis took a lively interest during his life in the Zionist movement, and for some years headed the organization in the United States. He also pursued many personal, unostentatious philanthrophies and gave away much of his personal fortune to charitable causes.

B'nai B'rith Head Praises Brandeis

Henry Monsky, president of B'nai B'rith, issued the following statement last night in the name of the organization he heads:

"One of the great Americans of his time, Louis Dembitz Brandeis did much by his intellect, integrity and the enduring quality of his judicial opinions to keep the torch of Americanism shining brightly. Serving both justice and the renaissance of the Jewish people with devotion and faithfulness, Justice Brandeis was one of the great moral forces of our day. Better than anyone he summed up his own career when he said his philosophy was 'high thinking and simple living.'"

Mr. Tolson
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'Friend of Justice and of Men'

Retired Justice Brandeis Dies; Famed as People's Champion

Stricken Wednesday By Heart Attack, He Expires in D. C. Home

Louis D. Brandeis died at 7:15 o'clock last night at the age of 84.

The retired Supreme Court justice, whose liberalism and humanitarianism during 23 years on the tribunal won him world renown, passed away peacefully without emerging from a coma into which he sank Saturday night.

At his bedside were his wife of 50 years, the former Alice Goldmark, of New York City, and their two daughters, Mrs. Elizabeth Brandeis Rauschenbush, of the University of Wisconsin faculty, and Mrs. Susan Brandeis Gilbert, a New York City judge.

Justice Brandeis was stricken with a heart attack Wednesday at his apartment, 2205 California Street Northwest, where death ended a vigil of four days for Mrs. Brandeis, Dr. Lewis C. Ecker, the family physician, and close friends. The jurist sank steadily from the time of the attack.

The funeral will be "strictly private," with admission by card only, the Brandeis family announced. It was added: "The family will appreciate it if no flowers are sent."

Memorial services may be held after the funeral, possibly at the Supreme Court, friends said. The time of the funeral had not been set last night.

Once Headed Zionists

As associate justice of the Supreme Court since appointment by President Wilson in 1916, Brandeis' passionate concern for the rights of the individual classified him as one of the greatest liberals ever to sit on the Nation's highest tribunal.

From the start he found a sympathetic soul in his old friend, Oliver Wendell Holmes, and frequently sided with "the Great Dissenter" liberal minority opinions.

LOUIS D. BRANDEIS

Since his retirement [illegible] March 13, 1939, at the age of 82, Brandeis had occupied himself talking to friends, writing [illegible], reading, motoring and advancing the cause of the Zionist movement, which he once headed in the United States.

It was Woodrow Wilson who wrote the words which remain the simplest and finest epitaph of Louis Dembitz Brandeis—"This friend of justice and of men."

Storm of Protest

He wrote them at a time when Brandeis was under the sharpest fire of his career, condemned for the same human philosophy, and the accomplishments grown from it, which later were to bring the gray-haired, deep-eyed scholar a degree of universal admiration, respect and love bestowed on no other modern jurist and liberal, except, perhaps, on his own best friend, Justice Holmes.

The occasion of Wilson's characterization was the fight beginning January 28, 1916, when the President sent the name of the Boston "people's lawyer" to the Senate for appointment to the Supreme Court to replace the late Justice Joseph R. Lamar. A storm of protest arose which was not to end until five months and 1600 pages of Senate hearings later, when the Senate confirmed him by a vote of 47 to 22, with 27 Senators absent from the chamber when the roll was called.

Fought by Big Business

Hated by some, he had been termed a "traitor to his class," not "temperamentally fitted" for a place on the Supreme Court bench, a "socialist," "dangerous radical" and "vibrant partisan." The fight against his confirmation was led in his Boston home by Abbot Lawrence Lowell, the president of his alma mater, Harvard. In Washington the seven living past presidents of the American Bar Association, included among them former President Wil-

WASH. POST
OCT 6 1941

...m Howard Taft, petitioned against ...s confirmation.

...Bitterest and most effective opposition, however, came from the representatives of big business, whose very "bigness" was the focal point of Brandeis' earlier crusade, a crusade, incidentally, which was to continue as the major objective of his life until his retirement from the court February 14, 1939.

To look at Brandeis in later years as he sat in the magnificent $10,000,000 new Supreme Court Building—whether he had taken his desk lamp of incredibly ancient vintage—there was nothing to indicate the reason for the once bitter clamor. Striking in his bearing and figure, with fine, chiseled features, deep-set, brilliant eyes, unruly gray hair rising flame-like from his high forehead, there was nothing to indicate "temperamental unfitness."

In his keen questioning, as he leaned over the bench and, in a quiet tone, delved for facts from the arguing attorney, because, with a truly Platonic conception of truth, he held that "behind every argument is someone's ignorance," there was nothing to indicate "violent partisanship."

The root both of the opposition to the famed justice and to the ideals for which he stood lies as far back as his birth, November 13, 1856, at Louisville, Ky., when he inherited a passion for freedom from his Bohemian-Jewish parents, who fled their homeland after fighting for liberty.

Father Flees Prague

His father, Adolf Brandeis, was a native of Prague, then, as now, the capitol of a nation with a past, a future, but no present. With his wife, Fredericka, the elder Brandeis fled bigotry and persecution following the great Central European revolutionary attempts in 1848.

The tradition of liberty was strong in the family. Fredericka Brandeis' brother, Louis Dembitz, was a delegate to the Republican convention in 1860 when he voted for the nomination of Abraham Lincoln. Her father led a prior revolutionary movement in Poland in 1830. Adolf Brandeis, although living in a Southern community, had strong Union sympathies. A childhood recollection of the future justice was that of his mother secretly carrying food and medicine to Union soldiers.

There was little to distinguish Brandeis' adolescence from that of other young men in similar circumstances. His father made a comfortable fortune in the grain business. He sent his son for two years' schooling in Saxony. In 1875, however, when he entered Harvard, with Longfellow, Lowell, Dr. Holmes and Emerson still on the faculty, Brandeis' brilliance became apparent. He graduated with an LL.B. at 21, with an exceptional scholastic record. Family fortunes having been reversed, Brandeis had worked his way through the law school by tutoring.

...In 1891 he married Alice G... ...ark, of New York City, ...ter of postgraduate work ... ...young lawyer hung out his sh... ...in St. Louis, which he ... ...practicing devotion in a year, ...ever, he was glad of an opportuni... ...to return to the more congenial su... ...roundings of Boston, where he w... ...into a law partnership with a cla... ...mate, Samuel Warren.

Fought for Ideals

A few years later, when Warr... ...withdrew, owing to ill health, ...partnership of Brandeis, Dunbar ... Nutter was organized. This ye... 1897, marked the beginning of ... phenomenal metamorphosis of ... young lawyer with everything ... lose by forsaking his lucrat... practice, gaining everything ... fighting for ideals in which mor... had no part.

One of Brandeis' first crusades ... the public was a vain atte...pt ... block the Dingley tariff act, the ... ...pinning of this country's high ta... ...policy.

Next he gained national fa... when he forced the traction co... ...pany operating the Boston subw... to take a 20-year lease on ter... favorable to the taxpayers, just ... it was about to walk away with ... 50-year lease. He refused to acc... a fee from the citizens' committ... which he represented.

He fought similar battles again... the Boston Elevated Co., an... against the Boston Gas Co., forcin... the latter to adopt a sliding sca... by which dividends could increa... only as rates diminished.

Becomes Wealthy

By the turn of the century, ... Boston Brahmins' eyebrows w... raised at the inconceivable spec...le ... of a solicitor for the wealthies... clients becoming a champion of t... public. Brandeis became known ... a crusader for public utility r... form. But although he consistent... devoted more and more of his ti... to the public interest, his fi...

Justice and wife photographed in 1938

Harris & Ewing Ph

About 1920 after four years on High Bench

[illegible] suspected, and he with it. By 1907, his biographer writing, he was a wealthy man.

At the same time and for the same cause that catapulted Charles Evans Hughes into the national spotlight, Brandeis began a victorious battle which he always counted as one of his supreme achievements. In 1905, while Hughes was exposing the activities of life-insurance companies as counsel for the Armstrong commission, the quiet-mannered Boston lawyer became counsel for the policy holders' protective committee of the Equitable Life Assurance Society, whose management was one of the chief targets of the Hughes investigation.

Brandeis disclosed that the wage earners of his State were under compulsion to carry industrial life insurance at such high premiums that there were hundreds of thousands of lapses in policies, with consequent loss of both protection and money. After a hard fight, the Massachusetts Legislature adopted the law he drafted making possible the purchase of insurance at cost through savings banks. The immediate effect was a reduction of premium rates by 20 per cent. The law is still a model for the rest of the Nation, and the system he established flourished even through the depression.

Won Subway Fight

In 1907, the year his savings bank insurance bill passed, Brandeis, as volunteer counsel, also conducted a successful fight to maintain public ownership of the city subway system. At the same time, he appeared before the Supreme Court in the first of a series of cases defending state minimum wage laws for women. In the first of these, concerning an Oregon law fixing a 10-hour day for women, he presented a 100-page brief only three pages of which were devoted to legal precedents. The other 97 described factory conditions.

In the same period the public-spirited counselor took on the biggest opponent the country could offer—the J. P. Morgan interests, which sought to merge, under the New York, New Haven & Hartford Railroad, all the rail, trolley and coastal steamship lines east of New York. The fight lasted until 1912. He warned that the railroad company's unsound policies would lead to a crash. They did, some years later.

In 1910, Brandeis was drafted as the arbiter of New York's bitter garment workers strike. He not only effected a peace, but set up an harmonious relationship between employer and employe which still serves as a model.

President Defended Him

It was small wonder that by the time Brandeis' name was submitted for the Supreme Court vacancy, in 1916, powerful interests were aligned against confirmation.

After four months of bitter argument the President wrote a staunch defense of the liberal, and aided by Newton D. Baker and Senator Walsh (Democrat), of Massachusetts, [illegible] was guilty [illegible] his seat on June 1, 1916. [illegible] had said of him [illegible] ...ewis. "The only crime of which [illegible] gentleman is guilty is that he has exposed the iniquities of [illegible] ...ce in our financial system."

The only Republican to vote for his confirmation was Senator [illegible], now Independent, of Nebraska.

By the time Brandeis assumed the place on the Supreme Court bench he had already behind him [illegible] accomplishments on which he could well have rested. Besides his insurance system, his arbitration boards, his successful minimum wage cases and his work with the Zionist movement he had also developed the much used conception of a "preferential union shop," by which union men are hired first, but outsiders are employed when the union is no longer able to supply labor.

Famous Dissenter

Once on the bench, however, Brandeis' work seemed only to have begun. He carried it on not only by his decisions—minority decisions at first, with "Justices Holmes and Brandeis dissenting"—but by his gift for teaching no matter what the medium or what the circumstance.

Yearly he chose a Harvard Law School graduate as his secretary, never minding the added burden of breaking in a new man each year. Among the men who have been his secretaries are James M. Landis, now dean of the Harvard Law School, and Dean Acheson, Assistant Secretary of State.

He taught also by his books and lectures. "Other Peoples' Money" is not only a classic, it is still a consistent seller.

Brandeis' philosophy defies the handy labels of "liberal," "conservative" or "radical." Fundamentally it was based on an unshatterable faith in democracy, a system of government which he pointed out was "more difficult to maintain than achieve."

He warned against bigness not only in giant concentrations of capital, but in equally huge concentrations of power even in labor unions.

Defended Labor's Rights

A staunch defender of labor's right to organize—he preached the doctrine long before the national labor relations act was dreamed of—he nevertheless pointed out that "we gain nothing by exchanging the tyranny of capital for the tyranny of labor," and insisted that "arbitrary demands be met by determined refusals."

His philosophy of government was perhaps most tersely expressed in his famous Fourth of July address at Faneuil Hall, Boston, in 1915:

"What are American ideals? They are the development of the individual for his own good; the development of the individual through liberty, and the attainment of common good through democracy and social justice."

Liberty, to Brandeis, meant "the right to enjoy life, to acquire property, to pursue happiness in such manner and to such extent only as

the exercise of the right in each is consistent with the right by every other of our fellow citizens."

Brandeis' crusade against "bigness" was motivated not only by his conviction that a diminishing return in economy and efficiency was reached when industrial concentrations reached too large a scale, but that "bigness" denied the average man the opportunity to work for himself, and with that denial the loss of the moral stamina which characterized the pioneering individualistic America of 50 to 75 years ago.

Foreshadowed Future Law

This did not imply, however, that Brandeis was a nostalgic harker back to the "good old days." On the contrary, he was one of the rare liberals with whom the times never caught up or passed. First, his arguments as a lawyer, then his dissenting opinions foreshadowed the future law.

In the 1932 Oklahoma Ice Case decision, for example, which invalidated a State law regulating competition in the ice business, Brandeis' dissent was a forecast of the New Deal. He wrote:

"To stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the Nation. . . . There must be a power in the States and the Nation to remold, through experimentation, our economic practices and institutions to meet changing social and economic needs. It is one of the happy incidents of the Federal system that a single, courageous State may, if its citizens choose, serve as a laboratory and try novel social and economic experiments without risk to the rest of the country.

"This court has the power to prevent experiment . . . But in the exercise of that power we must be ever on our guard . . . If we would guide by the light of reason, we must let our minds be bold."

Backed New Deal Ten Times

In 16 major legislative tests during the New Deal, Brandeis sided with the Administration 10 times. He wrote the majority decision that upheld the gold devaluation, voted with the minority when the agricultural adjustment act was declared void, but he sided with the majority which outlawed the national recovery act.

By a strange paradox, Brandeis had already become a legend while still the most creatively vital and effective legal philosopher in America.

At the same time when he was quietly but effectively aiding, by advice and by cash, the newest cause celebre in labor's rights—the organization of Southern farm tenants—he had become a legend [illegible] of scholarly austerity, doing at [illegible] working almost uninterruptedly, foregoing the social life and recreation which were his for the taking.

While his decisions were breathing new life and vitality to a seriously threatened code of civil liberties, he was already known as the fabulous justice who maintained a horse and buggy long after the rest of official Washington had taken to automobiles.

His Integrity Lincolnian

In other respects also, Brandeis was a legend. Stories of his Lincolnian integrity became classic. How twice he voluntarily excluded himself from consideration of cases, once because his daughter was administratively connected with the statute in question, again when a law was debated which he had helped draft years before. How he returned a $2500 fee to a client when he turned to denounce as monopolistic agreements he had once drafted. How he declined to accept a fee, in order to remain unhampered, in the railroad merger cases, but paid out of his own pocket $25,000 to his law firm for the time he had taken from its practice.

Just as Brandeis' interest in the labor movement stemmed from the Homestead strike, so his devotion to the cause of Zionism came from the garment workers dispute in New York, when he first came in contact with ghetto conditions. Since his retirement from the Court his work in Zionist affairs increased, picking up where he left off in 1916, when he resigned as head of the Zionist movement in this country. He was offered the presidency of the world movement in 1930 but declined.

The first Jew to sit on the Supreme Court bench, Brandeis was not active in the church despite his leadership in Zionism.

For years Zionist groups observed his birthday with special services. One year, at such services in Jerusalem, leaders of Palestine colonists called the justice, "perhaps the only Jew who belongs to the histories of two peoples, the Americans and the Jews."

Long before his death, Brandeis did the impossible in reclaiming the unstinted approval of those who once had reviled him. Taft and Senator Borah (Republican), of Idaho, who also opposed his appointment, apologized. Even his bitterest opponents in business have long since foresworn their attacks.

Commanded Affection

But Brandeis gained more than respect and admiration. Young friends whom he helped and taught and to whose troubles he listened, affectionately referred to him as "God," holding that his judgment was infallible. On his retirement, his colleagues on the court wrote him of

[illegible] and his [illegible]
[illegible] this [illegible]
[illegible] Brandeis' decisions
[illegible] appreciate his [illegible]
he would they live [illegible]
"On his last birthday [illegible]
[illegible] the court—his [illegible]
[illegible] referred to [illegible]
[illegible] comment [illegible]
[illegible] to [illegible]

"As judge of our highest court," the letter continued, "he has pushed aside the curtain of legal verbiage and breathed into our jurisprudence a broad humanism."

[illegible] among many memorials to [illegible] is a mural in the Department of Justice Building bearing words from one of his court opinions: "If we would guide by the light of reason, we must let our minds be bold."

Another is a marker in St. Louis on the spot where he began the practice of law in 1878.

Was Enthusiastic Canoeist

Since retirement, Brandeis had spent much of his time in his simple study at his California Street home, reading and writing. He walked some and motored much.

In his more active years he was an enthusiastic canoeist and at one time indulged also in water sports.

Never during his long residence in Washington did he participate in social activities of the Capital, though for years he held open house weekly for his friends. Later, probably at the insistence of Mrs. Brandeis, regarding his advancing age, Sunday afternoon teas, with invited guests only, were substituted for these affairs.

The gatherings were attended largely by young men, many in Government service, who found him a source of unfailing encouragement. Many of them bore names famous or to become famous in public affairs, philosophy, the law, letters or some other branch of endeavor.

His lack of interest in the conventional social activities of the Capital is exemplified in his failure on a number of occasions to attend even the President's annual reception in honor of the Supreme Court justices.

Despite his Southern birth and rearing, Brandeis remained a New Englander by residence and always spoke with a New England accent.

Although he was regarded as wealthy, Brandeis always lived simply. He was a consistent contributor to charity and educational institutions, among them the University of Louisville, one of his alma maters.

One of his donations to this university was seven packs of personal papers. He instructed that they remain sealed until his death.

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Mr. Headon
Mr. Holloman
Mr. Quinn Tamm
Mr. Nease
Miss Gandy

Louis Brandeis, 84, Retired Justice, Dies

Noted Liberal Left Supreme Court in '39

Louis Dembitz Brandeis, whose famous liberal dissents became guiding doctrine of the Supreme Court after he had served on it for more than two decades, died at his home in the 2200 block California St. NW., last night. He would have been 85 on November 13.

Brandeis was stricken with a heart attack last Wednesday. His death came at 7:15 p.m.

Funeral services will be private, with admission by card only. A memorial service is planned for a later date.

Stricken Wednesday

The attack was the first serious illness Brandeis had suffered since his retirement from the high court on February 13, 1939, although he always appeared frail.

Although he was stricken Wednesday, no announcement of Brandeis' illness was made until 24 hours later. Then a friend of the family reported the heart attack, and said the justice was "gravely ill." Members of the family were summoned and, because of his age, only the faintest hope was held for his recovery.

Mrs. Brandeis, two daughters—Mrs. Jacob Gilbert and Mrs. Paul Raushenbush—and a sister were at the bedside. Together with a number of grandchildren, they are his only immediate survivors.

The nation's great and near great were quick to mourn his passing. President Roosevelt made no public statement but it

LOUIS D. BRANDEIS
He Was a "Great Dissenter"

was disclosed at Hyde Park, N. Y., that the Chief Executive sent his condolences in a personal message to Mrs. Brandeis.

Court to Adjourn

The Supreme Court opens its 1941-42 term at noon today but will adjourn shortly afterward out of respect for Justice L. D. Brandeis. The new Chief Justice, Harlan Fiske Stone, will make a formal statement to his colleagues on the death of Brandeis. The court then will adjourn for a week.

62-27585-A

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Wives and Friends of Justices Witness Opening Session Of Supreme Court Term

Ambassador and Lady Halifax And Attorney General and Mrs. Biddle Attend Ceremonies

Mrs. Harlan Fiske Stone, wife of the new Chief Justice of the United States, with the wives of the Associate Justices of the Supreme Court, witnessed its convening yesterday at noon. The meeting was brief and served only to announce the new Chief Justice and two new Associate Justices, and adjourn because of the death Sunday evening of one of the retired members, Associate Justice Louis D. Brandeis. The occasion was more solemn than usual and dark blue and black predominated among the costumes of the feminine witnesses. Mrs. Stone was dressed in brown, her dress of crepe and chiffon, and her small round felt hat had wings of velvet on the top. With her were her two sons and daughters-in-law, Mr. and Mrs. Marshall Stone and Mr. and Mrs. Lauson Stone. Mrs. Marshall Stone was dressed in a black tailored suit with a small black tailor hat. Her sister-in-law also wore black, its severity relieved by the bright red flowers on her hat.

His Britannic Majesty's Ambassador and Lady Halifax, back only a few days from their home in England, were guests of the newest member of the court, Associate Justice Robert H. Jackson, and Mrs. Jackson. Refreshed from the brief vacation at home and perhaps greatly relieved over what they found there, the Ambassador and Lady Halifax were warmly greeted. Lady Halifax wore a beige color crepe and lace frock, with a small brown hat and veil. Also with Mrs. Jackson, who wore a trim tailored suit of black, with small black hat having a rose on the front, was Miss Irene Boyle, secretary to Lady Halifax. Miss Boyle was smartly gowned in black and white crepe, with a white hat.

Mrs. Owen J. Roberts Comes from Pennsylvania.

Mrs. Owen J. Roberts, wife of the associate justice next to the Chief Justice in length of service on the bench, came from their farm in Pennsylvania for the occasion and returned there last evening. Yesterday she was dressed in pale green crepe with a small black figure and a becoming black hat. She was accompanied by Dr. and Mrs. Alexander Roberts.

Mrs. Hugo L. Black was accompanied by her sister, Mrs. Cliff Durr of Alexandria, and Mrs. Thurman Arnold, wife of Assistant Attorney General. Mrs. Black was dressed in smartly tailored costume of navy blue with white about the neck and front of the bodice and a small blue hat to match.

Mrs. William O. Douglas, wife of the youngest of the nine members of the court, had with her, Mr. and Mrs. Barnet Nover. Mrs. Douglas wore pale green and black print with a black hat with narrow brim, trimmed with red roses in the front.

Mrs. James F. Byrnes, wife of one of the new members for this session was accompanied by Mrs. Adams, wife of Senator Alva B. Adams; Mrs. L. B. Fuller of Charleston, S. C., sister of Mr. Justice Byrnes, who spends her winters in Washington, and his cousin, Mr. Frank J. Hogan of Washington, who spent his youth with Mr. Justice Byrnes' family, and Mrs. Hogan; Mr. and Mrs. H. B. Hare, Mrs. C. W. Warburton, Miss Frances Falconer and Mr. H. E. Bailey of Columbia, S. C. Mrs. Byrnes was dressed in a becoming black costume with a small black hat.

New Attorney General Blends with Mrs. Biddle.

The new Attorney General and Mrs. Francis Biddle were in the reserved section. The Attorney General served as Solicitor General while Associate Justice Jackson was Attorney General. Mrs. Biddle wore a light blue costume especially becoming to her blue eyes and in the front of her narrow-brimmed hat was a cluster of soft rose-color roses.

Senator Joseph F. Guffey sat with the many attorneys who were there to be presented for practice before the court. This ceremony has been postponed until Monday because of the death of Mr. Justice Brandeis. Others sitting with the attorneys were former United States Minister to Egypt, Mr. Hampson Gary; Mr. Wade H. Ellis, Mr. Emil Hurja, Judge Ernest H. Van Fossan of the Board of Tax Appeals, Judge Clarence Norton Goodwin and Mr. Wade Cooper.

Judge Van Fossan and Judge Goodwin joined their wives, who sat in the reserved section, at the session. Mrs. Van Fossan was dressed in black with a small round black hat trimmed with a red quill. Mrs. Goodwin, who was in San Francisco all summer with Judge Goodwin and came here last week from a brief vacation at Blue Ridge Summit, was dressed in her favorite green. With this she wore a black hat and accessories. She will be off after the fashion show Thursday for the benefit of the British American Ambulance Corps, for her home at Lake Forest, Ill., to spend the remainder of the month.

Mrs. A. Mitchell Palmer, widow of former Attorney General, was among the spectators yesterday wearing a tailored black gown with a small black felt hat and accessories.

Mrs. William Denman, wife of Judge Denman of Denver, who is here for a short stay attended to convening of the court.

Former Assistant Attorney General, Mrs. Mabel Walker Willebrandt, also attended. She wore a particularly becoming white costume. Her hat was black and she wore a string of pearls.

WASH. STAR
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62-27555-A

Supreme Court Acts Tomorrow On Red Issue

Tribunal Composed Of Younger Men to Weigh 300 Cases

By GILBERT W. STEWART Jr.

The Supreme Court, composed of the youngest men to sit on the high bench in many a decade, will act tomorrow on more than 300 cases, including the question of whether Communist party membership is a bar to becoming a naturalized American citizen.

The Communist case was one of the several hundred the justices considered last week in secret conferences. Results of these deliberations on cases to be accepted for review will be made known tomorrow in the first business session of the 1941-42 term.

Appeal of Communist

Similar action on several hundred other appeals will be taken on subsequent decision Mondays.

The case arises on the appeal of William Schneiderman, West Coast Communist party leader. His citizenship was revoked. The lower court held that the Communist party advocates violent overthrow of the government, and its doctrines must be ascribed to alien members seeking citizenship.

Several other important issues will be weighed tomorrow by the Court, which for the first time in many months will have full membership present at a business session.

Addition of new Justices brought the average age of the tribunal to just over 56 years. The eldest is the Chief Justice, Mr. Harlan F. Stone, who celebrated his sixty-ninth birthday yesterday. The youngest is Associate Justice William O. Douglas, who is 42.

Among other cases are important labor controversies, including an appeal seeking a constitutional test of Wisconsin's 1939 employment peace act. Local unions of both AFL and CIO contest the Wisconsin law, which imposes new restrictions on labor activities, particularly the use of strikes and picketing. The question posed is the power of States to curtail certain of labor's rights guarded by the National Labor Relations Act.

In a New York trucking case the Federal Government seeks to apply antitrust and antiracketeering statutes to an AFL teamsters union accused of coercing truck operators into hiring unneeded drivers.

Other Requests

One case involving the defense program may be acted upon. Alabama and the Federal Government have asked a determination whether the States may impose sales and use taxes on purchases by contractors holding cost-plus-fixed-fee defense contracts.

Other requests for review include:

Challenge to constitutionality of Tennessee's $1 annual poll tax.

A Florida case testing applicability of the Hatch "clean politics" act to primary elections.

Contempt of court conviction and two-year prison sentence of Thomas J. Pendergast, one-time Kansas City, Mo., political boss.

Mail fraud conviction of former Louisiana Governor Richard W. Leche.

Multi-million dollar income tax cases of Pierre S. duPont and John J. Raskob involving 1929 securities transactions.

General Motors Corp. appeal from antitrust charge convictions involving financing automobile sales.

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WASHINGTON CITY NEWS SERVICE

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Mr. Tracy
Mr. Rosen
Mr. Carson
Mr. Coffey
Mr. Hendon
Mr. Holloman
Mr. Quinn Tamm
Mr. [illegible]
Miss Gandy

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THE SUPREME COURT DECIDED TO REVIEW THE VALIDITY OF WISCONSIN'S "EMPLOYMENT PEACE" ACT AND ALSO AGREED TO CONSIDER WHETHER MEMBERSHIP IN THE COMMUNIST PARTY IS GROUNDS FOR DENYING CITIZENSHIP.

10/13--R1224P

THE COURT ANNOUNCED ACCEPTANCE OF THESE MAJOR CASES FOR REVIEW. IT ALSO ACTED ON SEVERAL HUNDRED OTHER REQUESTS FOR CONSIDERATION BY THE HIGH TRIBUNAL.

IT AGREED TO CONSIDER A FLORIDA CASE IN WHICH THE LOWER COURTS HELD THAT THE HATCH "CLEAN POLITICS" ACT DOES NOT APPLY TO PRIMARY ELECTIONS FOR THE NOMINATION OF CANDIDATES FOR FEDERAL OFFICE.

ANOTHER IMPORTANT CASE ACCEPTED FOR REVIEW WAS A TEST OF WHETHER CONSTRUCTION FIRMS OPERATING UNDER GOVERNMENT COST - PLUS - FIXED - FEE CONTRACTS ARE SUBJECT TO STATE SALES AND USE TAXES.

(SLUG ABOVE -- ADD SUPREME COURT --)

10/13--R1231P

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WASHINGTO[illegible] NEWS SERVI[illegible]

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ADD SUPREME COURT

THE FIXED FEE CONTRACT TAX CASE, WHICH MAY AFFECT THE COSTS OF THE GOVERNMENT'S DEFENSE PROGRAM, WAS BROUGHT TO THE COURT FROM ALABAMA WHERE THE STATE SUPREME COURT HELD THAT COMPANIES HAVING SUCH DEFENSE CONTRACTS WERE IMMUNE FROM STATE TAXATION. UNDER THIS FORM OF CONTRAC THE GOVERNMENT REIMBURSES CONTRACTORS FOR SPECIFIED ITEMS OF CONSTRUC-TION COSTS AND SETS A FIXED FEE TO COVER PROFIT AND OVERHEAD.

IN ANOTHER ACTION THE COURT DECLINED TO CONSIDER THE CONSTITUTIONAL ITY OF TENNESSEE'S $1-A-YEAR POLL TAX AS IT APPLIES TO VOTING IN CONGRESSIONAL ELECTIONS.

THE COURT DENIED THE PETITION OF THOMAS J. PENDERGAST AND ROBERT E. O'MALLEY, FORMER MISSOURI SUPERINTENDENT OF INSURANCE, FOR REVIEW OF THEIR CONVICTIONS ON CHARGES OF CRIMINAL CONTEMPT ARISING FROM A 1935 INSURANCE RATE CASE.

IN A COMPANION ACTION THE COURT DECLINED TO REVIEW THE PETITIONS OF THE 137 INSURANCE FIRMS INVOLVED IN THE LITIGATION CONCERNING THE INSURANCE CASE. THAT CASE INVOLVED DISTRIBUTION OF $10,000,000 IN IMPOUNDED POLICY PREMIUMS.

OTHER ACTIONS BY THE COURT INCLUDED:

REFUSED TO REVIEW THE CONVICTION OF GENERAL MOTORS CORP. AND THREE SUBSIDIARY FIRMS ON CHARGES OF VIOLATING FEDERAL ANTI-TRUST LAWS IN THE FINANCING OF AUTOMOBILE SALES.

AGREED TO REVIEW A LOWER COURT DECISION SETTING ASIDE THE CONVICTIO OF A NEW YORK LOCAL OF THE AFL TEAMSTERS' UNION ON CHARGES OF VIOLATIN THE SHERMAN ANTI-TRUST ACT AND THE FEDERAL ANTI-RACKETEERING LAW.

REFUSED TO TAKE UP THE TAX LITIGATION OF PIERRE S. DU PONT AND JOH J. RASKOB, WHO TRADED $29,000,000 WORTH OF SECURITIES IN THE BOOM DAYS OF 1929 SO AS TO REDUCE THEIR TAXES. THE GOVERNMENT DISALLOWED THEIR DEDUCTIONS. DUPONT FACES A TAX BILL OF $568,741, AND RASKOB, $850,09 PLUS INTEREST AT 6 PER CENT DATING FROM 1930.

AGREED TO TAKE UP A CIRCUIT COURT OF APPEALS DECISION SETTING ASIDE AN ORDER OF THE FEDERAL POWER COMMISSION REQUIRING THE NATURAL GAS PIPELINE COMPANY AND TEXOMA NATURAL GAS CO. TO MAKE A $3,750,000 A YEA RATE CUT IN ILLINOIS. THE CASE IS THE FIRST COURT TEST OF THE COMMISSION'S RATE POWERS UNDER THE 1938 NATURAL GAS ACT.

10/13--R116P

62-27585-A

Supreme Court To Say if 'Red' May Be Citizen

Also Will Review Wisconsin's 'Labor Peace' Legislation

The Supreme Court yesterday agreed to consider whether American citizenship may be denied legally to Communist party members and to review validity of a law under which Wisconsin sought to achieve industrial peace within its borders.

These were but two of 380 cases, which have come before the court this summer, in which action was taken yesterday.

To Review Florida Ruling

In other decisions, the court agreed to review a lower Florida court ruling that the Hatch "Clean Politics" Act dose not apply to primary elections for nomination of candidates for Federal office, and accepted for review a test of whether firms operating under Government cost-plus-fixed-fee contracts are subject to State sales and use taxes.

The appeal for review of the conviction of General Motors Corporation and three subsidiaries on charges of violating Federal anti-trust laws in the financing of automobile sales was rejected.

The Government was upheld in its long tax fight with Pierre S. du Pont and John J. Raskob who traded $29,000,000 worth of securities in the boom days of 1929 to reduce their income taxes. Du Pont faces a tax bill of $568,741 and Raskob $850,091.

[redacted] Poll tax foes suffered a sharp defeat when the court refused to pass on the constitutionality of Tennessee's $1.a-year poll tax as applied to voting in congressional elections.

The controversy surrounding Wisconsin's "employment peace" law has national significance. That act makes it unfair labor practice for workers by violence to [redacted] date other workers; to engage in mass picketing, or to conduct a strike without first having approval of a majority of the workers by secret ballot.

It was upheld by the State Supreme Court and was brought before the high tribunal in cases involving the CIO United Electrical, Radio and Machine Workers and the Allen-Bradley Company, Milwaukee, and AFL employes in two Milwaukee hotels.

Red Leader Appeals

Also of national interest is the appeal of William Schneiderman, West Coast Communist leader, who is challenging the right of the Government to cancel his citizenship because of his admitted membership in the Communist Party.

Ultimate cost of the Government's huge defense program is involved in the fixed "fee" contract case which came before the court from Alabama. The Supreme Court of that State held that companies having such contracts are immune from State taxation.

In other decisions yesterday the tribunal:

Denied the petition of Thomas J. Pendergast, former Kansas City political boss, and Robert E. O'Malley, former Missouri superintendent of insurance, for review of their convictions on charges of criminal contempt arising from a 1935 insurance rate case.

Denied the petition of Richard W. Leche, former governor of Louisiana, for review of his conviction on mail fraud charges. He is serving a 10-year sentence.

Rejected the petition of William Dudley Pelley, former leader of the Silver Shirts, for review of lower court action in ordering his extradition from Washington to North Carolina to face charges concerning the State's Security Act.

WASHINGTON TIMES-HERALD
OCTOBER 14, 1941

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Defense Poll Tax Review

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Red Leader Appeals

Also of national interest is the appeal of William Schneiderman, West Coast Communist leader, who is challenging the right of the Government to cancel his citizenship because of his admitted membership in the Communist Party.

Ultimate cost of the Government's huge defense program is involved in the fixed "fee" contract case which came before the court from Alabama. The Supreme Court of that State held that companies having such contracts are immune from State taxation.

In other decisions yesterday the tribunal:

Denied the petition of Thomas J. Pendergast, former Kansas City political boss, and Robert E. O'Malley, former Missouri superintendent of insurance, for review of their convictions on charges of criminal contempt arising from a 1935 insurance rate case.

Denied the petition of Richard W. Leche, former governor of Louisiana, for review of his conviction on mail fraud charges. He is serving a 10-year sentence.

Rejected the petition of William Dudley Pelley, former leader of the Silver Shirts, for review of lower court action in ordering his extradition from Washington to North Carolina to face charges concerning the State's Security Act.

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Supreme Court To Decide on Status of Reds

Agrees to Review Case of California Party Secretary.

WASHINGTON, Oct. 13.—(AP)—The supreme court today promised a decision which may clarify finally the status of foreign-born Communists in this country.

It agreed to review the case of William Schniederman, California Communist party secretary, who came here from Russia at the age of three, became naturalized in 1927, and had his citizenship cancelled last year on the ground that he could not be loyal to the United States if he believed in Communism. He was said to have concealed his Communist affiliation at the time of naturalization.

The question whether the Communist party advocates the overthrow of the United States government by force, as foes of Communism have long contended, never has been ruled on by the supreme court although lower courts have held in a number of immigration cases that it does.

Tie-In With Bridges.

The question was posed prominently in connection with deportation proceedings against Harry Bridges, west coast CIO leader and native of Australia. A special Justice Department examiner, former Judge Charles B. Sears, of Buffalo, recently found that Bridges had been affiliated with the Communist party and that it advocated the violent overthrow of this government.

Attorneys for Bridges have served notice that they will appeal to the supreme court if necessary. But if the court decides this question in the Schneiderman case, it probably would refuse to review the Bridges deportation case unless the attorneys presented a different issue.

Another case involving Bridges—a contempt of court conviction for a telegram he sent to Secretary of Labor Perkins criticizing a California court's action in a labor case—was reargued before the supreme court today, along with a contempt citation against the Los Angeles Times in another case. Decisions may be forthcoming next month.

362 Petitions.

In its first business session of the new term, the court passed upon 362 petitions for reviews of cases. Justice Jackson disqualified himself from considering many of them because of his recent interest in them as attorney general. Justice Murphy, another former attorney general, also abstained from deliberations on a few cases.

One important question which the court agreed to decide involves the subpoena powers of the federal wage-hour administrator. The federal circuit court at Boston held in the case of the Lowell (Mass.) Sun that the administrator could not delegate subpoena powers to subordinates; the circuit court at New Orleans in the case of the Cudahy Packing Company held that he could. The supreme court agreed to review both cases.

In the field of politics, the tribunal granted the Justice Department a review of a ruling by the federal district court at Jacksonville, Fla., that the Hatch act regulating political activities does not apply to state primaries. It declined to review a lower court decision that a state (Tennessee) could require voters to pay poll taxes in order to vote in a congressional election.

Appeals Turned Down.

In three outstanding criminal cases, the court turned down appeals of Richard W. Leche, former Governor of Louisiana; William Dudley Pelley, leader of the Silver Shirts of America; Thomas J. Pendergast, former Kansas City political leader, and Robert Emmett O'Malley, former Missouri superintendent of insurance.

The latter two sought review of their contempt convictions and two-year prison sentences in connection with settlement of a $10,000,000 fire insurance rate controversy. Leche appealed his conviction on a charge of mail fraud in an alleged scheme to defraud the Louisiana Highway Commission by purchasing trucks at exorbitant prices. Pelley sought reversal of an order returning him to North Carolina from the District of Columbia for possible revocation of probation granted after a conviction of violating blue sky laws.

THE ATLANTA CONSTITUTION
October 14, 1941

PEOPLE

THIS FINE PICTURE of the new Chief Justice of the Supreme Court portrays his granite-like strength and at the same time—in the falling forelock and tucked-in tie—catches some of the warm informality of his nature. One of his strongest beliefs is that "law cannot rise above its source in the customs, morals and social experience of the people to whom it is to be applied."

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WASHINGTON POST
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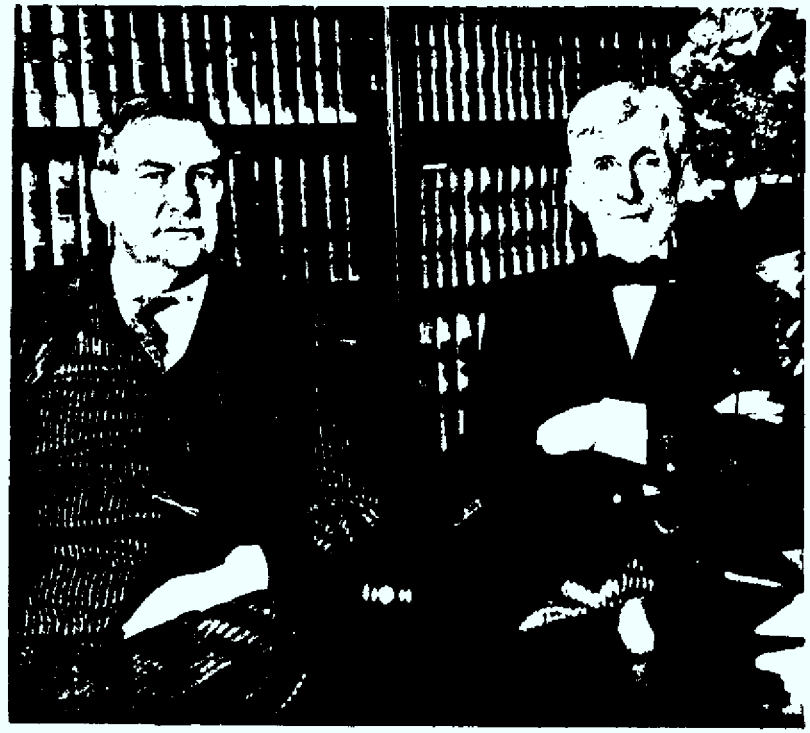
Chief Justice Harlan Fiske Stone

HE WAS ATTORNEY GENERAL in President Coolidge's cabinet when this photograph was made in 1924. Former Chief Justice Charles Evans Hughes, right, was then Secretary of State.



WHEN HE ENTERED the court as Associate Justice in 1925 he looked like this. With him is pictured Associate Justice Joseph McKenna, whom he was succeeding.

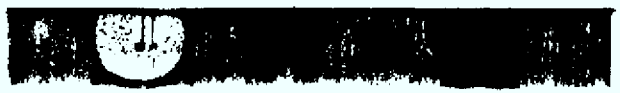
MURAL above is in the Department of Justice Building, depicts "law leading the people to a more abundant life." Chief Justice Stone is the central figure, having been selected by Artist Leon Kroll because he had "the best-shaped head" for the design.

Chief Justice Stone is 69 years of age, a native of Chesterfield, N. H., a graduate of Amherst College and Columbia University. Although first appointed to the court by a conservative President, his approach to the law is liberal. In his writings and judicial opinions he has held that law is neither superhuman nor subhuman, but the "product of human experience."

AT LEFT, Chief Justice Stone is seen rowing to a spot at Isle au Haut, Me., where the fish bite frequently. Fishing is his favorite form of relaxation.

He has said: "It is inevitable that law can never realize completely nor keep pace wholly with the moral aspirations of mankind, not only because they lack definiteness along their outer boundaries which must characterize the law, but because moral standards must become generally settled and accepted by society before they can find expression in law as an established rule of conduct."

Acme Photos.



WITH HIS GRANDSONS Peter, 4, and Harlan, 6, the new Chief Justice looks like this. The picture was made recently in New York, a city in which Chief Justice Stone declared a man "has to make $50,000 a year to live." Peter and Harlan are the children of one of his two sons.

WASHINGTON CITY NEWS SERVICE

Mr. A. Tamm
Mr. Clegg
Mr. Glavey
Mr. Rosen
Mr. Carson

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ADD SUPREME COURT

THE COURT AGREED TO RECONSIDER LAST YEAR'S DECISION SETTING ASIDE A NEW YORK STATE COURT INJUNCTION PROHIBITING PICKETING BY AN AFL TEAMSTERS UNION IN OPPOSITION TO THE SO-CALLED "PEDDLER SYSTEM" OF DISTRIBUTING BAKERY PRODUCTS IN NEW YORK CITY. LAST JUNE THE COURT REVERSED THE NEW YORK COURT OF APPEALS IN SUSTAINING THE INJUNCTION. TODAY IT WITHDREW THAT ACTION AND AGREED TO REVIEW THE CASE.

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R3

Court to Decide If Pauper Alien Can Be Citizen

Justice Dept. Asks Review of Appellate Decision From Coast

The Supreme Court yesterday agreed to consider a case involving the issue of whether an alien can be denied American citizenship because he has accepted relief funds.

The issue arose on appeal of Louis Weber, denied citizenship at Los Angeles, after it was testified he had accepted relief for years.

U. S. Asks For Review

While Weber contended that this was the basis of denial, the Ninth Circuit Court said he was denied citizenship because he was not attached to American principles of government. The Department of Justice urged review to clarify the legal situation.

Other court action included:

The Ford Motor Co. lost an appeal for review of a decision of the Sixth Circuit Court upholding an order of the Federal Trade Commission to cease advertising time payments in an alleged deceptive manner. The Ford Co., denying the charge, contended that its advertising was on the same basis as that of the Federal Housing Administration.

Denied for lack of jurisdiction a petition of the State of Louisiana for permission to file suit against Claude Cummins, Clarence R. Birch, the Dredging Realizing Corp., the Standard Dredging Corp., and Abraham L. Shushan to recover on alleged fraudulent contracts. The court held one of the parties is a citizen of Louisiana, thus depriving it of jurisdiction. The State claimed Shushan received a bribe of nearly $130,000.

Pelley Extradition Blocked

Denied a motion to withhold an order of last week denying the petition of William D. Pelley, Silver Shirt leader, for review of a District of Columbia court order on his extradition to North Carolina.

Denied the petition of J. Edward Jones, New York oil securities dealer, for a review of a District of Columbia Court of Appeals decision dismissing his suit for damages against former members of the securities and exchange commission. He originally sued Joseph P. Kennedy, James M. Landis, George C. Mathews and Robert E. Healey for $1,000,000, claiming that they slandered, libelled and harassed him.

Denied a petition for review of Ohio court decisions enjoining picketing of the Liberty Theater, Springfield, on the ground that picketing was ordered to force employes to join the union. The case was appealed by a local of the International Alliance of Theatrical State Employes and moving picture operators.

Spreckels Wins Review

Granted Adolph B. Spreckels, of San Francisco, a review of a Ninth Circuit Court decision holding that he could not deduct commissions paid in buying and selling stocks in reporting income tax. The decision, he said, is in conflict with the Second Circuit Court at New York.

Granted the petition of the National Labor Relations Board for review of a Sixth Circuit Court decision upholding the Electric Vacuum Cleaner Company, of Cleveland in ordering employes to join an American Federation of Labor union. The board charged that the company aided the AFL union and, in so doing, discriminated against members of a rival CIO union to enforce a closed shop.

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Mr. Coffey
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Mr. Gurnea
Mr. Quinn Tamm
Mr. Hogan

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WASHINGTON CITY NEWS SERVICE

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Mr. Rosen
Mr. Carter
Miss Gandy

JUSTICE FRANK MURPHY HAS RECONSIDERED HIS ACTION DISQUALIFYING HIMSELF FROM PARTICIPATING IN THE SUPREME COURT'S REVIEW OF THE GOVERNMENT'S WORLD WAR CONTRACT CASE AGAINST BETHLEHEM SHIPBUILDING CORP., THE SUPREME COURT ANNOUNCED.

THE CASE, REVIEW OF WHICH HERETOFORE HAS BEEN BLOCKED BY LACK OF A QUORUM, WILL BE ARGUED ABOUT NOV. 17 AS A RESULT, COURT OFFICIALS SAID. THE SUIT INVOLVES THE POWER OF THE GOVERNMENT TO RE-EXAMINE CONTRACTS EXECUTED UNDER EMERGENCY CONDITIONS. IF THE POWER IS SUSTAINED, IT MIGHT PROVIDE A POTENT WEAPON FOR REDUCING CONTRACTS IN THE PRESENT DEFENSE PROGRAM.

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Supreme Court's Spy Trial Ruling Will Be Precedent For All Espionage Cases

Prisoners Can Be Sent Back to Military Tribunal, Turned Over to Civil Court, or Even Set Free.

See editorial, "Are These Coals of Fire for the Nazi Saboteurs?"

By LEWIS WOOD
Philadelphia Record-New York Times Service

WASHINGTON, July 28—The Supreme Court will meet tomorrow in an unprecedented special session to determine whether seven of the eight Nazi saboteurs have any legal avenue of escape from trial and sentence by the military commission which has authority to order them executed.

Whatever decision the Court makes will be a precedent that will undoubtedly guide the course of any future spy cases there may be.

There are two principal questions before the Highest Court. First, has it jurisdiction to receive petitions for writs of habeas corpus from the German prisoners? Second, if it does receive these petitions, what will it do?

Hearing Could Free Spies.

Refusal to consider the petitions would result in remanding the prisoners to the seven-general military commission which they have faced for 16 days. Granting the plea would afford the Court a chance to review the direct challenge to President Roosevelt's authority in denying the prisoners access to the civil tribunals.

Such a review might end in the justices supporting the Executive, might terminate in throwing the case back to the civil courts, or might even close by freeing the prisoners.

Despite intense public interest in the case, none seemed willing to forecast the outcome. One lawyer of high repute believed it mandatory upon the court to allow the motions of the defense counsel to be filed regardless of what the Justices did afterwards.

Others argued that the Supreme Court lacks original purisdiction to receive such pleas which are almost invariably directed to lower courts.

Stone May Not Sit.

There was considerable speculation whether Chief Justice Harlan Fiske Stone and Associate Justice Frank Murphy will sit in on

Continued on Page 8, Column 5.

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PHILADELPHIA RECORD
JULY 29, 1942

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tomorrow's hearing. Stone's son, Lauson, is one of the defense counsel and Murphy has been on active duty with the Army as a lieutenant colonel. Court attaches said Justices were "keepers of their own conscience" in deciding their eligibility to participate in the hearing.

Although the arguments are bound to be of a technical character and the saboteurs will not be present, hundreds of persons are anxious to attend the session. Requests far outnumbering the seating capacity of 300 have been made to court officials. While the length of time the Court will sit is problematical, it is assumed that two or three hours will be consumed in hearing arguments by the defense and Government.

Biddle Flew to See Roberts.

Colonel Cassius M. Dowell and Colonel Kenneth Royall, chosen by Roosevelt as defense lawyers, will appear for the Nazis, while Attorney General Francis Biddle and Major General Myron C. Cramer, Judge Advocate General, will speak for the Government. At the Supreme Court it was said that Colonel Carl L. Ristine, special counsel for George John Dasch, would not argue in the case, and this gave assurance that Dasch was not one of those seeking the benefits of habeas corpus. He is said to have given valuable information to the Government.

Preliminary arrangements for the appeal to the Supreme Court started a week ago, it was learned at the Department of Justice. On that day, when the military commission took its first recess, Colonel Dowell and Biddle flew to Philadelphia to discuss the proposal with Justice Owen Roberts. However, Roberts referred his caller to Chief Justice Stone in New Hampshire. Stone instituted telephone conversations with the other court members, and the special session of tomorrow was the result.

Purely Defense Move.

The move towards the Supreme Court comes entirely from the defense, it was ascertained. Some persons believed the Government consented to the test, but it was emphatically stated that Biddle resisted the proposal vigorously, and visited Justice Roberts entirely as an opponent of Colonel Dowell. It was further asserted that, almost as soon as the Nazi trial started, the defense lawyers urged upon the commission that the prisoners were being so deprived of their basic rights as to make a Supreme Court approach necessary.

Swift Action Demanded.

The Court was called upon by Representative Emanuel Celler (D., N. Y.) to act swiftly and surely against the saboteurs. Likewise, the Brooklyn Congressman urged President Roosevelt to follow largely the example of Abraham Lincoln in denying writs of habeas corpus.

"Our people are of the opinion that the eight Nazi saboteurs should be executed with all possible dispatch," said Celler. "They are confident that the military tribunal will decree their death. Any interference with that trial by civil court would strike a severe blow to public morale.

"The Supreme Court, without hesitation, should deny the petition for a writ of habeas corpus. It need not be bound by the famous Civil War ex parte Milligan case which, by a five-to-four decision, decided that as long as the courts were open and were not in the actual theater of war, the defendant accused of affording aid and comfort to the rebellion, of inciting insurrection and conspiracy against the United States could not be tired by a military commission.

Lincoln Denied All Writs.

"Lincoln went so far as to deny all writs of habeas corpus. That act of courage and foresight prevented Maryland from seceding and probably was one of the telling blows that saved the Union.

"This is a war of survival. It is hoped that the President will follow somewhat the action of President Lincoln."

Exhaustive briefs will be submitted by both sides tomorrow. Informed quarters said that the defense would rely greatly upon the case of Lambdin P. Milligan, the Indiana citizen, who, the Supreme Court decided in 1866, was not subject to trial by a military commission, which condemned him to death.

These Defendants Aliens

In this connection, it was suggested that Milligan was a citizen, whereas six of the Nazi saboteurs are aliens—but this was countered with the assertion that the Bill of Rights does not exclude aliens from its protection, and also 100 years ago Congress extended the privilege of the writ of habeas corpus to persons of the same description of the present prisoners.

While the defense brief probably will quote freely from Justice David Davis, who wrote the Milligan decision for the Supreme Court, the Government is expected to point out also that he said the writ of habeas corpus might be suspended in places "where war actually prevails." With this quotation in mind Attorney General Biddle and Major General Cramer may contend that this survival war the United States is as much a battlefield as any other, and that President Roosevelt possesses ample authority in such a situation.

The Milligan Case.

Milligan was charged with giving aid and comfort to the enemy (the Confederacy) through participation in a secret society known as the Order of American Knights, or Sons of Liberty.

He was arrested in 1864, the last year of the Civil War, tried by a military court at Indianapolis, convicted and sentenced to hang. Nine days before he was due to die, Milligan appealed to the Circuit Court for Indiana and later to the Supreme Court, for a writ of habeas corpus—declaring the military tribunal which tried him was without authority.

The high court took the case from the military and handed it to the civil courts.

Garfield a Justice.

The nine Justices concurred in upholding arguments of Milligan's counsel — among them James H. Garfield, who was to become President—that the military court had no jurisdiction because —1. Civil courts were functioning in Indiana, and 2. Martial law was not in effect.

It split, 5 to 4, on the major main premise: that neither the President nor Congress has the power to set up a military tribunal except in an actual theater of war, and that elsewhere courts-martial have jurisdiction only over persons in the military or naval service.

The Saboteurs' Appeal

The Supreme Court makes history today, meeting in special session to hear the habeas corpus appeal of the Nazi saboteurs for transfer of their trial from the military to civil courts. Depending on what the court does, and still more upon its reason for doing it, this may turn out to be one of the most important cases in our judicial annals.

The accused men are being tried by a military court set up by the President as commander in chief, under authority derived from acts of Congress. The authority of Congress comes from its constitutional power to "make rules for the government and regulation of the land and naval forces"—a power historically construed to include the punishment of civilian spies. No grand jury indictment is required "in cases arising in the land or naval forces . . . in time of war or public danger." Although the right of habeas corpus can be suspended in times of rebellion or invasion, it has not been in this war.

The purpose of the defense attorneys in seeking a transfer to the civil courts is not clear. They may be acting at the request of the defendants, who if convicted by a military court will receive a mandatory death penalty, but who might escape death in the civil courts. They may be acting simply as lawyers, expecting a denial of the writ, but feeling that they must use every possible legal defense for their clients. Or, the military court itself, or the Attorney General, may have suggested this move, expecting the writ to be denied, but feeling that such a denial would remove any doubt in the public mind about the legality or fairness of the military trial. There is a final possibility that the government feels shaky about the legality of a military trial and wants the case transferred. It may also be intended to set a precedent.

Military law is by no means clear in its relationship to the civil courts. Military courts are not part of the federal judiciary system. Appeals from sentences by court-martial are to the President, not to the Supreme Court. To an uncertain extent, however, the civil courts can intervene to prevent arbitrary action by the military courts.

During the Civil War, when control of the border states was in balance, President Lincoln suspended the writ of habeas corpus in order to stop the wholesale release of Copperheads who were being tried by court-martial. His power to do so, without the consent of Congress, was very doubtful, though it may have saved the Union. After the war, in 1866, in the famous Milligan Case, the Supreme Court held that where a state was not invaded or in rebellion, and the civil courts were open, a military commission was without power to try a citizen for disloyal practices or aiding the enemy.

In the present case, the Supreme Court may deny that it has any jurisdiction; holding, for instance court-martial of spies in wartime is a military function, or ruling that members of the armed forces of an enemy nation cannot appeal from the military to the civil courts. If it accepts jurisdiction and decides to pass on the appeal for a writ, a whole set of new questions will arise as to the extent and scope of military law. The fact that these saboteurs find a Supreme Court to appeal to is an ironic commentary upon their devotion to Adolf Hitler.

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MORE IMPORTANT THAN DEAD SPIES

AT THE time the six Nazi spies were being executed, a lot of our own soldiers, sailors and airmen, and those of our Allies, were facing honorable death in action.

But the spies got the headlines, because their death marked the end of a dramatic story of capture and trial.

Americans can draw comfort in the knowledge that the spies got what was coming to them, not only in punishment, but in the protection afforded by our laws—the nation's highest court passing on the validity of the military procedure thru which they were found guilty.

Believing that the maintenance of due process is vital, Americans await with great interest the studied opinion the Supreme Court is now drafting, outlining the reasoning which impelled its decision. That document may well become a high point in American jurisprudence, if the court makes the most of its opportunity to spell out the wartime powers of the President, and the civil rights of citizens and aliens which must remain inviolate even in a state of war.

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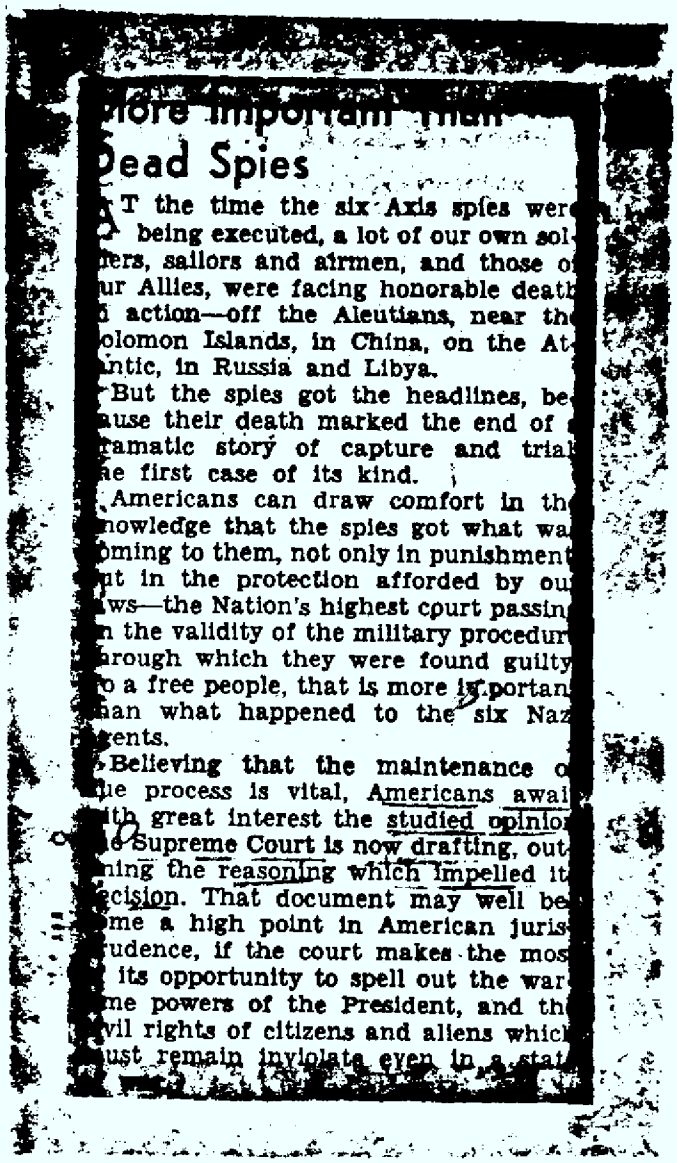
THE EL PASO TIMES
August 10, 1942
(Editorial)



More Important Than Dead Spies

AT the time the six Axis spies were being executed, a lot of our own soldiers, sailors and airmen, and those of our Allies, were facing honorable death in action—off the Aleutians, near the Solomon Islands, in China, on the Atlantic, in Russia and Libya.

But the spies got the headlines, because their death marked the end of a dramatic story of capture and trial, the first case of its kind.

Americans can draw comfort in the knowledge that the spies got what was coming to them, not only in punishment but in the protection afforded by our laws—the Nation's highest court passing on the validity of the military procedure through which they were found guilty. To a free people, that is more important than what happened to the six Nazi agents.

Believing that the maintenance of due process is vital, Americans await with great interest the studied opinion the Supreme Court is now drafting, outlining the reasoning which impelled its decision. That document may well become a high point in American jurisprudence, if the court makes the most of its opportunity to spell out the war time powers of the President, and the civil rights of citizens and aliens which must remain inviolate even in a state

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Biddle Boomed for Byrnes' Seat as High Court Opens

By DANIEL O'SULLIVAN

An eight-justice Supreme Court begins its 1942-43 term amid speculation in Congress that Attorney General Francis Biddle may be named to succeed James F. Byrnes, now director of the new economic stabilization program, as the court's ninth member.

Today's session is expected to follow the precedent of other years and be merely a ceremonial one. At an early session, however, the court is expected to hand down its formal opinion on the Nazi saboteurs, six of whom were electrocuted last summer after an habeas corpus appeal to the high court.

Biddle Boomed

Byrnes resigned his seat at President Roosevelt's request to take over leadership of the anti-inflation program as director of the Office of Economic Stabilization. He had served on the court only two days less than a year, having taken his seat along with Associate Justice Robert H. Jackson on October 6, 1941.

In the opinion of many Senators, Biddle was running far in the lead as Byrnes' likely successor. At least 10 Senators pointed out that the post of Attorney General "is the logical stepping stone to a Supreme Court judgeship." Two of Mr. Roosevelt's former attorneys general—Jackson and Frank Murphy—and a former solicitor general, Stanley F. Reed, now are members of the court.

Others mentioned in informal speculation for Byrnes' seat were former Senator Sam Bratton, of New Mexico, now judge of the Tenth Circuit Court of Appeals; Harold M. Stephens, of Utah, now judge of the District of Columbia Court of Appeals, and Sen-

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OCT 5 1942

WASHINGTON TIMES-HERALD
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ate Democratic Leader Alben W. Barkley, of Kentucky.

It was considered conceivable but not likely, that the President might leave Byrnes' seat vacant during the war, and then reappoint Byrnes.

This will be Mr. Roosevelt's eighth appointment to the Supreme Court—more than any other President except George Washington.

Most Senators were reticent about speculating on Byrnes' successor. One said that "after the way Mr. Roosevelt jumped on us about being 24 hours late with this anti-inflation bill, most of us are afraid to say anything because there's no telling what he'd say if we so much as suggest anybody at all."

Senator Alexander Wiley (R.) of Wisconsin, however, told reporters that the President would be performing a great service to the nation by appointment of a Middle Westerner. Such an appointment, he said, would aid the court in representing "more balanced and well-rounded opinions."

Lack of a full court is not expected to delay its work on the calendar, which includes cases on labor, agriculture, taxes and patents.

Among the cases to be decided is an appeal to the court for a review of the conviction of Thomas Pendergast, former Kansas City (Mo.) political boss.

Wendell L. Willkie, now in China, will appear before the court during the term to plead an appeal for William Schneiderman, secretary of the Communist party of California, whose citizenship was revoked by a district court.

Murphy Doffs Army Uniform, Dons Supreme Court Robe

Justice Frank Murphy doffed his uniform as a U. S. Army officer to join his colleagues on the Supreme Court bench today as they opened a new eight-month term with one vacancy in their ranks.

The vacancy was created over the week end when President Roosevelt appointed Justice James F. Byrnes to be the nation's economic stabilization director, and Byrnes immediately resigned as an associate justice of the court.

Bust of Brandeis Presented

The first order of business today was the presentation to the court of a bronze bust of the late Justice Louis D. Brandeis. President George M. Morris of the American Bar Association made the presentation on behalf of that organization.

Chief Justice Stone announced formally the resignation of Justice Byrnes.

"I announce with regret, in which my colleagues share, the resignation of Mr. Justice Byrnes of his office as an associate justice of this court," said the Chief Justice.

"Wish Him Success"

"We are reconciled to his leaving us only by the realization that he is moved by a sense of duty to render a needed service of public importance in a time of great national emergency.

"We wish for him all success in his new and arduous undertaking and that he may find in it that durable satisfaction which is the true reward for a great task greatly performed."

Meanwhile speculation in Congress was that Attorney General Francis Biddle was the most likely candidate to succeed Byrnes.

Byrnes had served on the court only two days less than a year, having taken his seat along with Associate Justice Robert H. Jackson on October 6, 1941.

In the opinion of many Senators, Biddle was running far in the lead as Byrnes' likely successor. At least 10 Senators pointed out that the post of Attorney General "is the logical stepping stone to a Supreme Court judgeship." Two of Mr. Roosevelt's former attorneys general—Jackson and Frank Murphy—and a former solicitor general, Stanley F. Reed, now are members of the court.

Others mentioned in informal speculation for Byrnes' seat were former Senator Sam Bratton, of New Mexico, now judge of the Tenth Circuit Court of Appeals; Harold M. Stephens, of Utah, now judge of the District of Columbia Court of Appeals, and Senate Democratic Leader Alben W. Barkley, of Kentucky.

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WASHINGTON TIMES-HERALD
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Judge Parker, May Succeed Justice Byrnes

Jurist Who Missed Confirmation in 1930 Is on Rumor List

Senior Judge John J. Parker of the Fourth Circuit Court of Appeals, who missed confirmation for the Supreme Court by two Senate votes in 1930, last night was reported among the names under study for appointment to the seat he was denied.

Parker was mentioned as speculation ranged widely on the President's probable selection to fill the Supreme Court vacancy caused by resignation of Justice James F. Byrnes to become the Nation's first economic "czar."

The North Carolina senior circuit judge, opposed for the highest bench 12 years ago by Senate liberals who later conceded publicly they had been mistaken in objecting to Parker, is known to be highly regarded by the Administration for his long line of liberal decisions.

Parker, who hails from Byrnes' own Fourth Circuit, was appointed to the Supreme Court by President Hoover but failed of confirmation by a 39-to-41 vote. He was vigorously opposed by organized labor because a decision of his court upheld a "yellow dog" contract.

His subsequent line of opinions led Senate progressives to acknowledge they had misjudged him. Among other pro-New Deal opinions, Parker wrote the decision upholding completely the constitutionality of PWA's power loans.

But Parker, a Republican, was only one of a long list of possibilities being mentioned for the post. The field included Attorney General Biddle, whose three predecessors in the Justice Department have already been named to the court; Judge Samuel Rosenman of the New York Supreme Court, close friend and advisor of the President; Senate Majority Barkley, who has battled for Administration policies down the line, and Governor Lehman of New York, the latter not a lawyer.

President Might Keep Job Open

One report was circulated at the Capitol to the effect that the President might take his time about filling Byrnes' seat on the bench, or might even hold the vacancy open until the South Carolinian has fulfilled his stabilization assignment and can be returned to his court post.

Senate friends of the former justice were the first to discount this. These voiced the private opinion that Byrnes would not have resigned from the court with any such understanding, and argued that so far as the new stabilization director was concerned, his severance from the court was complete.

Senator Hatch (Democrat) of New Mexico said he thought the President would be making a mistake to allow the court to continue on an eight-man basis with many important cases pending.

Chief Justice Pays Tribute

As the court yesterday opened its new term, Chief Justice Stone paid a high tribute to Byrnes in officially announcing his resignation.

"I announce with regret, in which my colleagues share, the resignation of Mr. Justice Byrnes of his office as an associate justice of this court," the Chief Justice said. Stone wished Byrnes on behalf of himself and the other justices, "all success in his new and arduous undertaking."

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Basic Freedoms Seen Hinged On Choice of Byrnes Successor

Supreme Court Decisions Scheduled On Vital Constitutional Points

By CHESLY MANLY

Freedom of speech, of the press, and of religion may depend in the future on President Roosevelt's nomination of a Supreme Court Justice to succeed James F. Byrnes, who resigned Saturday to become director of economic stabilization.

Harlan F. Stone

These cherished fundamental liberties, guaranteed by the First Amendment to the Constitution, are in greater peril now than at any time in our history, according to recent pronouncements by members of the Supreme Court itself.

Starts New Term

The court convened a new term yesterday and is expected to hand down decisions within the next few weeks respecting momentous issues of constitutional government.

The scope of President Roosevelt's powers as commander in chief of the armed forces in time of war will be the subject of a formal opinion in the case of seven Nazi spy-saboteurs, who appealed unsuccessfully for writs of habeas corpus to release them from a military commission appointed by the President to try them.

Because of the Administration's constantly tightening censorship of the press and the mounting agitation against minority groups in this country there is much greater interest in the petition of Jehovah's Witnesses, a religious cult for a rehearing of their case in which the Supreme Court, last June 8, held that vendors of religious books, tracts and pamphlets may be licensed and taxed.

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Stone Dissented

Chief Justice Harlan F. Stone stated in a dissenting opinion that the court's approval of the license taxes objected to by Jehovah's Witnesses opened a way "for the effective suppression of speech and press and religion despite constitutional guarantees. The very taxes now before us are better adapted to that end than were the stamp taxes which so successfully curtailed the dissemination of ideas by Eighteenth Century newspapers and pamphleteers, and which were a moving cause of the American Revolution."

The license taxes were upheld by a 5 to 4 decision, with Justice Byrnes voting with the majority, so that his resignation leaves the court equally divided on this momentous issue. Whether the petition for a rehearing will be granted may be announced by the court next Monday. The American Newspaper Publishers' Association and the American Civil Liberties Union have filed intervening petitions as friends of the court.

Might Change Mind

Conceivably one of the Justices who voted with the majority might change his mind and admit that the case was wrongly decided. This is precisely what Justices Frank Murphy, Hugo L. Black, and William O. Douglas did in a dissenting opinion when the case was decided on June. They reversed the position they took in a similar case, involving the same religious cult, two years ago, because of apprehensions as to current trends respecting the rights and views of minorities.

Chief Justice Stone was the lone dissenter two years ago, when the majority opinion was delivered by Justice Felix Frankfurter. To win a majority of the court, the Chief Justice must convert either the new Justice to be appointed by President Roosevelt or one of the following: Owen J. Roberts, Stanley F. Reed, Robert H. Jackson and Frankfurter.

Saboteur Case Cited

Attorney General Francis Biddle is regarded by most Senators as Mr. Roosevelt's most likely choice. Biddle professes to be a champion of civil liberties, especially when he is called upon to explain his refusal to take action against Government officials and employes who are members of organizations which he himself has branded subversive.

Some defenders of civil liberties questioned Biddle's devotion to the Bill of Rights when he asked the Supreme Court, in the Nazi spy-saboteur case, to overrule the historic decision in the case of ex parte Milligan, one of the fundamental precedents of American jurisprudence. In the Milligan case, decided in 1866, the Supreme Court held unanimously that persons other than members of the land and naval forces are not triable by military commissions under the laws of war in a district where the civil courts are open and functioning. The court also held that only Congress may suspend the writ of habeas corpus, and then only in case of invasion or insurrection.

"The Constitution of the United States is a law for rulers and people, equally in war and peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances," said the Court in the Milligan case.

Seek Rehearing

Jehovah's Witnesses are seeking a rehearing of three cases, considered simultaneously, in which the court upheld license ordinances in Opelika, Ala.; Fort Smith, Ark., and Casa Grande, Ariz. Each ordinance forbids the selling of books, pamphlets, tracts and other articles without a license, for which taxes ranging from $10 a year in Alabama to $25 a month in Arkansas are levied.

The majority opinion of the Court, delivered by Justice Reed, implied that there are moral as well as military limits to freedom of expression. "To proscribe the dissemination of doctrines or arguments which do not transgress military nor moral limits is to destroy the principal bases of democracy — knowledge and discussion," the opinion said.

Rights Not Absolute

The opinion flatly stated that the rights safeguarded by the Constitution "are not absolutes to be exercised independently of other cherished privileges, protected by the same organic instrument." Freedom of expression, the opinion added, "may be limited by duties of the proper legislative body to times, places and methods for the enlightenment of the community which, in view of existing social and economic conditions, are not at odds with the preservation of peace and good order."

Chief Justice Stone said the cases presented "in its baldest form the question whether the freedoms which the Constitution purports to safeguard can be completely subjected to uncontrolled administration action... The first amendment is not confined to safeguarding freedom of speech and freedom of religion against discriminatory attempts to wipe them out. On the contrary, the Constitution . . . has put those freedoms in a preferred position. Their commands are not restricted to cases where the protected privilege is sought out for attack. They extend at least to every form of taxation which, because it is a condition of the exercise of the privilege, is capable of being used to control or suppress it."

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These Charming People

By IGOR CASSINI

REPRESENTATIVE AND MRS. LAURENCE ARNOLD from Illinois are trying to have the elopement marriage of their lovely blond daughter, Carol Lee, to Matteo Mezzanotte ("scooped" exclusively in this column) annulled. The young couple, by the way, is already separated. Carol Lee is being encouraged for a theatrical career and Matteo is trying to get into the air force...Singing star Jeanette MacDonald announced proudly yesterday that her husband, Gene Raymond, has been made a captain in the U. S. Army Air Corps...Although Attorney General Francis Biddle is the most likely to get it, Judge "Rosie" Rosenman, President Roosevelt's confidant and co-writer (with Robert Sherwood) of many of F. D.'s speeches, is whispered as a possibility to get Justice Byrnes' Supreme Court seat.

Igor Cassini

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Barkley Boomed For High Court

Senator Lister Hill (D.) of Alabama, said today that President Roosevelt "couldn't make a better choice" than Senate Majority Leader Alben W. Barkley of Kentucky to fill the Supreme Court vacancy created by the resignation of James F. Byrnes.

Hill pointed out that Byrnes's resignation leaves a Southern vacancy on the bench.

Byrnes, a South Carolinian, was serving in the Senate when Mr. Roosevelt named him to the court in 1941. He resigned last week to become director of economic stabilization.

Attorney General Francis Biddle has been generally regarded as the most likely successor to Byrnes, but according to his friends he does not want the job.

Senator Joseph F. Guffey (D.) of Pennsylvania informally nominated Sherman Minton, former Senator from Indiana, now serving on the Fifth Circuit Court of Appeals.

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Roosevelt G... Plea for Neg... On High Cou...

Edgar G. Brown, director of ... National Negro Council, yeste... appealed to President Roosevel... consider the appointment of ... eral Judge Herman E. Mo... Negro, of the Virgin Islands, ... the vacancy on the Supre... Court bench caused by the res... ignation of Associate Justice James F. Byrnes, newly appointed economic czar of the nation.

"Appointment of a distinguished member of the Negro race," said Brown, in his telegraphic appeal, "would at this time inspire renewed hope and confidence in 13,000,000 Negroes in the United States and the darker races of the Americas, as well as peoples of China, India and Africa in this world struggle for democracy."

Justice Moore was graduated from Howard University in 1914 and received his master's degree in law at Boston University, 1919. He was admitted to the bar in Massachusetts, 1919, and practiced in Boston and Chicago until his appointment in 1939 as judge of the United States District Court, St. Thomas, Virgin Islands.

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9 to 4:30

GPO Carries Pay Rise Plea to Congress

By JOHN F. CRAMER

Employes of Government Printing Office will go to Congress this week to ask for a pay raise—and thereby hangs a little story.

Since 1924, pay at the GPO has been governed by a law known as the Kiess act. It sets up a procedure for adjusting pay disputes. It makes the Joint Congressional Committee on Printing the final arbiter.

The printers got one raise in 1926. And they got the equivalent of another several years ago when their hours were reduced without a corresponding slash in pay.

In both cases, however, the raises were granted by the Public Printer. In neither was it necessary to appeal to the Joint Committee.

So in taking the present case to the Committee the printers are setting a precedent. It will be the first real test of the appeals machinery.

They expect to file a brief this week. It will ask a basic rate of $1.52 an hour as against the present $1.32. That's an increase of approximately 15 per cent.

After the printers file their brief, the law gives the Public Printer 10 days in which to reply. Then it will be up to the Committee to call an open hearing.

There are nine separate crafts at GPO. Committee Chairman Sen. Carl Hayden (D., Ariz.) has ruled that each must argue its case individually.

For that reason, the hearings may take quite a while.

What They're Saying

At Justice Department: "Francis Biddle for that Supreme Court vacancy? Not if he can help it!" . . . Sen. Truman (in a recent issue of American Magazine): "Washington has become a city where a large proportion of the population makes its living, not by taking in another's washing, but by unreeling one another's red tape." . . . The Citizens Emergency Committee: "A dollar of Government economy finances just as much war as a dollar of either taxes or bonds." . . . At War Department: "What I like about Secretary Stimson—he doesn't let the generals rush him."

Jimmy's Determined

Insiders say Jimmy Byrnes still is determined that his new Office of Economic Stabilization will be a very small office. . . . Incidentally, it was Atty. Gen. Biddle who sold the President on the idea of asking Congress for farm price stabilization—instead of using his own executive powers without resort to Congress. . . . Mr. Biddle reportedly will back Solicitor General Charles Fahy for that Supreme Court vacancy. And for a dark horse you might keep your eye on Minority Leader Charles L. McNary, a former Supreme Court justice in Oregon who stands very high with the President. "A cinch—if he wants the job," one insider puts it. . . . Corrington Gill, ex-WPA big-shot and more recently administrative officer for Civilian Defense, now is doing a statistical job for Army's Services of Supply. One rumor has a much bigger job waiting for him. And by an odd coincidence, his boss in Services of Supply is Lieut. Gen. Brehon B. Somervell, who used to be Mr. Gill's subordinate in WPA.

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Sez Mussolini!

On Sept. 22, in the presence of President Roosevelt, the Henry J. Kaiser shipyard at Portland, Ore., launched a 10,500-ton freighter just 10 days after the keel was laid.

On Sept. 26, according to official digests, the announcer on Mussolini's Radio Rome had this to say:

"If among those who are listening to me at this moment there are any who know anything about ship building, I should like to know what they think of this Mr. Kaiser, of his boasting bluff.

"I should like to ask a shipbuilder, a navigator, or even a simple sailor whether such a thing (building a ship in 10 days) is possible, or whether perhaps Mr. Kaiser's ships are not phantom vessels born not of a cool mind, but of an imagination excited by whisky.

"There is a limit to everything. No one can build a 10,000-ton ship in 10 days.

"I should like to say to Mr. Kaiser: 'You are not to launch ships before starting construction of them.'"

New Pay Compromise?

Prediction: In an effort to placate the very vocal postal workers, Senate Civil Service Committee will bring out a compromise Government overtime pay bill. The postal workers want a 10 per cent bonus. So the Senate bill will grant individual postmasters the option of giving employes either a bonus or overtime—whichever seems most advisable. . . . And another prediction: Postal workers will reject the compromise. They say it would result in "confusion and discrimination." . . . The Senate Committee met yesterday in the hope of reporting out the bill. But it failed to get a quorum and postponed action until after passage of the tax bill—probably another 10 days. . . . And there's that quotation from Saroyan that is sprouting as a sign in various Office of War Information offices: "He Knew the Truth, and Was Looking for Something Better."

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High Court May Rule On Medical Society Monopoly Case Today

Opinion Also Expected On Military Commission That Tried Saboteurs

The Supreme Court today was expected to announce whether a review would be granted to the American Medical Association and the District Medical Association which are appealing from a District Court conviction on charges of violating the Sherman Anti-trust Act.

The case grew out of the reputed efforts of the organizations to thwart the aims of Group Health Association, Inc., a medical co-operative of Federal Government employes.

The AMA was fined $2,500 and the District society $1,500 by Justice James M. Proctor after a jury had found them guilty. The Court of Appeals upheld the conviction in June. Refusal of the Supreme Court to grant the review would leave the findings of the lower court in effect.

The petition from the medical organizations was among more than 300 accumulating over the summer on which the Supreme Court was expected to act today before launching into arguments.

May Act In Saboteur Case.

It was thought also that the court might hand down a decision clarifying the extent of the President's wartime powers.

This litigation was instituted by counsel to a group of Nazi saboteurs who slipped into this country from U-boats on a mission of destruction. They challenged the constitutionality of a military commission appointed by the President to try them.

After an extraordinary three-day session in July, the Supreme Court upheld the President's action, but postponed the delivery of its formal opinion. Six of the eight Nazis were executed and the others were imprisoned.

Some of the other petitions awaiting action involved:

1. Constitutionality of California legislation fixing minimum prices for milk sold to the Federal Government for use at Moffett Field. Federal officials contended a State lacked this power. Another case involving a similar Pennsylvania law is pending before the Supreme Court.

Pendergast Case Included.

2. Validity of the conviction of Thomas J. Pendergast, former Democratic political leader in Kansas City, on a charge of criminal contempt of court in connection with Missouri's $10,000,000 fire insurance settlement litigation.

3. An appeal by Enoch L. (Nucky) Johnson, former Atlantic City Republican leader, from his conviction on Federal income tax evasion charges.

Chief Justice Stone reached his 70th birthday anniversary yesterday and became eligible to retire, but there were indications that he would continue to serve indefinitely as head of the court.

His health was described as excellent and he was said to be intensely interested in the work of the tribunal. Friends predicted that the day of retirement was quite a distance away.

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These Charming People

By IGOR CASSINI

WASHINGTON is a box full of rumors anyway. Now that there's a seat left vacant in the Supreme Court, everybody is entitled to a free guess for who will be Justice Byrnes' successor. The trouble is that in Washington every whisper is given the coat of authenticity and authority. Columnists and commentators have gone to town on this Supreme Court matter. Everybody in the Government, and outside of it, practically, has been mentioned as a possibility for it. Most frequently mentioned have been Attorney General Francis Biddle, who would seem the logical successor; Senator Alben Barkley, majority leader, and as a dark, but spectacularly sensational horse, Judge "Rosie" Rosenman, adviser to the President and co-author of many of his best speeches.

Igor Cassini

Every columnist in the business, practically, has tried to guess who will succeed Byrnes. Undoubtedly they have all received "inside" tips from the "highest and best-informed" sources. Now here's my tip, and, confidentially, methinks it's the right one—but who can swear to it?

This is the story that I was told from people very high up, indeed, and it's the story that I'm inclined to believe, will come into headlines very soon. The man who will fill Justice Byrnes' vacant Supreme Court seat is Solicitor General Charles Fahy. That sounds surprising and unorthodox, but don't forget that the breaking of traditions has become a favorite New Deal method. Besides, there's a definite reason why Solicitor General Fahy will jump over the head of his boss, the Attorney General.

FAHY, in fact, will be given his Supreme Court judgeship only temporarily. Justice Byrnes, who resigned to become Economic Czar, consented to take the new job for the "duration," but he was assured that when the war will be over he will get it back. Nobody doubts that Byrnes is a fine and unselfish man. Nevertheless, it's a very extraordinary case for a man to leave the Supreme Court for any other office in the land—unless, perhaps, it be the Presidency. A judgeship in the Supreme Court is a job for life, and it's the greatest distinction that any American can obtain. Even in the practical sense, Byrnes left a $20,000 a year job for one that pays him only $12,000.

Solicitor General Fahy was approached on this proposition and he is said to have accepted it. When time comes for him to "resign" he has also been assured that another good job would be in hand for him.

But here are some more inside facts about the Supreme Court. The feud between Justice Felix Frankfurter on one side, and Justice Frank Murphy and Justice William Douglas on the other side, has far from died down. In these last few weeks there have been a lot of stories that both Murphy and Douglas were restless and intended to step down from the Supreme Bench. Frank Murphy, it has been said, wants only to wangle a definite promise that he'll be assigned in active duty with troops with his present rank of lieutenant colonel. And William Douglas, who, it has been reported, cried his eyes out when Byrnes was made economic czar (because he was hoping to get it), is still angling for any good Administration job. One scribe went even as far as to say that Justice Douglas was deliberating the possibility of enlisting in the Army as a buck private!

Justices Murphy and Douglas won't say so, but their friends are loud with accusations that all these wild rumors were planted by the opposite faction. Anyway, they insist that neither Murphy nor Douglas have the slightest intention of quitting the Supreme Court. And that, undoubtedly, is the truth!

BUT to continue judicial stories: Ogden Hammond jr., the diplomat who is shortly bringing his case against the State Department before the highest court in the land, gave a cocktail party the other afternoon for Hollywood's boy genius, Orson Welles, and Dolores Del Rio. La belle Del Rio, however, wasn't there. Orson Welles said he was so sorry, but she was in bed with the sniffles. Otherwise, former Attorney General Homer Cummings and Assistant Attorney General Thurman Arnold were there, and had a lot of things to say to and hear from Mr. Welles.

Also at the party were Mrs. Justin Miller and her attractive daughter. That was amusing, because Mrs. Miller's husband, Justice Miller, wrote the opinion against Hammond in the Court of Appeals, and that's why "Oggie" is bringing it before the Supreme Court. But judicial battles cannot interfere with personal friendships. Or, at least, don't in this case.

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Fahy Hinted As Roosevelt's Choice for Supreme Court

Frankfurter Seen Behind Move

By CHESLY MANLY

Solicitor General Charles Fahy is regarded by New Deal inner circles as President Roosevelt's most likely choice for the vacancy on the United States Supreme Court, which is so closely divided on momentous civil liberties issues that the appointment may determine the future of freedom of speech, freedom of the press, and freedom of religion.

Fahy is said to be favored by Justice Felix Frankfurter to succeed Justice James F. Byrnes, who resigned to become Director of Economic Stabilization.

Biddle in Line

Attorney General Francis Biddle is in line for the Supreme Court appointment by virtue of seniority and New Deal precedent, but it is reported in authoritative quarters that Justice Frankfurter wants to keep him in charge of the Justice Department. Justice Frankfurter's wishes in these matters of state are of no small consequence, for he is widely recognized in Washington as a sort of unofficial "Prime Minister" of the New Deal and Grand Panjandrum of the war effort.

SOLICITOR GENERAL FAHY
Groomed for High Court

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Fahy Hinted F. D. Choice For High Court

Frankfurter Seen Behind 'Sidetracking' Of Biddle's Bid

By CHESLY MANLY

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WASHINGTON TIMES HERALD
Tuesday, Oct. 27, 1942

CH-24184

New Deal Inner Circle Sees Fahy Slated

(Continued From First Page)

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This decision was impelled, according to his friends, by his conviction that freedom of religion, freedom of speech, freedom of the press and the other cherished fundamental liberties guaranteed by the Bill of Rights are imperiled now as never before in our history.

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It was a 5-to-4 decision, and Justice Byrnes' resignation left the court equally divided on the momentous constitutional question.

Biddle's Record

Defenders of civil liberties have shuddered at the possibility of Biddle's appointment to the Supreme Court. Their misgivings are based in part upon the Justice Department's recent indictment of 28 persons, many of whom are unknown to the others, on a charge of conspiracy to impair the morale of the armed forces.

This indictment links convicted enemy agents and anti-Semitic rabble rousers with others whose only known offense was opposition to Communism or—before Pearl Harbor—opposition to war. The indictment smears by naming but does not indict such partiotic pre-war organizations the America First Committee and the National Committee to Keep America out of Foreign Wars, which consisted of 50 noninterventionist members of Congress.

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He is a member of the National Lawyers Guild, which was pronounced too Communistic for their brand of "liberalism" by Attorney General Robert H. Jackson, now a member of the Supreme Court; Assistant Secretary of State Adolf Berle, jr., and Judge Ferdinand Pecora, of New York, when they resigned from it two years ago. Unlike Biddle and other Frankfurter favorites, Fahy is not a Harvard Law School man. He went to Notre Dame and received his law degree from Georgetown University.

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The three leading civil liberties cases in the last two years were the Jehovah's Witnesses case, the Los Angeles Times case and the so-called detectaphone case. In each case Justice Murphy upheld the contention of the petitioners that their constitutional libertes had been violated by Government. Chief Justice Harlan F. Stone and Justices Douglas and Hugo L. Black voted for the petitioners in two of the three cases.

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For High Court Seat

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Cites Colonial Situation

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The minority opinion, delivered by Justice Frankfurter, advanced the revolutionary theory that freedom of the press; which is secured against Congressional abridgement of the First Amendment, is not secured against State infringement by the Fourteenth Amendment.

"Which one of the various limitations upon State power introduced by the Fourteenth Amendment absorbs the First?" Frankfurter asked. " . . . only the due process clause assures Constitutional protection of civil liberties to aliens and corporations. Corporations cannot claim for themselves the 'liberty' which the due process clause guarantees. That clause protects only their property."

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Justice Murphy, in a lone dissenting opinion, maintained that this was an unconstitutional invasion of privacy. The Fourth Amendment, he said, "puts a restraint on the arm of the Government itself and prevents it from invading the sanctity of a man's home or his private quarters in a chase for a suspect except under safeguards calculated to prevent oppression and abuse of authority . . . Whether the search of private quarters is accomplished by placing on the outer walls of the sanctum a detectaphone that transmits to the outside listener the intimate details of private conversation, or by new methods of photography that penetrate walls or overcome distances, the privacy of the citizen is equally invaded by agents of the Government and intimate personal matters are laid bare to view . . . It is strange doctrine that keeps inviolate the most mundane observations entrusted to the permanence of paper but allows the revelation of thoughts uttered within the sanctity of private quarters, thoughts perhaps too intimate to be set down even in a secret diary, or, indeed, utterances about which the Common Law drew the cloak of privilege—the most confidential revelations between husband and wife, client and lawyer, patient and physician, and penitent and spiritual adviser."

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Fahy Hinted F. D. Choice For High Court

Frankfurter Seen Behind 'Sidetracking' Of Biddle's Bid

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Supreme Court Rules on Costs Of Transcripts

By the Associated Press

The Supreme Court ruled yesterday that a person convicted of crime in a Federal district court is not entitled to be furnished a verbatim stenographic transcript of the evidence at public expense when he seeks to appeal as a pauper to a Federal circuit court.

Justice Roberts delivered the unanimous decision, affecting Jessie William Miller, convicted in the Western Arkansas Federal District Court of kidnaping and sentenced to a five-year penitentiary term at Leavenworth.

The tribunal, however, returned the case to lower courts to permit Miller to file a new bill of exceptions with the Eighth Federal Circuit Court so as to permit it to determine whether there was sufficient evidence to sustain his conviction.

"There is no law of the United States," Justice Roberts said, "creating the position of official court stenographer and none requiring the stenographic report of any case, civil or criminal, and there is none providing for payment for the services of a stenographer in reporting juridical proceedings."

Review Is Refused

The opinion noted, however, that, "at the instance of the conference of senior court circuit judges, legislation has been introduced in Congress to provide an official system of reporting and to defray the cost of it."

The Standard Oil Co. (Indiana) and affiliated subsidiaries failed yesterday to obtain a Supreme Court review of a decision sustaining a $409,819 Federal income tax deficiency for 1930 as an outgrowth of the famous Teapot Dome oil leases.

Both the Board of Tax Appeals and the Seventh Federal Circuit Court held that a $2,906,484 judgment against Stanolind Crude Oil Co., a wholly-owned subsidiary, was not deductible litigation. Justice Roberts, who prosecuted Teapot Dome for the Government, did not participate in yesterday's action.

"Stanolind's liability for the judgment," the Circuit Court said, "arose out of the fact that it purchased 1,430,024 barrels of crude oil, prior to March 12, 1924, from Mammoth Oil Co. pursuant to contract, paying therefor $2,107,501. It had been a codefendant with Mammoth in the Wyoming suit instituted by the United States March 13, 1924, to secure the cancellation of the Teapot Dome lease.

"Mammoth obtained the oil by drilling on certain Government-owned lands in Wyoming, commonly known as Teapot Dome, to which the Government had given oil and gas leases, executed on April 7, 1922. These leases had been voided by the United States Supreme Court for fraud."

Signed By Fall, Sinclair

The Justice Department said the leases were signed by Albert B. Fall, then Secretary of the Interior, and Harry F. Sinclair, president of Mammoth. Stanolind, it added, was incorporated in 1921 and was known until 1930 as the Sinclair Crude Oil Purchasing Co.

Among other actions, the Supreme Court yesterday returned to the Federal district court at Chicago litigation to determine whether a labor organization which submits a dispute to the National Railroad Adjustment Board may not withdraw the controversy after receiving information that an adverse ruling is to be delivered.

This action was taken because of the death of the referee appointed by the adjustment board to consider the controversy at issue. The District Court was directed to take "such further proceedings as may be appropriate."

The five members of the labor group on the first division of the board, which sits at Chicago, had sought a Supreme Court review of a ruling by the Seventh Federal Circuit Court directing the board to decide 170 disputes between the Delaware & Hudson Railroad Corp. and employes over rates of pay. The railway employes had attempted to withdraw the disputes after the referee indicated what his conclusions would be.

Antitrust Case Dismissed

The Supreme Court dismissed yesterday an antitrust suit brought by the Justice Department charg-

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ing a group of companies with conspiracy to fix the prices and monopolize the sale of gasoline computer pumps, which register the quantity and price of the product sold.

In the 5-to-3 opinion, Justices Douglas, Black and Murphy dissented. Dismissal was ordered on technical jurisdictional grounds governing the right of appeal to the Supreme Court.

The Northern Illinois Federal District Court also had dismissed the suit.

The Justice Department asserted that the effect of the District Court's action was "to hold that a dominant group in an industry may combine and conspire to use a patent owned by one of the conspirators for the purpose of fixing the selling price or securing a total monopoly of the manufacture and sale of important articles of commerce."

Charges were filed against the Wayne Pump Co., Fort Wayne, Wayne Pump Co., Fort Wayne, Ind.; Gilbert & Barker Manufacturing Co., West Springfield, Mass.; Tokheim Oil Tank & Pump Co., Fort Wayne, Ind.; Veeder-Root, Inc., Hartford, Conn.; and the Gasoline Pump Manufacturers Association of New York.

The Wayne Co. was said to have obtained a patent in 1932 for a computer pump.

To Review Decision

The Supreme Court agreed to review a decision dismissing a suit brought by the Justice Department charging a group of milk dealers with engaging in a conspiracy to fix prices for the sale of fluid milk and milk products in the Cincinnati area in violation of the Sherman Antitrust Act.

The District Court had held that, although 50 per cent of the milk was shipped from other States, it "became commingled with" the milk produced within Ohio and had lost its "identity as a commodity moving in commerce between the States."

The Supreme Court ruled yesterday in favor of the United Carbon Co. of Charleston, W. Va., in acting on litigation in which the company has been charged with infringing a patent for making carbon black pellets held by Binney & Smith Co. of New York.

Requests for reviews were denied these petitions:

One hundred and thirty-nine insurance companies of a decision ordering the distribution to policyholders of eight million dollars impounded in the Federal District Court at Kansas City in connection with Missouri's long-pending fire insurance rate controversy. The distribution was ordered by a three-judge Federal court at Kansas City and by the Eighth Federal Circuit Court. The money represented increased rates which were collected and impounded pending a settlement as to their validity.

Edward L. Scheufler, Missouri superintendent of insurance, of a decision holding that R. E. O'Malley, former superintendent, was not liable for expenditures made in 1936 and 1937 in connection with operation of the Manufacturing Lumbermen's Underwriters, a Kansas City reciprocal insurance exchange now in liquidation.

Robert G. Ewald of his conviction on a charge of accepting a bribe to influence his vote as a member of the Detroit common council.

The City of Dubuque Bridge Commission, which operates a toll bridge across the Mississippi River between Dubuque, Iowa, and East Dubuque, Ill., of a decision sustaining a $4,620 real estate tax for 1941 imposed by Iowa.

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CAPITAL COMPASS

By George D. Riley and Page Huidekoper

LIFE for an august justice of the U. S. Supreme Court is far from an unruffled bed of ease these days, even though no Federal judge's income can be reduced during his term of office.

In the first place there is the well known and growing feud between Mr. Justice Frankfurter and a whole bloc of others headed by Mr. Justice W. O. Douglas.

Thurman Arnold

In the second place, court observers say, there is a definite trend on the high bench toward following the recent election returns to a point somewhat Right of the New Deal. That means unhappiness again with the President.

The third trouble was exposed in part, yesterday, by Representatives Emanuel Celler (D.), of New York, ranking member of the House Committee on the Judiciary. Mr. Celler introduced a bill proposing that only five judges need to attend a session of the court to make a legal majority capable of handing down a lawful opinion. At present there must be six judges sitting to make a proceeding legal.

This move of Mr. Celler's is a necessary preliminary to the disposal of the longest, most expensive and most embarrassing lawsuit in world history, the department of Justice's anti-trust suit against the Aluminum Company of America.

Stymied Justice

ON the Supreme Court now are former U. S. Attorney Generals Stone, Murphy and Jackson and former Solicitor General Reed. Each has declined to sit in judgment on the case because he has at one time or another been drawn into a Government lawsuit with the Aluminum company.

That leaves four judges competent to hear arguments in this critically important anti-trust suit which, so far, the Government has lost all the way.

Before the aluminum case can be settled, the President must fill the vacancy left by the resignation of Mr. Justice Byrnes, and the law fixing the number of judges who must sit on each case must be changed. There must be a change or else a substitute must be found for one of the judges who has, as the legal language puts it, "recused himself."

The very idea of calling back

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in service one of the retired justices to sit for a "recused" judge makes New Dealers shudder. There are available only conservatives Hughes, and McReynolds.

Filling the vacancy left by Mr. Justice Byrnes is going to be no easy job for the New Deal. The present organization of the Senate Judiciary Committee is controlled by Senators who fought the President's Court packing scheme in 1937. They will still be there in the next Congress, too and very unsympathetic to judges of the kind the New Deal likes.

All of which accounts for the glum looks you get these days from Assistant Attorney General Thurman Arnold. He has to take the Aluminum case to the Court for argument. IF he can ever get a Court that will hear it.

Lesson to Wendell

ONE of the greatest weaknesses suffered by Wendell Willkie is his belief that he is the smartest politician in or out of the Republican party. But he got a new lesson in the art last week during the Republican National Committee meeting at St. Louis.

In the first place, while he was so busy fighting the election of Werner Schroeder, of Illinois, as national chairman, the party regulars got together and put over Harrison Spangler, of Iowa. The only difference between Schroeder and Spangler, insofar as political outlook is concerned, is that the one is named Schroeder and the other Spangler. They are political identical twins.

But that is not all. Insiders are laughing heartily at another trick the committee pulled out of pure dislike for Willkie and with no other public significance.

At Philadelphia, in 1940, R. B. Creager, of Brownsville, Tex., was floor manager for Presidential Candidate Robert A. Taft. Creager accused Willkie's organization of unfairly packing the galleries at the Convention Hall, and in so doing incurred Willkie's relentless enmity.

In the reorganization of the committee after the nomination, at Willkie's demand, Creager was kicked out of his long-standing honorary position as a member of the party's executive committee.

Last week at St. Louis he was given his old job back. To Willkie that was the most unkindest cut of all.

Petrillo Upheld By High Court

PM's Bureau

WASHINGTON, Feb. 16.—William Dudley Pelley, goateed Fascist who dreamed of becoming America's Fuehrer, yesterday lost his last chance to avoid a 15-year term in Federal prison for sedition.

William D. Pelley

The Supreme Court, in handing down a number of important decisions, refused to review the trial at which he and two assistants were convicted in Indianapolis.

The Court also:

¶ Upheld the right of James C. Petrillo, president of the American Federation of Musicians, AFL, to prohibit recording of any music for commercial purposes, such as broadcasting or juke boxes.

¶ Affirmed conviction of Enoch L. (Nocky) Johnson, former Republican boss of Atlantic City, for income tax evasion.

¶ Ordered reargument of the deportation case against William Schneiderman, California Communist, whom Wendell L. Willkie defended at his hearing last Fall.

¶ Agreed to reconsider three cases and to consider appeals in two others restricting the right of Jehovah's Witnesses to distribute literature and compelling them to salute the flag.

Pelley, who for years in the columns of his *Fellowship Press* and *Gillean* sneered at democratic processes, appealed to the Court on grounds that his constitutional rights had been invaded because no women were on the jury and because special assistants to the Attorney General were in the grand jury room when his indictment was being considered.

James C. Petrillo

The Court invoked the Norris-La Guardia Act in dismissing the Government's antitrust suit against Petrillo and the AFMU, ruling that an injunction could not be issued in a labor dispute. In its appeal, the Government said the case raised these new issues:

¶ Whether a union may use organized coercion to eliminate competition.

¶ Whether a union may demand that an employer hire men for "useless and unnecessary work."

¶ Whether a union may combine with a radio network to prevent amateurs from performing.

Nocky Johnson

Johnson was convicted of tax evasion for the years 1935-37.

Eventual reversal of the Court's previous decisions against Jehovah's Witnesses was considered likely as a result of its decision to reconsider the cases.

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This is a clipping from page 10 of the PM for Feb. 16, 1943
Clipped at the Seat of Government.

WA ON CITY NEWS

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Mr. Ladd
Mr. Nichols
Mr. Rosen
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Mrs. Harbo
Mr. Quinn
Mr. Nease
Miss Gandy

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THE SUPREME COURT, IN TWO 7-TO-1 DECISIONS, TIGHTENED LEGAL RULES GOVERNING ADMISSIBILITY OF EVIDENCE BY OVERRULING TWO CRMINAL CONVICTIONS IN WHICH ALLEGED CONFESSIONS WERE READ DURING THE TRIALS.

THE COURT HELD IN BOTH CASES THAT THE "CONFESSIONS" WERE NOT FREELY MADE, AND THAT THEY THEREFORE SHOULD NOT HAVE BEEN ADMITTED AS EVIDENCE.

(1) ONE CASE INVOLVED BENJAMIN, FREEMAN AND RAYMOND MCNABB--BROTHERS--CONVICTED OF SECOND DEGREE MURDER IN CHATTANOOGA FEDERAL DISTRICT COURT IN 1940 IN CONNECTION WITH THE SLAYING OF SAMUEL LEEPER, AN INTERNAL REVENUE AGENT.

(2) THE SECOND CASE INVOLVED THE FEDERAL COURT CONVICTION OF EIGHT MEMBERS OF THE INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS (CIO) WHO WERE FOUND GUILTY OF CONSPIRING TO BLOW UP TVA POWER LINES SERVING THE TENNESSEE COPPER CO., AT COPPERHILL, TENN., DURING A STRIKE AT THE COMPANY'S MINES.

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Mr. Hendon
Mr. Kramer
Mr. McGuire
Mr. Quinn Tamm
Mr. Nease
Miss Gandy
[redacted]

In Supreme Court

Viereck's Prison Sentence Set Aside, New Trial Ordered

Not Bound to Reveal Propaganda Work Done On His Own, Ruling

Another Indictment

JOHN EOGHAN KELLY, 50, alleged propagandist for the Spanish government, was indicted yesterday by the District grand jury on a charge of violating the Foreign Agents Act.

Story on Page 5.

Maloney Criticized

By Dillard Stokes
Post Staff Writer

The Supreme Court yesterday set aside the two-to-six-year prison term imposed on the Nazi propagandist, George Sylvester Viereck, for violating the Foreign Agents Act.

Chief Justice Stone declared that "however deserving of punishment his conduct may seem," Viereck must have a new trial because the law did not require him to reveal his propaganda work unless he did it for Germany, whereas the trial jury was told that Viereck was bound to disclose, also, the agitation he claims he was doing on his own account.

Justices Black and Douglas dissented vigorously, saying the law was passed to bring foreign agents out in the open and that "no strained interpretation should frustrate its essential purpose."

They pointed out that Viereck's "own" anti-British, isolationist agitation was exactly like that he carried on for the Nazi propaganda organization.

The Chief Justice sharply criticized Special Prosecutor William Power Maloney for the vigor of his closing address, in which he reminded the trial jury that the

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Supreme Court — Viereck et al
Mark — Klapprott, et al
Holt — Rowles
Representing Tennessee Valley Authority Power Line

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WASHINGTON POST
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Nation was at war with Viereck's late employers. From this criticism, too, Justices Black and Douglas dissented, saying that earnestness and stirring eloquence did not amount to unfairness.

"Author and Journalist"

Viereck was an active German propagandist in this country in World War I and began similar operations for the Hitler government some years ago. In 1939 he registered at the State Department as a foreign agent. On several occasions when asked for a comprehensive statement of the nature of his business he gave the answer, "author and journalist."

Special Prosecutors Maloney and Edward J. Hickey brought Viereck to trial in the District Court here on an indictment which charged that he willfully concealed the operations of the huge propaganda machine he built up during the bitter isolationist agitation in this country.

Chief Justice Stone referred to some of these operations, saying:

"There was evidence from which the jury could have found that during the 18 months' period covered by (Viereck's statements) . . . he had controlled and financed Flanders Hall, a corporation which published numerous books and pamphlets from manuscripts furnished by (Viereck); that it had also published other books furnished by (Viereck) which purported to be English translations of French or Dutch publications, or to have been compiled from English sources, but which were in fact translations of German books published by the Deutsche Informationsstelle of Berlin. All were highly critical of British foreign and colonial policy. During this period (Viereck) actively participated in the formation of the 'Make Europe Pay War Debts Committee,' and the 'Islands for War Debts Committee,' and made use of these organizations as a means of distributing propaganda through the press and radio and under congressional frank. He also consulted with and was active in writing speeches for various members of Congress, and in securing distribution of the speeches under congressional frank."

Did Not Take Stand

Although Viereck did not take the witness stand to defend himself, his attorneys claimed he did all these things on his own account and that they were wholly apart from the similar isolationist propaganda for which he was being paid by the Germans.

The trial justice, F. Dickinson Letts, instructed the jurors that Viereck was obliged to report these activities whether they were for himself or for the Nazis.

Chief Justice Stone yesterday declared this instruction a mistake, saying that although the law has been amended to require a foreign agent to report all his activities, there was no such broad requirement when Viereck was operating. All Viereck had to report was his work as a paid agent.

The dissenting justices said all Viereck's propaganda was to further the interests of Germany and that it was their opinion the law did not allow [illegible] any of his activities.

Justices Roberts, Reed, [illegible] and Frankfurter concurred in Justice Stone's opinion. Justice Jackson, a former Attorney General, and Rutledge, a new member of the court, did not take part in the case.

Assistant Attorney General dell Berge argued the appeal for the Government and Col. O. [illegible] Guire appeared for Viereck.

Two Other Decisions May Mean New Treason Trials for Six

Two strong "civil rights" decisions handed down by the Supreme Court yesterday seemed to foreshadow granting of new trials to the six pro-Nazis convicted of treason for giving aid and comfort to the German spies who came to America in submarines last summer.

The Court announced a broad doctrine which seemed likely to go far toward outlawing all confessions obtained by third degree methods.

The court severely rebuked agents of the Alcohol Tax Unit and the Federal Bureau of Investigation for grilling prisoners to get confessions. Two convictions based on such confessions were set aside.

The common law rule has been that the value of a confession as evidence depends on whether it is voluntary. The court went far beyond this doctrine yesterday to declare, in two opinions by Justice Frankfurter, that admissions gotten by long questioning of prisoners, before they have been taken before a magistrate, must be ignored by the courts. Justice Reed dissented.

Three moonshiners — Benjamin, Freeman and Raymond McNabb—were convicted in the Tennessee Federal Court of second-degree murder, for the fatal shooting of an agent of the alcohol tax unit during a raid. The men were grilled at intervals for two days after their arrest.

Eight other men were convicted in Tennessee Federal Court of dynamiting a Tennessee Valley Authority power line during a bitterly fought strike in 1940. They were questioned by FBI agents and other officers during a period of six days before their formal arrest.

The Tax and FBI agents claimed that defendants in both these cases confessed during the grilling.

The circumstances were strikingly like those brought out in the Chicago treason trials, where FBI agents "detained" several friends and relatives of the German spies in secret for several days before their formal arrest. During this period, the alleged traitors were questioned at length and their admissions were used against them at the trial in which three men were sentenced to death and their wives to 30 years in prison.

Functions Denied By Congress

After setting out the facts in the moonshine case, Justice Frankfurter said:

"We are constrained to hold that the evidence elicited from the petitioners in the circumstances disclosed here must be excluded. For in their treatment of the petitioners the arresting officers assumed functions which Congress has explicitly denied them. They subjected the accused to the pressures of a procedure which is wholly incompatible with the vital but very restricted duties of the investigating and arresting officers of the Government and which tends to undermine the integrity of the criminal proceeding."

The justice pointed out that Federal marshals, FBI agents and tax officers are required by law to take prisoners before a judicial officer "immediately."

In the dynamiting case, where the confessions were obtained before there was a formal arrest, Justice Frankfurter said the fact the the FBI agents were "not formally guilty of illegal condut does not affect the admissibility of the evidence which they secured improperly through collaboration with State officers."

To Hear Objector's Appeal

For the first time in World War II, the Supreme Court yesterday agreed to hear an appeal involving a conscientious objector. This involved Whitney Bowles, former Princeton University student, who professed a deep aversion for war.

Bowles' Selective Service Board rejected his claim on the ground that he did not belong to any faith which taught nonviolence, but was a Presbyterian. For failing to report for induction Bowles was sentenced to three years in prison.

Among other actions by the justices yesterday were:

In a decision of far-reaching importance, affecting the purchase of supplies for the armed forces, the court ruled that a State may fix minimum prices for milk sold to the Federal Government for use at an Army camp on land belonging to the State. In another decision, however, the court ruled that a State can not exercise this function on land under the exclusive control of the Federal Government.

Ruling on Employe Reinstatement

The court ruled that a company ordered by the Labor Relations Board to reinstate employes and give them back pay cannot deduct the amount received by the employes for State unemployment benefits while they were idle.

The court agreed to review a decision holding constitutional a section of the 1935 Public Utility Holding Company Act requiring Interstate Gas and Electric holding companies to limit their operations to a "single integrated" system. This section, usually referred to as the "death sentence" requirement, was challenged by the North American Co.

The court ruled that the United States may recover $24 from the J. C. Penny Co. of Clearfield, Pa., and the Clearfield Trust Co., both of which indorsed a Government check after an unidentified person had forged the payee's name.

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High Court Decides to Review Death Sentence of Lepke, Pals

Washington, D. C., March 15 (AP).—In an unusual reversal the Supreme Court agreed today to review the conviction of Louis (Lepke) Buchalter, Emanuel Weiss and Louis Capone, members of Brooklyn's "Murder, Inc.," on a charge of killing Joseph Rosen, Brooklyn storekeeper.

A review was denied by the tribunal on Feb. 15, but today it decided to hear oral arguments in the case of the trio now under sentence to die at Sing Sing Prison.

The court's action was announced in these words:

"The petition for rehearing is granted. The orders denying certiorari are vacated and the petitions for writs of certiorari are granted. Mr. Justice Murphy and Mr. Justice Jackson took no part in the consideration or decision of this application"

Louis (Lepke) Buchalter

A stay of execution had been granted by Supreme Court Justice Roberts on Dec. 5. It was cancelled when the Feb. 15 action was taken.

In other actions today, the court:

Upheld reorganizations of the Chicago, Milwaukee, St. Paul and of the Western Pacific railroad companies ordered by the Interstate Commerce Commission under the Federal Bankruptcy Act.

Refused to review the conviction of Orman W. Ewing, former Democratic National Committeeman from Utah, on a charge of raping a 19-year-old government worker here Oct 26, 1941.

Rejected a request for reconsideration of its recent decision upholding the conviction of Enoch L. (Nocky) Johnson, former Atlantic City Republican leader, on a charge of evading federal income taxes for 1936 and 1937.

Refused for the second time to review the conviction of William Dudley Pelley, former leader of the Silver Shirts of America, on a charge of criminal sedition. Pelley was sentenced to 15 years' imprisonment.

Louis Capone — Emanuel Weiss

Get an unexpected break.

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NEW YORK DAILY NEWS — MARCH 16, 1942

Supreme Court's Crier Held Key Man; Deferment Won

The Costello committee investigating draft deferments yesterday ordered an inquiry into evasion of military service by employes of the Supreme Court after it heard that the dulcet voice of a 28-year-old court crier had been termed "indispensable."

T. Perry Lippitt, the resplendent young man in morning coat with boutonniere, wing collar and striped trousers, who smoothly intones the "oyez, oyez, oyez" which opens the court at noon each day, has been deferred from the draft, Chairman John M. Costello (D.), of California, was informed, on the contention of a superior that his place cannot be filled.

Bride Also on Payroll

Lippitt was married since Pearl Harbor, which eliminates his wife as a dependent under draft law. Mrs. Eleanor Lippitt, in any event, occupies a position on the Supreme Court payroll in the administrative office.

Thomas E. Waggaman, the court marshal, who asked for Lippitt's deferment, termed his youthful subordinate a "keyman" when questioned by the House Appropriations Committee.

Costello said the Supreme Court would be asked to provide a list of all employes of draft age and the number of deferments requested. Particular attention will be paid to Lippett's case, he said.

Underwood-Underwood Photo

T. PERRY LIPPITT

Supreme Court Needs Him

block of Twenty-eighth St. NW., was not available for questioning. Waggaman said he did not think it was "fair" to question the young man.

"Indispensable" Oratory

So far as the public is concerned, Lippitt's sole duties appear to be in connection with the opening of the Supreme Court and its closing at 4:30 p.m. After the "oyez" he announces:

"The Honorable, the Chief Justice and the Associate Justices of the Supreme Court are now in session. All persons having claims before the Honorable, the Supreme Court, are admonished to draw near as this court is now in session. God save the United States and this Honorable court."

Marshal Waggaman was asked why he considered young Lippitt indispensable to a court which continued to function despite the resignations of such luminaries as former Chief Justice Charles Evans Hughes.

"Why, I trained that boy for seven years," said Waggaman. "He helps me with the accounting work which I can't do. I simply couldn't run the office without him. For example, he is really the only one around here who knows how to make out a Government voucher."

Waggaman asserted that Lippitt wanted to "get in the Army" and that he "easily" could have obtained a commission but that he prevailed upon him to remain as court crier. When the judicial branch sets up its own deferment committee, under terms of the pending Lodge bill, Lippitt's case can be disposed of, he added.

Lippitt, who lives in the 52(

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High Cou Backs Press, Church Rights

By ARTHUR SEARS HENNING

Reversing itself the United States Supreme Court yesterday upheld in sweeping terms the constitutional immunity of religion and the press from all forms of licensing the dissemination of the spoken and written word.

Divided 5 to 4 the court, in an opinion delivered by Associate Justice Douglas, invalidated the exaction of license fees by four cities from Jehovah's Witnesses, a religious sect, for distribution of its tracts. In a 5 to 4 decision a year ago the court upheld such licensing ordnances in the cities of Opelika, Ala., Fort Smith, Ark., and Casa Grande, Ariz. In the Douglas opinion yesterday the court announced the vacation of the judgment in these cases and invalidated the application of a similar ordinance by the city of Jeannette, Pa., to Jehovah's Witnesses.

Resignation Factor

The court's right about face on the issue of freedom of speech arising from the first amendment to the Constitution was brought about by the resignation of Associate Justice James F. Byrnes to become Economic Stabilization Director and his replacement by Associate Justice Wiley Rutledge. Byrnes held with the majority a year ago, Rutledge with the majority yesterday.

The majority of the court in the decision yesterday was composed of Chief Justice Stone and Associate Justices Douglas, Rutledge, Black and Murphy. Associate Justice Reed delivered a dissenting opinion in which he was joined by Justice Roberts, Frankfurter and Jackson, who together with Byrnes constituted the majority a year ago.

"Quite Another Thing"

Seldom has the court spoken more forcefully in interpretation of the Bill of Rights than in the Douglas opinion yesterday. It found in the license tax applied to Jehovah's Witnesses a threat not only to the freedom of religion but an opening wedge to the censorship and suppression of the press.

"We do not mean to say that [illegible] groups and the press are [illegible] from all financial burdens of [illegible]ament," said the majority [illegible]on. "We have here something quite different, for example, from a tax on the income of one who engages in religious activities or a tax on property used or employed in connection with those activities. It is one thing to impose a tax on the income or property of a preacher. It is quite another thing to exact a tax from him for the privilege of delivering a sermon. The tax imposed by the city of Jeannette is a flat license tax, the payment of which is a condition of the exercise of these constitutional privileges. The power to tax the exercise of a privilege is the power to control or suppress its enjoyment.

"Those who can tax the exercise of this religious practice can make its exercise so costly as to deprive it of the resources necessary for its maintenance. Those who can tax the privilege of engaging in this form of missionary evangelism can close its doors to all those who do not have a full purse. Spreading religious beliefs in this ancient and honorable manner would thus be denied the needy. Those who can deprive religious groups of their colporteurs can take from them a part of the vital power of the press which has survived from the Reformation.

Tax Hit on Privilege

"It is contended, however, that the fact that the license tax can suppress or control this activity is unimportant if it does not do so. But that is to disregard the nature of this tax. It is a license tax—a flat tax imposed on the exercise of a privilege granted by the Bill of Rights. A State may not impose a charge for the enjoyment of a right granted by the Federal Constitution. Thus, it may not exact a license tax for the privilege of carrying on interstate commerce although it may tax the property used in, or the income derived [illegible] that commerce, so long as [illegible] taxes are not discrimina[illegible]. A license tax applied to [illegible]rities guaranteed by the First [illegible]endment would have the same [illegible]ect.

"It is true that the First Amendment, like the commerce clause, draws no distinction between license taxes, fixed sum taxes, and other kinds of taxes. But that is no reason why we should shut our eyes to the nature of the tax and its destructive influence. The power to impose a license tax on the exercise of these freedoms is indeed as potent as the power of censorship which this court has repeatedly struck down."

[illegible]vision of the [illegible] that Congress [illegible] prohibiting the [illegible]f religion or abridging the freedom of speech or of the press, Justice Douglas observed that "it could hardly be denied that a tax laid specifically on the exercise of those freedoms would be unconstitutional. Yet the license tax imposed by this ordinance is in substance just that."

He quoted the Illinois Supreme Court decision in a Jehovah's Witnesses case that a person cannot be compelled "to purchase, through a license fee or a license tax, the

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privilege freely granted by the Constitution." The sect's activities, said Douglas, are as much entitled to protection as more conventional exercises of religion and a freedom of speech and of the press.

"The taxes imposed by this ordinance," the majority opinion continued, "can hardly help but be as severe and telling in their impact on the freedom of the press and religion as the 'taxes on knowledge' at which the First Amendment was partly aimed. They may indeed operate even more subtly. Itinerant evangelists moving throughout a State or from State to State would feel immediately the cumulative effect of such ordinances as they become fashionable. The way of the religious dissenter has long been hard. But if the formula of this type of ordinance is approved, a new device for the suppression of religious minorities will have been found.

"The fact that the ordinance is 'nondiscriminatory' is immaterial. The protection afforded by the First Amendment is not so restricted. A license tax certainly does not acquire constitutional validity because it classifies the privileges protected by the First Amendment along with the wares and merchandise of hucksters and peddlers and treats them alike. Such equality in treatment does not save the ordinance. Freedom of press, freedom of speech, freedom of religion are in a preferred position.

"This tax is not a charge for the enjoyment of a privilege or benefit bestowed by the State. The privilege in question exists apart from State authority. It is guaranteed the people by the Federal Constitution.

"Plainly a community may not suppress, or the State tax, the dissemination of views because they are unpopular, annoying or distasteful. If that device were ever sanctioned, there would have been forged a ready instrument for the suppression of the faith which any minority cherishes but which does not happen to be in favor. That would be a complete repudiation of the philosophy of the Bill of Rights."

Justice Reed, who wrote the majority opinion a year ago, took the position in his dissenting opinion yesterday that the sale of religious books cannot be classed as a religious exercise.

Cover Many Businesses

"It is urged," he said, "that such a tax as this may be used readily to restrict the dissemination of ideas. This must be conceded but the possibility of misuse does not make a tax unconstitutional. No abuse is claimed here. The ordinances in some of these cases are the general occupation license type covering many businesses. In the Jeannette prosecutions, the ordinance involved lays 'the usual tax on canvassing or soliciting sales of goods, wares, and merchandise. It was passed in 1898. Every power of taxation or regulation is capable of abuse. Each one to some extent prohibits the free exercise of religion and abridges the freedom of the press but that is hardly a reason for denying the power. If the tax is used oppressively, the law will protect the victims of such action."

Justice Frankfurter, in a separate dissent, said that Chief Justice John Marshall's famous dictum that the power to tax is the power to destroy is true "only in the sense that those who have power can misuse it. Mr. Justice Holmes disposed of this smooth phrase as a constitutional basis for invalidating taxes when he wrote 'the power to tax is not the power to destroy while this court sits.'"

Supreme Court Voids Religious Literature Tax

Reverses Itself to Say Ordinances Violate Freedoms

By Edward H. Higgs
Associated Press Staff Writer

In a far-reaching opinion, the Supreme Court yesterday reversed its previous stand and declared that municipal license taxes on the sale of religious literature violate constitutional guarantees of freedom of the press, speech and religion.

The court's 5-to-4 opinion, written by Chief Justice Stone, upset a decision of last June 8, in which the tribunal had upheld the validity of municipal ordinances which imposed the taxes in Opelika, Ala.; Fort Smith, Ark., and Casa Grande, Ariz. The ordinances were challenged by Jehovah's Witnesses, who were supported in briefs filed by the American Newspaper Publishers Association, the American Civil Liberties Union and the general conference of Seventh Day Adventists.

The court set forth its reasons for vacating last year's decision in another opinion, by Justice Douglas, ruling invalid a similar ordinance in Jeanette, Pa. Justice Douglas declared that if communities or states were given the right to tax the dissemination of views, "because they are unpopular, annoying or distasteful," it would be "a complete repudiation of the

See COURT, Page 4, Col. 4

philosophy of the Bill of Rights."

The vote of the court's newest member, Justice Rutledge, swung the court from its previous decision. He replaced former Justice Byrnes who had voted to uphold the constitutionality of the ordinances. Dissenting from today's opinion were Justices Reed, Jackson, Roberts and Frankfurter. Besides Rutledge those who voted to overrule the earlier decision were Chief Justice Stone and Justices Douglas, Black and Murphy.

In the tax case Justice Douglas declared that "the hand distribution of religious tracts is an age-old form of missionary evangelism," and "occupies the same high estate under the First Amendment as do worship in the churches and preaching from the pulpits."

"It has the same claim to protection as the more orthodox and conventional exercises of religions," the opinion read. "It also has the same claim as the others to the guarantees of freedom of speech and freedom of the press."

Not Commercialized

Justice Douglas held that the sale, instead of donation of the literature, "does not transform evangelism into a commercial enterprise."

In other outstanding opinions yesterday the court—

Held, in the first case of its kind to reach the tribunal, that a person claiming exemption from military service as a conscientious objector must report for induction if his plea for exemption has been turned down by the Selective Service director on behalf of the President.

Held unconstitutional a Struthers, Ohio, ordinance prohibiting distributors of circulars from ringing doorbells or "otherwise" summoning residents of a home. This ordinance also was challenged by Jehovah's Witnesses.

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Mr. Nease ....
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Supreme Court Decisions

Supreme Court Withdraws Traitor's Stay of Execution

The Supreme Court yesterday in two opinions withdrew its stay of execution for Max Stephan, Detroit restaurant owner convicted of treason, and affirmed death sentences imposed on three members of Brooklyn's "Murder, Inc."—Louis (Lepke) Buchalter, Emmanuel Weiss and Louis Capone.

It was the third time the court has refused to intervene in Stephan's conviction by a Detroit Federal District Court on charges of harboring Peter Krug, German aviator who escaped from a Canadian prison camp.

It unanimously rejected his attorney's latest request for an appeal and ruled the execution stay previously granted "accordingly . . . is vacated." The Detroit court now will set a new execution date and sentence will be carried out unless Stephan obtains Presidential clemency or his attorneys obtain a further stay.

The tribunal upheld their conviction after reviewing the case on a petition by attorneys for the trio, who claimed the men were "framed" and a new trial should be granted.

Barring further action by State courts, the three men will be electrocuted.

In other opinions the court:

Affirmed an injunction barring Florida officials from halting distribution of commercial fertilizer shipped into the State by the Federal Government.

Ruled that the case of Fred Toyosaburo Korematsu, Japanese resident of San Leonardo, Calif., —convicted of remaining on the Coast after the Army had ordered all persons of Jap ancestry evacuated and placed on a five-year probation—can be appealed to the Ninth Circuit Court of Appeals.

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THE CORPUS CHRISTI CALLER
June 8, 1943
Corpus Christi, Texas
Front Page

High Court Supports Texan In Draft 'Evasion' Case

Tribunal Also Clears Up Law Protecting Soldiers, Sailors

WASHINGTON, June 7. (AP)—The Supreme Court ruled today that a draft registrant satisfies the requirement of keeping his draft board informed of his whereabouts when he provides a chain of forwarding addresses through which he can reasonably expect to receive an induction notice in time to report for service.

The 7-2 decision, delivered by Justice Reed, upset the conviction of Homer Lester Bartchy, Houston, Texas, on a charge that he knowingly failed to keep his draft board advised of the address where mail would reach him.

Bartchy, who joined the Merchant Marine while his induction was imminent, contended that he had told his draft board that an induction notice sent to the National Maritime Union in Houston would reach him. He later went to New York, and, he said, told the union office there that he was expecting a letter from the board. Then he went aboard ship; remaining there for two weeks while the vessel was being repaired. The board, meantime, sent an induction order to Bartchy's former Houston address and it was subsequently forwarded to the Maritime Union there and then to New York. The New York office, be-

been postponed because his duties prevented him from appearing in court.

Observing that Boone apparently had not applied for a leave, the high tribunal said that "in some few cases absence (from court) may be a policy, instead of the result of military service and discretion is vested in the courts to see that the immunities of the act are not put to such unworthy use."

Justice Black, dissenting, said he feared that the decision "seriously limits" the benefits that Congress intended to provide under the act.

...The sun was pouring down like ...olden molasses and little puffs of ...hite dust rose from the street. ... short half block and Renaldo ...opped in front of a small white ...aster building with a dozen um-... ...ella-covered tables along the ...dewalk.

"Here we are!" Renaldo announced and drew back a bamboo ...hair for Allison. The three sat ...own and suddenly three cups of ...eaming coffee appeared before

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Cannot Compel Salute to Flag, Court Rules

WASHINGTON, June 14 (UP). — The Supreme Court ruled on this flag day that no U. S. citizen may be compelled to salute the American flag.

This sweeping judgment came when the tribunals, by a 6-to-3 vote, overturned its previous stand on the subject and specifically upheld the right of children of the Jehovah's Witnesses sect to refrain from saluting the flag on religious grounds.

But the ruling went far beyond the Jehovah's Witness case wherein the court declared that to compel members of the sect or their children to salute the flag would be to "say that a Bill of Rights which guards the individual's right to speak his own mind left it open to public authorities to compel him to utter what is not in his mind."

In its broader interpretation, the court held that the issue does not turn on "one's possession of particular religious views or the sincerity with which they are held."

"While religion supplies respondents' motive for enduring the discomforts of making the issue in this case, many citizens who do not share religious views hold such a compulsory rite to infringe constitutional liberty of the individual," the court said.

"It is not necessary to inquire whether non-conformist beliefs will exempt from the duty of salute unless we first find power to make the salute a legal duty.

"We think the action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power and invades the sphere of intellect which it is the purpose of the first amendment of our constitution to reserve from all official control."

The verdict reversed the court's famed Gobitis decision of three years ago when it held 8-to-1 that children of the sect could be compelled to salute the flag in public school exercises on penalty of expulsion.

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ADDITIONAL INDEXING

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29 JUN 16 1943

This is a clipping from page 3 of the DAILY WORKER Date 6/15/43 Clipped at the Seat of Government

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Supreme Court Decisions

High Court Reverses Jehovah Conviction

The U. S. Supreme Court yesterday reversed and ordered back to the lower courts the convictions of Orville J. Richie and David Busey, Jehovah's Witnesses, who were arrested here for selling religious tracts without a license.

In its opinion, the high court stated that District prosecutors had admitted the unconstitutionality of the law under which the two were sentenced.

Busey and Richie were arrested at Fourteenth Street and Park Road Northwest. They were sentenced by Judge Walter J. Casey to pay five dollars fines or serve a day in jail each.

The Supreme Court yesterday, in a 4-to-4 decision, upheld a decision of lower Federal courts holding that the Washington Terminal Company does not have the right to seek a declaratory judgment in a suit involving seniority rules of its railroad employes.

Justice Rutledge, newest member of the court, disqualified himslf, thus making possible an equally divided court.

The company, which operates Union Station, was ordered by the National Railroad Adjustment Board to grant claims of employes totaling $80,000 a year.

The employes, engineers and firemen employed on switch engines, contend that under an agreement made in 1923 they were given exclusive jurisdiction to perform work of yard-engine employes. They sued for money paid others for the work.

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WASHINGTON TIMES-HERALD
~~BULLDOG EDITION~~ 6/15/43

Religious [illegible]

The Supreme Cou[illegible]lished a complete about-face on the series of cases arising out of the activities and convictions of the religious sect known as Jehovah's Witnesses. A month ago the Court turned most of the way in forbidding municipal license taxes on the sale of religious literature. On Monday, in an opinion by Justice Jackson distinguished for its eloquence as well as for its legal logic, the Court reversed its decision of three years ago in the Gobitis case, and held that public school children may not be compelled to salute the flag in defiance of their conscientious scruples. A majority of the justices decided, in effect, that the constitutional guarantee of religious freedom is unqualified.

No small share of credit for this judicial change of mind belongs to Chief Justice Stone. His dissenting voice was alone in protest against the Gobitis decision of 1940. Three of his associates, Justices Black, Douglas and Murphy, who at that time had differed from him have now come to accept his view. This emergence of a dissenting opinion to majority acceptance is one of the real tests of judicial stature.

On Monday, Justice Frankfurter, who had written the majority opinion in the Gobitis case, became spokesman for the minority. The diligence and sincerity with which he searched his mind and conscience on this issue is apparent in the reasoning he advanced. Yet one sentence of his carefully worded opinion cannot fail to evoke curiosity. "It is self-delusive," he declared, "to believe that the liberal spirit can be enforced by judicial invalidation of illiberal legislation." Is it not, in fact, precisely the function of the Court on which Justice Frankfurter sits to guarantee protection to the liberal spirit, as it is defined in the Constitution, against legislative acts which would undermine or corrupt it?

[illegible] Court's reversal of [illegible] find fresh attestation [illegible] when, even when they enjoy the proper detachment of the judiciary. It is as a safeguard against that fallibility that we preserve in the Constitution a set of basic principles which we permit neither men nor laws to violate. And for this reason we recognize that the apparent triviality of any violation cannot condone it or mitigate its ultimate threat to the liberal spirit.

The Jehovah's Witnesses cases, to be sure, possessed all the superficial attributes of triviality. The refusal of members of the sect to permit their children to salute the flag of the United States is fatuously perverse. No less nonsensical is the regulation of the West Virginia Board of Education requiring their participation in this ceremony. As Justice Jackson observed, "To believe that patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous instead of a compulsory routine is to make an unflattering estimate of the appeal of our institutions to free minds." Certainly the majesty of the United States is unlikely to be subverted by the refusal of a few children to pay obeisance to it.

In its conscientious and careful deliberations on these cases, the Supreme Court has probed to the bedrock of our freedom. If it erred in its earlier decision, we can congratulate ourselves on the judicial processes and the qualities of mind which have made a reevaluation possible. The Court has brought itself back into consistency with the great tradition that the sanctity of the individual conscience is superior to the power of the state.

Supreme Court Reversal

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WASHINGTON POST
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JUN 16 1943

Supreme Court Decisions

Supreme Court Rules Today on U. S. Japs

By United Press

The Supreme Court is expected to adjourn for the summer today after announcing its decision in a case that may affect all Americans of Japanese ancestry now held in internment camps.

The question is involved in the joint case of Gordon K. Kirabayashi, Seattle, and Minoru Yasui, Portland, Ore., both of whom disobeyed curfew and evacuation orders. Both were fined and sentenced to prison.

The men, born in the United States and thus American citizens, have based their appeal on the ground that their rights as native-born citizens have been abridged. Some 70,000 American citizens now are interned at relocation centers in the West. The Court's decision may determine the future of those persons.

Only two other cases remain on the docket. One involves the citizenship of Russian-born William Schneiderman. The Government has asked that naturalization papers be revoked because of his affiliations with the Communist Party in California in 1927 when he became a citizen.

The other involves an $80,000 award to the Marconi Wireless Telegraph Co. of America for radio patents used by the Government.

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Washington Daily News- 6-21-43

'Witnesses' Decisions Notable

Civil Liberties Gained in High Court Session

By BANNING E. WHITTINGTON
United Press Staff Correspondent

The Supreme Court, in its just-concluded 1942-43 term, reinforced constitutional safeguards against Government encroachment on civil rights and liberties of individuals.

This trend was most notable in a series of decisions outlawing local ordinances restricting the activities of members of the Jehovah's Witnesses religious sect. It also was seen in the ruling rejecting the Government's contention that membership in the Communist Party is grounds for revoking citizenship of naturalized Americans.

Even in the Monday decision upholding the power of the military to impose curfew orders on West Coast citizens of Japanese ancestry, Chief Justice Harlan F. Stone—speaking for an unanimous court—warned that misuse of emergency power must be guarded against most carefully. He also declared that any war-time restrictions imposed on citizens must be eliminated immediately on conclusion of the emergency.

MOST NOTABLE OF SERIES

In what was probably the most notable of its series of Jehovah's Witnesses cases, the court specifically reversed its dictum of three years ago which held that children of members of the sect could be expelled from public schools for refusing to salute the American flag, even tho their religious tenets forbade such worship.

The court two weeks ago held that the Constitution guaranteed persons full freedom of religious thought, and that if their beliefs did not permit them to salute the flag no Government agency could compel them to do so. Three justices who voted with the 1940 majority switched their positions and voted to overrule the old dictum.

In other cases, the court outlawed ordinances which required members of the sect to purchase licenses before they could distribute their religious tracts and literature and otherwise restricted their freedom in disseminating their religious beliefs.

SET ASIDE RULES

The Communist ruling came when the court set aside lower court rulings providing for denaturalization of Russian-born William Schneiderman, admitted Communist party leader in California.

The Government contended that because he belonged to the party when he was granted citizenship in 1927, Schneiderman necessarily held a mental reservation in swearing allegiance to the United States and his oath therefore was fraudulent. The court held largely to the views of Wendell Willkie, who twice appeared before the tribunal to argue that Communist affiliation did not bar Schneiderman from citizenship.

The only Federal statute held invalid during the term outlawed a section of the Federal firearms act which prohibited any person previously found guilty of committing a crime from possessing arms or ammunition shipped in interstate commerce. Mere possession was deemed proof of guilt in such cases, under the statute. The court held this language too broad to be valid.

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Washington Daily News - 6-23-43

Beliefs Are Personal

Mr. Dooley's famous dictum that the Supreme Court follows the election returns may be given even wider application. Apparently the Court also follows the course of foreign affairs. This is no more than to say that the Court is aware of the significant social currents which dominate our times.

In the opinions delivered on Monday respecting the Government's right to revoke the citizenship of the Communist, William Schneiderman, both Mr. Justice Murphy, who expressed the majority view denying that right, and Chief Justice Stone, who spoke for the minority, took pains to assert that "our relations with Russia, as well as our views regarding its government and the merits of Communism are immaterial to a decision of this case." However, the judgment of the Court was tinged to some extent by the contemporary concept that our basic freedoms must have universal application. And that is neither unwise nor unfortunate.

This was a difficult case to decide, since it involved a question of attitude, rather than of action. The dissenting arguments were exceedingly persuasive. But the verdict evidently turned upon an old judicial principle, reiterated by Justice Murphy: ". . . Under our traditions, beliefs are personal and not a matter of mere association . . . Men in adhering to a political party or other organization notoriously do not subscribe unqualifiedly to all of its platforms or asserted principles."

Here is a doctrine which Congressmen Dies and Starnes and other inquisitorial patriotteers might well commit to memory. If this has relevance in the case of an admitted member and official of the Communist Party, it must apply with even greater force to the case of an individual whose affiliation with the party is at most a remote one—that is, through some organization regarded as a Communist front or allegedly dominated by Communists. The establishment of guilt by association is a procedure wholly alien to our traditions.

"Nowhere in the world today," Justice Murphy asserted, "is the right of citizenship of greater worth to an individual than it is in this country . . . This does not mean that once granted to an alien, citizenship cannot be revoked or canceled on legal grounds. But such a right once conferred should not be taken away without the clearest sort of justification and proof." A man's reputation as a patriotic and loyal American is no less precious to him and should be taken away no more lightly.

The chief significance of the decision in this Schneiderman case would appear to be its reinforcement of the Court's emphasis on the rights of individuals. Once more, as it did in the Jehovah's Witnesses cases, the Court has acted to curb the power of the State to enforce conformity. This is also the emphasis of the Bill of Rights. It does not seem impertinent to suggest that the Court is what the Constitution says it is.

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THE WASHINGTON POST
MORNING EDITION

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Important War Litigation Awaits Decision As Supreme Court Begins New Session Today

By James W. Douthat
Associated Press Staff Writer

With 400 cases already docketed, the Supreme Court will open today its new 1943-44 term that is expected to produce far-reaching decisions on a variety of wartime litigation.

Some of the outstanding cases awaiting action involve the application of the Draft Act to conscientious objectors, the constitutionality of Federal rent control regulations, and the right of a Negro to vote in a State primary which nominates candidates for Congress.

More cases are arriving daily to occupy the court's attention during the next eight months. It has been in recess since June 21.

Membership Unchanged

There has been no change in the membership of the court since last February 15, when Justice Wiley Rutledge succeeded James F. Byrnes, who had resigned to become Economic Stabilization Director.

Only one member of the court—Chief Justice Stone, who will be 71 on October 11—is eligible to retire at full pay because of having reached the age of 70 and having served 10 years on the bench. He still is going strong.

Ranking next in age is 68-year-old Owen J. Roberts, the only member of the tribunal not appointed to his present position by President Roosevelt. Roberts, a Pennsylvania Republican, was named by President Hoover, in 1930.

Court to Have New Crier

One change is in prospect for today's session. There will be a new crier to intone, "Oyez! Oyez! Oyez!" when the justices march into the chamber. He is John A. Kenning, 17 years old, of Germantown, Pa. He succeeds T. Perry Lippitt, 27, who is in the Navy. Lippitt also was assistant marshal.

The program for the session consists only of the admission of attorneys to practice before the tribunal and the receipt of motions. The customary call at the White House at the opening of a new term will take place when an appointment can be arranged.

Several conferences of the justices will be held this week to decide which cases filed during the summer will be reviewed and which will be denied a review. The announcement will be made the following Monday. Oral arguments also will begin then of cases which the tribunal agreed last spring to review.

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WASHINGTON POST
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High Court Denies Review To Defiant Draft Objector

The Supreme Court today denied a petition for review in which Walter Ford Gormly charged that provisions of the Selective Service Act, under which conscientious objectors are put to work in camps, is unconstitutional.

Gormly refused to obey an order of a Milwaukee draft board to report for work at Camp Merom, Ind., operated by the American Friends Service Committee.

He was sentenced to five years imprisonment, despite his contention of involuntary servitude and the additional complaint that the law infringes upon religious freedom, and then appealed.

Teacher Wins Review

The high court, however, agreed to review another conscientious objector case involving Arthur G. Billings, former teacher at the University of Texas.

Billings, whose entire service in the Army has been spent in prison, was inducted at Fort Leavenworth, Kans., over his protest when he sought to surrender himself to civil authorities for prosecution for refusal to obey the draft law.

He was inducted "by operation of law," he said, after he had been told by Army officers that he could take a physical examination without subjecting himself to induction.

The Government lost a petition for a rehearing in the case of William Schneiderman, California Communist. The Supreme Court during the last term, by a vote of 5 to 3, refused to cancel Schneiderman's naturalization.

In another petition for rehearing, the court denied the request of William R. Johnson, alleged Chicago gambling magnate, and four others whose convictions on charges of violating income tax laws were upheld last term.

The court held over for further action a petition in which constitutionality of the recent control provisions of the price control law were attacked.

It granted, however, the petition of the Davies Warehouse Company, Los Angeles, for review of a decision of the emergency Court of Appeals holding it subject to the price control act.

The court granted a Government petition for review of a Third Circuit Court decision holding that the Federal "kickback" act is not applicable to foremen on construction jobs.

The controversy grew out of conviction of Frank Laudani, foreman of the Weehawken (N.J.) Plaza job, which was financed in part by grants from the United States.

The "kickback" act makes it a violation of law to induce persons employed on public works projects from giving up part of his pay in order to hold a job.

Virginia Law Challenged

The court granted the petition of John T. Carter and Eugene Macemore for review of a decision of the Virginia Supreme Court of Appeals holding valid a State regulation prohibiting transportation of more than one quart of liquor through the State under restrictions.

The two were alleged to have been transporting liquor to North Carolina without the required permit. They contended that the Virginia law and regulations interferes with interstate commerce.

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Supreme Court Decisions

High Court to Review Case Of Objector Held by Army

The Supreme Court yesterday agreed to review the case of a former University of Texas instructor, now in an Army guardhouse, who contends he should be prosecuted by civil—not military—authorities for refusing to be inducted.

The plaintiff, Arthur Goodwyn Billings, had been refused a plea to be classified as a conscientious objector by his Minneapolis (Kansas) local draft board.

Held for Court-Martial

He openly boasted he never would serve in the Army, and after he took his physical at Fort Leavenworth, Kans., in August, 1942, he told Army officers he would refuse to be inducted, but would surrender to civil authorities for arrest and imprisonment.

But Army officers placed him under guard and read him the induction oath. Then, when he refused to be fingerprinted, he was placed in the guardhouse awaiting court-martial for refusing to obey orders.

Billings, contending he was deprived of his constitutional rights, brought habeas corpus proceedings in Kansas Federal District Court.

The court ruled, however, that he had been lawfully inducted and was "Now in the hands of the Army." The Tenth Circuit Court of Appeals affirmed the decision.

The tribunal, in its first business session of the 1943-44 term, denied the Government's appeal for reconsideration of a June verdict holding that the American citizenship of William Schneiderman, Russian-born California Communist leader, could not be revoked simply because he was affiliated with the Communist party when he was naturalized in 1927.

Wendell L. Willkie, 1940 presidential nominee, had pleaded Schneiderman's case.

Other Decisions of Court

In other actions, the court:

Refused to reconsider last June's decision upholding the convictions of William R. Johnson, Chicago gambling house operator, and four associates for failing to report income from 21 gambling establishments.

Denied the petition of Walter Ford Gormly, Milwaukee conscientious objector, for review of his conviction for failing to report for work of national importance as ordered by his local draft board.

Set aside the conviction of Frank Laudani, New Jersey foreman charged with forcing construction workers to "kick back" to him part of their 1937 and 1938 wages, and agreed to review a Third Circuit Court of Appeals interpretation of the Federal "kick-back" statute.

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L TAKEN BY SUPREME COURT

Review Granted on Induction by Reading of Oath Refused by a Texas Objector

WORK CAMP PLEA DENIED

Decision on Schneiderman's Citizenship Stands—Action Deferred on Threat to Kill

Special to THE NEW YORK TIMES.

WASHINGTON, Oct. 11—The Supreme Court has agreed to decide whether a draft registrant was legally enlisted in the Army when he had read to him the induction oath which he had refeused to take.

The case on which a review was granted today was that of Arthur G. Billings, a former teacher at the University of Texas. He contended that he had wished to present himself as a conscientious objector facing prosecution for failure to obey the Selective Service Act.

At the same time the court rejected the plea of Walter F. Gormly of Milwaukee, serving a five-year term for refusal to report for work at a conscientious objector's camp on grounds that it would make him "a participant in a war machine and an accessory to murder on the battlefield" and would violate the constitutional guarantee of religious freedom.

Action was deferred on a petition by William T. Reid of New Orleans, sentenced to eighteen months for threatening to kill President Roosevelt.

In setting its docket for the term, the court pased on about 300 petitions for review.

Among them it rejected the Government's reqeust for a rehearing on the 5-to-3 decision in June that mere membership in the Communist party was not sufficient reason to revoke the citizenship of William Schneiderman, State Secretary of the Communist party of California.

A review was granted on a decision of the Third Circuit Court that the Federal law against "kickbacks" did not apply to construction foremen, the case being that of Frank Laudani, convicted of forcing workers on the Weehawken, N. J. plaza connection with the Lincoln Tunnel to "kick-back' part of their pay in 1937-38.

The court consented also to examine a decision of the Virginia State Court of Appeals holding constitutional a State regulation controning liquor transportation.

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This is a clipping from page 20 of the New York Times for Oct. 12, 1943
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Employers' Free Speech Right Upheld

By Edward H. Higgs
Associated Press Staff Writer

The Supreme Court refused yesterday to interfere with a decision holding that an employer, under the constitution right of free speech, may legally give his employes his views on whether they should vote for union representation.

The employer in this case, the president of the American Tube Bending Co., Inc., of New Haven, Conn., had been accused by the National Labor Relations Board of unfair labor practices. A circuit court decision dismissed these charges and the Supreme Court, in refusing to review it, left the ruling in effect.

In the background of the case was a finding by the Labor Relations Board that the firm's president, on the eve of a collective bargaining election, sent a letter to each employe and delivered an address to the employes suggesting that they would be better off by bargaining directly with the management instead of through a union.

The Labor Board argued, in asking for a review of the decision, that "the privilege of free speech is not available where, because of the economic dependence of the listeners upon the speaker and the compulsion upon the listeners to give heed, the adajurations of the speaker pass from the realm of free competition of ideas into that of coercion."

Disclaiming any attempt at coercion of the employes, counsel for the company contended that the speech and the letters "set forth the right of the employes to do as they please without fear of retaliation by the company."

The company said "the moderate utterances" of the President "are within the protection" of the constitutional guarantee of free speech. It denied any violation of the National Labor Relations Act for colective bargaining.

In a decision on December 22, 1941, involving the Virginia Electric & Power Co., the court said that the Labor Act did not enjoin an employer "from expressing its view on labor policies or prob-

Two Proceedings Postponed

Also yesterday the court postponed further proceedings involving a constitutional test of the so-called "death sentence" clause of the 1935 Public Utility Holding Company Act and the antitrust suit against the Aluminum Co. of America until a legal quorum of six justices can be assembled to act on the cases.

Legislation already has been introduced in Congress to reduce the legal quorum to five and another bill proposes calling in retired justices to sit with the court when the present quorum of six is not available.

Action on the two cases has been help up for months by the fact that four of the present nine justices are disqualified. Most of the four were connected with the litigation before they were appointed to the tribunal.

Unless legislation is passed changing the present situation, the court will be unable to act until one of the present disqualified justices leaves the bench and is succeeded by a jurist free to participate.

Other Actions By Court

Among other actions yesterday, the court:

Refused to review a decision sustaining the constitutionality of legislation authorizing the President to prohibit, except under licenses, transactions in foreign exchange involving property in specified European countries. The law was challenged by Werner von Clemm, convicted in the southern New York Federal District Court of conspiring to import diamonds in which nationals of the Netherlands, Belgium and Luxembourg had interests for the purpose of selling them in this country.

Refused to review a ruling that a company, which failed to pay a worker overtime compensation when due because of a misinterpretation of the Federal Wage-Hour Act, is required to pay damages equal to the extra compensation even after the overtime payment was voluntarily made. This decision, by the Tenth Federal Circuit Court, was challenged by the Seneca Coal & Coke Co., operator of a mine in northern Oklahoma. The litigation involved payments to a night watchman.

Wash Post
Bull Dog
10-19-43

Mr. Tolson
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High Court Can't Decide 2 Big Cases

The Supreme Court today postponed indefinitely proceedingca in the Government's antitrust case against the Aluminum Company of America.

Likewise it postponed consideration of a dispute involving orders issued by the Securities and Exchange Commission to the North American Company in connection with simplification of that utility holding company's set-up.

Lacks Legal Quorum

The court has been unable to hear the cases because of a lack of a legal quorum of six justices. Four of the court's nine members have disqualified themselves from the consideration of each case.

The court announced it was unable at this time to make "final disposition" of the cases.

The court, in effect, held constitutional orders of President Roosevelt prohibiting trading in property seized in occupied countries by Germany.

It took this action by denying the petition of Werner von Clemm, convicted in Federal court in New York of violating the orders in representing that imported diamonds, seized by the German army in Belgium, the Netherlands, and Luxembourg, were of German origin. He was sentenced to two years imprisonment.

The Government both contended that the President's orders were valid in themselves and that Congress had ratified them.

Von Clemm was indicted with others on charges that they sought to market seized diamonds in this country ~~in behalf~~ of Germany after the Lowlands were invaded in 1942.

Wash. Times-Herald
10 Star
10-18-43

High Court Postpones Two Cases to Await Quorum of Justices

By the Associated Press.

The Supreme Court formally announced today that all further proceedings in litigation involving the Aluminum Co. of America and the North American Co. would be postponed until a legal quorum of six qualified justices is obtained.

Action on the cases has been held up for months because four oof the nine justices are disqualified. The law provides that a quorum of six justices is necessary to act on litigation.

Legislation has been introduced in Congress to lower the quorum to five members of the court and also to permit a retired justice to participate in a case when the legal quorum was not available.

The Aluminum Co. has asked the dismissal of litigation brought by the Justice Department charging the company with violating the Sherman Anti-Trust Act by possessing a monopoly in the production and sale of aluminum.

After a 26-month trial, the longest in history, the Federal District Court at New York held that the Justice Department had failed to prove its accusations. The Justice Department then sought a Supreme Court review of this ruling.

The North American case involves the constitutionality of the so-called death-sentence provision of the 1935 Public Utility Holding Company Act requiring interstate gas and electric holding companies to limit their operations to a single integrated system.

The litigation arose when the Securities and Exchange Commission ordered the North American Co. to confine its activities to a system centering around St. Louis. The order was upheld by the Federal Circuit Court at New York.

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Wash Star
10-18-43

43 OCT 27 1943

Court Upholds Labor Decision

WASHINGTON, Oct. 28.—The Supreme Court has refused to interfere with the operation of the Wisconsin Labor Peace Act, upholding a decision by the Wisconsin State Employment Relations Board that a local of the United Auto Workers, CIO, was guilty of unfair labor practices.

In another labor ruling, the Court agreed to review a decision that Los Angeles newsboys were independent contractors, not employes of publishers. The review was sought by the National Labor Relations Board, which had ordered the Los Angeles publishers to bargain collectively with the Newsboys Industrial Union, CIO.

The Court denied a review for William T. Reid, of New Orleans, sentenced to 18 months in prison for threatening to go to Washington to kill President Roosevelt if he had the time and money."

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This is a clipping from page 4 of P M

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...vember 18, 1943

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Miss Gandy

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Hobbs Submits Bill Lifting Court Curbs Of McNabb Decision

After scoring the Supreme Court decision in the McNabb case as "poison in the creek," Representative Hobbs, Democrat, of Alabama, a member of the House Judiciary Committee, today introduced a bill to lift the restrictions on the admissability of evidence in criminal cases which the court ruling of last March imposed.

Mr. Hobbs attacked the decision and announced his intention to introduce corrective legislation at a meeting of the National Sheriffs Association at the Willard Hotel after Henry A. Scheinhaut, a special assistant to the Attorney General, described as a "mess" the situation in the courts of the country as an aftermath of the McNabb case.

In that litigation the Supreme Court reversed the second-degree murder convictions of three youthful Tennessee mountaineers, Benjamin, Freeman and Raymond McNabb, on the broad grounds that they were detained for questioning too long before arraignment and that their statements in connection with the fatal shooting of a revenue agent were not admissable evidence against them.

Mr. Schweinhaut also said the Supreme Court was in error in assuming the men had not been arraigned promptly. The record on which the court acted was silent on that point. While the arraignment on the murder charge was delayed, Mr. Schweinhaut continued, the men were arraigned on a liquor charge shortly after arrest and were properly in custody when confessions were obtained about 48 hours later.

Sheriffs to Back Bill.

The association later adopted a resolution declaring that the assailed decision had produced "miscarriages of justice" and calling on Congress and the State Legislatures to adopt a uniform law on arrest, detention and questioning.

Under the present uncertain conditions, the resolution said, "police officers of the Nation are faced with the hopeless dilemma of obeying the 'law' on the one hand and protecting society, which they serve, on the other."

"The poison in the creek which has resulted from the McNabb case is one of the most serious matters that those of us connected with law enforcement ever have had to face," Mr. Hobbs told the association.

He added that the ruling "opens the door wide for the rankest kind of fraud on the part of crooked police officers." Explaining, the Alabaman said that a crooked officer —for a price—could keep a prisoner in his company at an all-night party before bringing him before an arraigning officer and, under the Supreme Court rule, no confession the man might have made... [illegible]

Under the Hobbs bill, no failure to observe any requirement of law as to time of arraignment would "render inadmissible any evidence otherwise admissible."

He said that if the sheriffs had any better ideas for correcting "the new rule of evidence" the Supreme Court had set up, he would be glad to have them. He added that Congress wants to co-operate in this matter.

Mr. Schweinhaut recited a number of instances—two in the local courts—in which the Government has sustained reverses as a result of the McNabb decision. He also told the sheriffs that, by implication, the court had invited State courts to follow the rule it laid down and that State officers everywhere may find their courts taking cognizance of the ruling.

In District Court earlier this week Justice David A. Pine ordered acquittal of Maywood Wilborn, ... on charges of housebreaking and attempted criminal assault, on the basis of the McNabb decision. Earlier the Court of Appeals reversed the conviction of James P. Mitchell, so-called "society burglar," on the same grounds. Mr. Schweinhaut listed one espionage defendant, six persons convicted of treason and one convicted murderer as examples where criminal charges had failed before the McNabb decision.

Treason Convictions Reversed.

The treason cases involved three men and three women who were relatives of the executed Nazi saboteurs. The three men were sentenced to death and the women to life imprisonment, but the Seventh Circuit Court of Appeals reversed the convictions. Mr. Schweinhaut said, however, that he does "not believe that the McNabb rule is going to be as harsh and absolute as some of the Federal courts now think it will be."

In opening today's meeting, which is called the Sheriffs Executive War Conference, William B. Souler, ... Point, Ohio, declared the McN... [illegible]

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FILE

Court Upholds Picketing Slogans

(Special to the Daily Worker)

WASHINGTON, Nov. 22.—The Supreme Court, highest tribunal in the land, has upheld the right of strikers to holler uncomplimentary remarks against the boss while they're on the picket line.

In a unanimous decision, the court reversed a New York Court of Appeals ruling which enjoined Cafeteria Local 302 from picketing the World Cafeteria and the Cosmo Cafeteria, both in the Bronx. The Court of Appeals had found that pickets told prospective customers the cafeterias served bad food and were aiding the cause of fascism.

"The right to picket," Justice Frankfurter, who wrote the decision, said, "cannot be taken away merely because there may have been isolated incidents of abuse falling far short of violence occurring in the course of that picketing."

The litigation was returned to the State court for "further proceedings not inconsistent with this opinion."

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