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TEN CENTS

Burton Retires From Bench

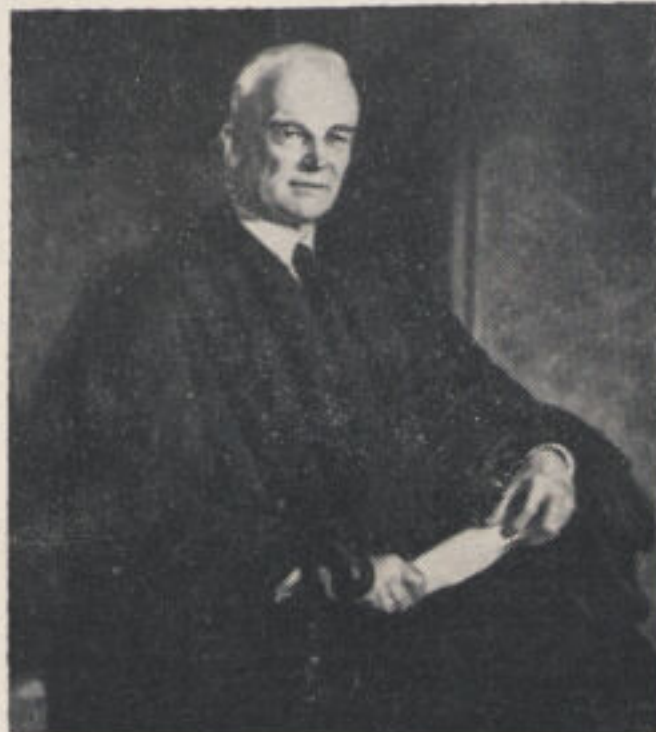
Harold Hitz Burton, 70, is retiring from the United States Supreme Court on Monday. He is doing so, the Justice explained, "with regret but in accordance with competent medical advice and with a desire to serve the best interests of all concerned."

Justice Burton received his LL.B. from the Law School in 1912. He was appointed to the Supreme Court on October 1, 1945, by President Truman.

Burton, an Ohio Republican, was acting mayor of Cleveland from November 9, 1931 to February 20, 1932, mayor, 1935-40, and United States Senator, 1941-45.

President Eisenhower accepted Justice Burton's resignation with "great regret," declaring that the Justice had served the Court with "high distinction."

Judge Potter Stewart, 43, of the Sixth Circuit, a native of Cincinnati, was named by the President to replace Justice Burton last Tuesday.



Harold H. Burton
Associate Justice
United States Supreme Court

Supreme Court Sets Precedent

Last week's decision of the United States Supreme Court ordering the reinstatement of the school integration program in Little Rock set a precedent. All nine of the Justices signed their names to the Court's opinion.

Ordinarily an opinion is written by one judge. The others either concur in the opinion or dissent. In *Brown v. Board of Education*, the historic 1954 Supreme Court decision which ruled separate but equal schools for negroes unconstitutional, the opinion was unanimous. But it was written by Chief Justice Warren, the other eight Justices merely concurring. Thus it is known as the *Warren* opinion.

The decision last week could easily have been an ordinary *per curiam* opinion by the Court. But a *per curiam* decision does not contain the signatures of the Justices.

Last week's signing of the opinion by all nine Justices emphasizes how strongly the Court feels about the integration problem, and how anxious it is that the whole world know just how strongly it feels.

Eban to Speak

Abba Eban, Israel's ambassador to the United States, will address the Law School Forum on Friday evening, October 17, in Sanders Theatre. He will discuss the significance of the formation of the United Arab Republic.

Privilege For Fourth Estate?

Does the fourth estate have a common law privilege to allow its members to refuse to disclose sources of information in legal proceedings? Judge Potter Stewart's opinion, handed down from the Second Circuit bench last week, upheld District Judge Sylvester J. Ryan's ruling that Marie Torre, *New York Herald Tribune* writer, must disclose the source of a statement published in her column.

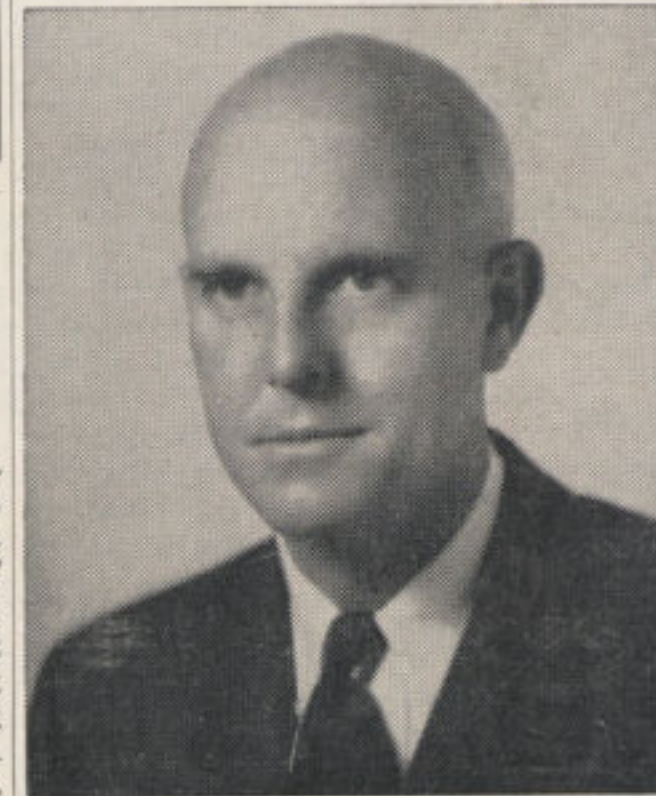
Miss Torre quoted an unidentified C.B.S. spokesman as saying that Judy Garland was "known for a highly developed inferiority complex" and "did not want to work because something is bothering her."

Miss Garland brought suit against C.B.S. for breach of contract and for false and defamatory statements about her which the defendant allegedly caused to be published. As a deponent in that action, Miss Torre refused to disclose the name of her source, but asserted that it was a direct quotation from a C.B.S. executive. When she refused the judge's order to disclose her source, she was sentenced to ten days in jail for contempt last November 12.

Miss Torre took refuge behind the common law doctrine of privileged communication which has been utilized by clergymen, lawyers, and physicians. In Judge Stewart's home state this privilege has been extended to journalists by statute (*Ohio Revised Code 2739.12*), but no such statute has been passed in New York.

(See ESTATE on page three)

Leach, Meserve Will Be Attorneys for Model Trial



W. Barton Leach

W. Barton Leach, Story Professor of Law, and Robert W. Meserve, Lecturer on Law, will be the opposing attorneys in this fall's Model Trial. The Trial will be held on Thursday evening, November 13, in the James Barr Ames Courtroom.

Professor Donald Trautman has announced that the plaintiff in the case was an applicant for the job of headmaster of a private school in the Commonwealth of Ames. The defendant, however, wrote a letter to the president of the school, accusing the plaintiff of being a hit and run driver, among other things. As a result of this letter, the plaintiff was turned down in his bid for the job of headmaster.

The plaintiff has charged the defendant with the torts of libel and interference with advantageous relations.

Presiding at the Trial will be Frank J. Murray, Judge of the Superior Court of Massachusetts.

At the Model Appeal, which is scheduled for Wednesday evening, December 10, Dean Griswold and Professor Louis Loss will be opposing counsel.

Calvert Magruder, Chief Judge of the United States Court of Appeals for the First Circuit, will preside over the Appeal. Associate justices will be Visiting Professor Elliott Cheatham and Robert Proctor, LL.B. '24 c.l., of the Boston law firm of Choate, Hall & Stewart.

Grad. Students Are Motley Crew

The Root Room of the Law Library looked more like a part of the United Nations Building in New York than a part of Langdell Hall last Thursday evening. About 60 graduate students, representing more than 20 different countries, were gathered together and discussing, in motley accents, everything from law and politics to hula hoops and the World Series.

The occasion was the annual reception and buffet supper sponsored by the Law School as a general get acquainted affair for the graduate students. It appeared to be quite a success.

Dean Erwin N. Griswold, a number of faculty members, and other individuals connected with the graduate program, were also in attendance.

All of the foreign students present, as Dean Griswold at one point lamented, were completely Americanized in their dress. All, that is, except a beautiful young lady from Bombay, India, Miss Ruty D. Katpitia, who appeared in a captivating red sari. Another center of attraction at the reception was a bewitching blond from Finland, Miss Malin Eklöf, who helped prove that the sack dress does not necessarily have to serve the purpose of disguising one's sex.

Dean Griswold, in a short, light, and informal talk, welcomed the students and explained the purpose and function of the new International Le-

(See STUDENTS on page three)

Soviet Professor To Address Class

Sergei A. Golunsky, Professor of Law at Moscow University, who is visiting the Law School this week, will address Professor Harold J. Berman's class in Comparison of Soviet and American Law this afternoon at 2 p.m. in the Roscoe Pound room of Langdell Hall.

Golunsky is representing the Academy of Sciences of the U.S.S.R. in a Soviet delegation to the International Council of Scientific Unions, which organized the International Geophysical Year, and which has just met in Washington to set the framework of the future Geophysical Year. He is also a Corresponding Member of the Academy of Sciences of the U.S.S.R.

Golunsky is a former member of the International Court of Justice, was the Chief Prosecutor for the Soviet Union at the Tokyo War Crimes Trials, and served on the Soviet delegation at the founding of the United Nations in San Francisco in 1945.

Do Third Parties Have a Chance? Ballot Access and Minority Parties

By
RALPH NADER
and
THEODORE JACOBS

Most people will agree, as a general proposition, that our democratic faith is reflected in our treatment of minorities. But, as so often happens with national professions, it is in the translation of these declarations into actual practice, in the testing of these principles in the crucible of actual events, that reservations begin the process of erosion. One area in which such erosion may be seen is that dealing with the laws governing the rights of minority political parties to place the names of their candidates on primary and general election ballots.

In state after state there is a practical monopoly of the ballot by the Democratic and Republican parties. The perpetuation of this monopoly is insured by laws which subject the entry of new or minority party slates to the ballot to almost impossible burdens, and by judicial interpretations of these laws which ignore their prejudicial effect on small parties.

The fact that this problem is still with us is evidenced by a long line of decisions upholding state requirements for small parties, the most recent being one handed down in November, 1957, by the California Supreme Court. In that decision, the primary law was upheld despite pleas by the Socialist Party and the Christian Nationalist Party that it would cost each party up to \$400,000 to

Ralph Nader and Theodore Jacobs, the co-authors of this article, both graduated from the Law School last June. Mr. Nader is a former editor of the RECORD.

qualify under that state's petition requirements.

It must be made clear that reference is not being made to political success, but rather to ballot access. Political success is impeded by deeper political patterns such as the election system of "plurality-take-all." Our emphasis here, however, is on the nature, operation and rationale of laws preventing minority parties from merely placing the names of their candidates on the election ticket.

What requirements must a small party or independent group meet in order to place its candidates on the ballot? There are 48 different answers to this question. Each state has its distinctive statutes, ranging from liberal to harsh, with the least populous more often in the former and the more heavily populated in the latter category. It is possible, however, to give a brief survey of the present statutory situation.

Barriers and Alternatives

Established political parties nominate their candidates in most states through a party primary which permits a direct expression by the voter of his preferences for party nominations. But minority groups are not permitted to nominate by means of party primaries unless they have received a certain percentage or num-

ber of votes cast in the preceding gubernatorial election. The minimum percentages stretch from 1% in Connecticut to 25% in Virginia, while the minimum figures range from 500 in Delaware to 50,000 in New York.

If the small party does not qualify for the primary, it may resort to the use of the independent nominating petition, which is essentially a device that allows a group to place its candidates on the ballot if a sufficient number of signatures is obtained. While the independent nominating petition is the most widely used, it also confronts the small party with its most onerous burdens.

Without taking into account all the minor variations in the several states, three main aspects of the independent nominating petition may be treated:

- (1) The number of signatures required;
- (2) Apportionment of these signatures throughout the state;
- (3) Stipulations concerning authentication of signatures and restrictions on persons who sign petitions.

In its Model Election Law, the American Civil Liberties Union urged that minor parties be required to accumulate signatures equivalent to only one-tenth of one percent of the total vote cast in the preceding gubernatorial election, with a maximum limit of 10,000 signatures. Compare this standard with the requirements

(See PARTIES on page four)

'Future Bright,' Says Robinson

Long term prospects of the stock market are excellent, Dwight P. Robinson, Chairman of the Board of Massachusetts Investors Trust, told the Bull and Bear Club last week.

Speaking before an opening meeting crowd of 200 persons, Mr. Robinson indicated that, despite the long term prospects, there would probably be a general readjustment downward of stock prices within the next few months, caused partly by profit taking and partly by investor reaction to the disparity between present high stock prices and the disappointing corporate profits of the past year.

But the readjustment will be "mainly a matter of psychology" and the downturn so achieved will not dim the overall excellent prospects for long term market growth, he said.

Mr. Robinson expressed confidence that the recent recession has given way to a new period of growth. He cited the continuing sharp upturn in business activity since April and the march of the stock market to new highs in the Dow Jones average.

Among the reasons for optimism concerning the stock market, Mr. Robinson enumerated the inflationary psychology prevalent among the public, resulting in a greater number of investors entering the market; the impact of the "war babies" reaching a consumer age, thus creating a heavy demand for goods and services; research and development of new products; and the rebuilding of inventories, liquidated to abnormally low levels during the recession.

As usual, not all factors are on the plus side, Mr. Robinson said. Productive capacity is high, so that business

(SEE MARKET on page three)

Speech

Dean Erwin N. Griswold will deliver the Morrison Lecture before the State Bar of California at Coronado, Cal., this evening at 8 p.m. (P.S.T.). The title of his address will be "Fools Rush In."

Harvard Law Record

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Crime of the South

Last week Governor James E. Folsom of Alabama commuted to life imprisonment the death sentence of Jimmy Wilson, 55, a negro convicted of having stolen \$1.95 from an 82-year-old white woman at her home in Marion, Alabama. Under Alabama law, Governor Folsom had no power to reduce the sentence below life imprisonment. Wilson will not be eligible for parole for 15 years.

Jimmy Wilson had been scheduled to die in the electric chair at Kilby Prison on October 24. He was convicted by an all white jury of burglary at night, a capital crime in Alabama. His sentence of death had been twice affirmed by the Supreme Court of Alabama.

It is hard to believe, when one reads tales like this, that we are living in the United States of America in the latter half of the 20th Century. It appears more like the France of Victor Hugo's time, when a man could be condemned to death for stealing a loaf of bread.

The prosecution had asserted that Wilson tried to rape the 82-year-old woman. Wilson denied the assertion. But although there was no mention of rape in the charge against him, the trial judge refused to bar the presentation to the jury of evidence bearing on the question of rape.

And in a clemency hearing before Governor Folsom two weeks ago, the prosecution had insisted on the death sentence, stating that it was "fully justified because Wilson made complete and deliberate plans to rob and rape an 82-year-old woman, the most vicious, heinous, and contemptible crime man is capable of."

Chances Slim

It is a well known fact that the cards are ruthlessly stacked against a negro throughout most of the South, when he is prosecuted for a criminal offense before an all white jury. Racial prejudice in states like Alabama is bred into most of the white citizenry from the moment of their birth. It doesn't take much to convince the average white jury member from the Deep South that a negro is guilty of a crime. Often just the accusation is enough.

In almost all courts throughout this country, the prosecution in a criminal case is not permitted to present evidence to a jury that the defendant committed prior crimes. It is not permitted to do this, even though it be true and the defendant has actually been convicted of the crimes, because it is felt that the disclosure of such evidence would unduly prejudice the jury against the defendant.

But in Wilson's case, where it is quite probable that an all white jury was already deeply prejudiced against the negro defendant, the prosecution was allowed to present to the jury evidence that the defendant committed an extremely serious crime, a crime he not only was never convicted of, but one that he had never even been charged with.

Fight for Life

The spotlight recently has been focused upon the struggle of negroes in the South to attend the same schools as white people. But even more important than this is the negroes' fight for life, for his freedom, in cases which arise in Southern courts every day of the year.

The case of Jimmy Wilson is unique in one way, for seldom is anyone anywhere condemned to death for stealing \$1.92. But it is typical, all too typical, of the "raw deal" that the average negro receives in local criminal courts throughout the South day after day.

Governor Folsom is to be commended for saving Jimmy Wilson's life. But he hesitated a good while before doing so. He did not act until after the case had received widespread publicity throughout not only this country, but the whole world, almost all of it sym-

THE SUPREME COURT FROM TAFT TO WARREN

By Alpheus Thomas Mason
 Louisiana State University Press, 1958. \$4.95.

by CHARLES EDWARD WYZANSKI, Jr.

Professor A. T. Mason has already shown in his biographies of Justices Brandeis and Stone how much a political scientist can add to a lawyer's knowledge of constitutional law. In his new book he undertakes an analysis of more than biographical scope. And though the initial chapters which cover the Taft period draw heavily on what Pringle had already told us, the succeeding chief-justice-ships are illumined by Mason's fresh materials and cogent comments.

Mason's picture of Hughes departs from the commonly held view. A reader almost gets an impression that Hughes was not the master of his craft, but a master of craftiness. The Chief's discussion (in the Minnesota mortgage opinion) of emergency as affording the occasion for the exercise of power rather than the source of power is labeled "logomachy." Mason endorses Stone's view that in difficult constitutional cases Hughes "didn't care what was said, as long as the opinion seemed plausible on its face, if not compared with any other." Mason explains that "determination to hold fast the appearance of stability even while shifting decisions is the key to Charles Evans Hughes's constitutional jurisprudence." And Mason accepts an anonymous scholar's judgment that "a synthetic halo is being fitted upon the head of the most politically calculating of men." John W. Davis is quoted as having written "from the point of view of personal character I would put (Chief Justice) White ahead of Hughes." And Mason twice draws attention to the occasion, when only a lad in college, Hughes, for money, wrote themes for his fellow students.

What Mason Ignored

A more generous commentator might have struck the balance differently. Hughes might have been credited with a deep understanding of the role law accords to tradition and myth, nay even to fiction, in making power palatable, and revolution effective. The Chief's delicate handling of Roberts might have been noted as an example of the art of leadership in a group of self-willed men. His care in preserving for posterity his own records of his early derelictions might have seemed proof of his essential humility and his understanding of moral growth. His accomplishments as a magistrate might have been so

Library

With the start of this year's Ames Competition, the new arrangement for reference works in the Library will undergo its first great test. Since the remodeling and removal of their reference desks from the center of the Library and its relocation along the West wall, a great many reference works to which students formerly had limited access and which were located behind the desk, are now on the open shelves and readily accessible to all students.

The RECORD echoes the wish of the Library staff that students will not hog these books and will return them to the shelves immediately after they are done using them. If all cooperate, all will benefit.

pathetic to Wilson, until he had received a floodtide of letters, including many from important personages such as George Meany, pleading for Wilson's life to be spared, and until Secretary of State Dulles sent a telegram, informing him of the black eye that the case was giving the United States abroad.

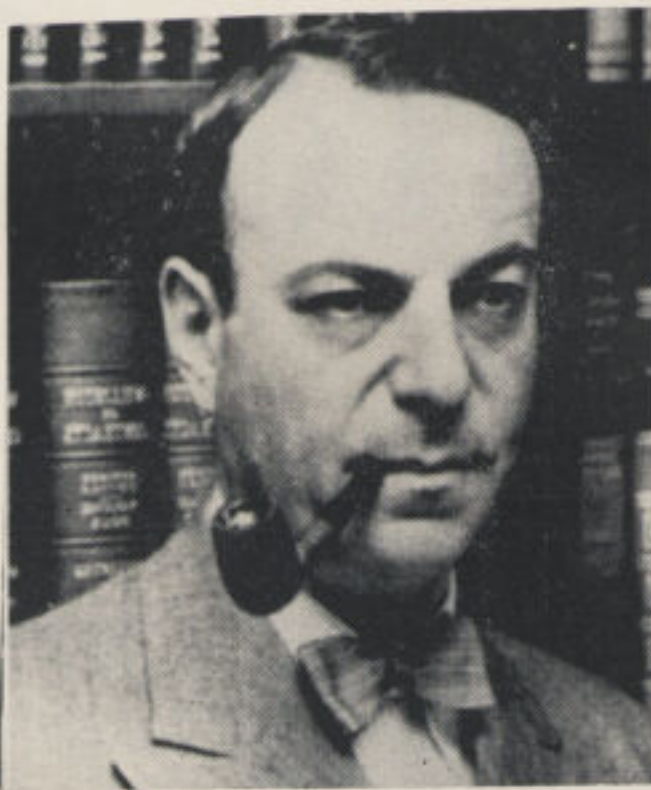
Factors?

Would Governor Folsom have commuted this sentence if widespread publicity sympathetic to the condemned man had not been given to the case? Would he have commuted the sentence if he had not received such a flood of letters demanding and appealing that the prisoner's life be spared? Would he have commuted the sentence if the big city newspapers had not decided that Jimmy Wilson made good copy?

It is not so much the negro desiring to fulfill his wish to attend an integrated school in Little Rock or Norfolk who needs protection. It is the unheralded negro in the unheard-of town, the one who is accused of a crime but who can't afford to hire a capable lawyer to defend him, and who is not offered top quality, high-priced counsel by the NAACP.

It is the Jimmy Wilsons that nobody ever hears of, whose cases are not unique enough, do not have a novel enough twist to make them worth the attention of big city journalists; it is the Jimmy Wilsons who don't command wide publicity, who don't receive the benefit of letters from public personages throughout the country pleading for their lives; it is the Jimmy Wilsons that the New York newspapers don't cover that need protection.

Book Review



Charles Edward Wyzanski, Jr.
 United States District Judge
 District of Massachusetts

arranged as to place him in the select company of John Marshall and Lemuel Shaw.

To Mason, Stone was the most judicial of our recent high court members. Stone declared as well as demonstrated a sophisticated awareness of the judge's power of choice and his duty of self-restraint. Mason calls him "one of the great creative judges of our time" and quotes Taft as authority for "the ease with which he expresses himself."

Most lawyers would agree that Stone ranks high in any list of judges, and would reject as petty scuttlebutt tales that he was vain and ambitious. But they might question whether Stone was creative in the sense that Holmes or Brandeis was, an originator of doctrines that law professors and law clerks had not already half-formulated. Was not Stone's clerk, Louis Luskey, the author of the celebrated fourth footnote in the *Carolene Products* case, which distinguishes between the Court's duty to presume the constitutionality of economic legislation and the Court's obligation to suspect legislation curtailing freedom of communication or restricting the franchise? Was not Stone's clerk, Warner W. Gardner, the ghost-writer of Stone's epochal address on the Common Law at the Harvard Tercentenary? And is it not fatuous, in the light of what many law clerks have whispered to the contrary, to repeat that Stone was a facile writer of opinions? For one who has had unrestricted access, as Mason had, to Stone's papers, to claim for Stone a pre-eminence equal to the giants of the law does no service to Stone's memory. He deserves to be recalled as a judge of considerable learning, free from partisan taint, solid in his judgment, and wise in discerning the deepest currents of his society. Men instinctively and rightly trusted his good sense and fairness. But he was no more a genius than he was a great chief. He was the true center — not the leader in ideas or in organization.

Later Courts

The Vinson and Warren courts are analyzed by Mason without, so far as appears, the benefit of confidential documents analogous to the Stone and Brandeis private papers. The professor shows a predilection for the constitutional philosophy of Justices Black and Douglas. He accepts their view of the preferred status of claims of freedom of speech, press, assembly, and petition — what has sometimes been called "the firstness of the first amendment." Justice Jackson, at least in his earlier phases, also commands Mason's admiration. Indeed, who can resist



Earl Warren
 Chief Justice
 United States Supreme Court

the charm and wit of R. H. J.'s style? And who, on reflection, can deny that in many ways he is the outstanding man of the last quarter century of the Court's history — the one who grew in character and in insight as he grew in learning and in experience?

Toward Justice Frankfurter Mason displays an attitude which is not without support in the reports, but may be nourished by contacts not fully disclosed on the record. Mason contrasts those philosophical generalizations of Professor Frankfurter which appear to recognize the political role of the

Letter to the Editor

TO THE EDITOR OF THE RECORD:

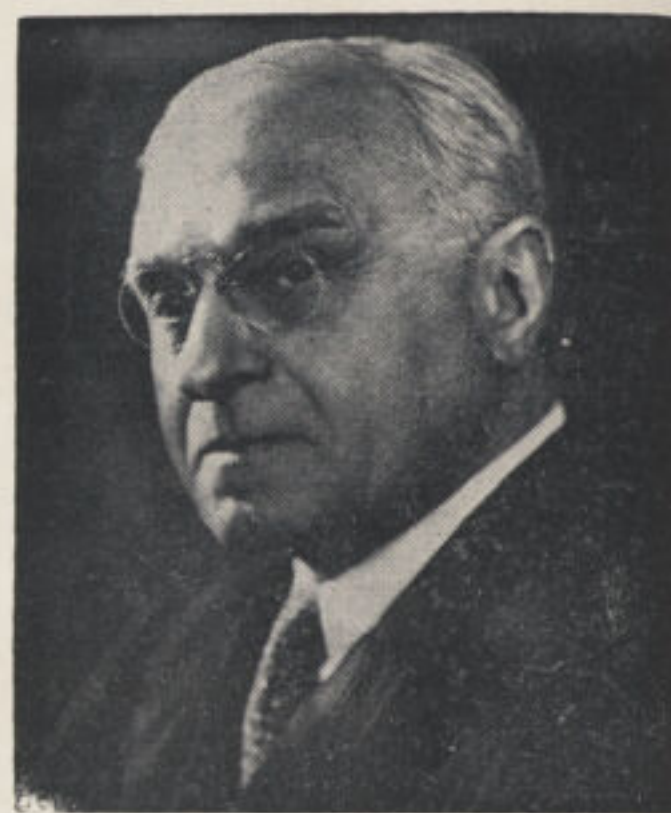
I wish to take exception to the tone of the front page article you published last week under the head, "Male Students Outshine Females."

While every statement in the article (e.g. about the higher percentages of failures and withdrawals among women) was technically correct, you should not have omitted to state that the overall average of law school women is approximately the same as the men's, and that out of the 113 women who have entered law school, six have been invited to join Law Review. It should also be pointed out that among those who withdrew from the School, several had served on, or had just made, Law Review. In addition, many of the withdrawals were occasioned by marriage; your article suggests unfairly that they were due to inability to handle the work load.

Statistics are often misleading, but in a case like this, where there have been so few women enrolled in the School to date, figures such as you have published really prove nothing at all. It would be necessary to wait several years before statistics about the women at law school are at all meaningful.

(Mrs.) Deborah Tanzer
 1L

Supreme Court with those *ad hoc* opinions of Justice Frankfurter that avoid issues by declaring them suitable for decision only by the electorate or other strictly political bodies.



Felix Frankfurter
 Associate Justice
 United States Supreme Court

He looks askance when F. F. seeks to avoid the dangers of a purely personal judgment by first putting on one side of the equation an announcement of his personal interest and then on the other side of the equation solemnly cancelling the effect of that interest by stating his express disregard of its impact. Without quoting John Mason Brown's *bon mot* that "Justice Frankfurter is the Joseph Conrad of the law," Mason is plainly annoyed by what T. R. Powell used to call "the felicity of his style," and what Mason terms "Frankfurter's fastidious pronouncements."

A completely detached critic might say that Mason had some justification for the points he scores. But would he not give at least equal emphasis to those gifts F. F. has brought to the conference of his colleagues and the interpretation of the constitution of his country? What judge has approached his knowledge of American history and institutions? In the 17 decades of our national existence has any lawyer had a wider or deeper familiarity with the principles of liberty as practiced in the English-speaking world? Has he not shown sceptics that mastery of procedure and resourcefulness in technique can be combined with sensitivity to emerging claims and hospitality to new ideas in every field of human learning? And who would deny that whatever errors he may have made, Justice Frankfurter has a mind of profoundly moral cast, testing each proposal against a pattern of high principle?

Irritation

Mason's hardly suppressed irritation at Frankfurter (a not unprecedented reaction, it must be confessed) is matched by Mason's irritation at those who have criticized his use, in his prize-winning Stone biography, of statements in unpublished materials found among a justice's papers — statements which, in equity, may be the property of the justice, the Court, or the government, or which perhaps have fallen into the public domain of scholarship. What Mason writes in defense of his user deserves attention. But a cautious scholar will consider the contrary arguments advanced by Henry Friendly in his University of Pennsylvania Law Review critique of Bickel's *Unpublished Opinions of Justice Brandeis*.

Taken as a whole, Mason's book rounds out our knowledge of the Supreme Court, and is documented by footnotes which compendiously collate citations worth having in one place. But it is surprising to observe the absence of any reference to this country's greatest constitutional law student, the successor in scholarly reputation, and one may hope ultimately in judicial office, of Holmes, Cardozo, and Frankfurter — Professor Paul A. Freund.

Cases Jam Federal Courts

Federal courts are facing a 75,000 case backlog, the largest in history, according to Warren Olney III, director of the Administrative Office of U. S. Courts.

This national backlog consists of 68,168 civil cases and 7,451 criminal matters. Olney has stated that this total alone is sufficient to keep all federal courts busy for a year, even if no new cases were filed.

This problem has delayed proceedings in some areas so much that it takes almost four years to get a civil case to trial.

While it is admitted that more judges are needed, Olney said that the courts must try to provide their own remedies to the problem. One recommendation is to transfer judges from areas without backlogs to overloaded districts.

Ladies

(Continued from page one)

the girls grab a bite of breakfast at the dorm, but most eat dinner at Harkness.

Out of the 72-girl total, the bulk of the residents are Education students. But there are seven first year law girls, and four graduate law girls. The latter hail from Finland, India, the Philippines, and Mexico.

The stern, grey-haired 50-year old prototype of a house mother is, happily, lacking at Wyeth Hall. Resident house "parents," Mr. and Mrs. Alan McKillop, are both graduate students and probably younger than some of the girls they "chaperone."

Wyeth Hall represents the first provision by the University of living quarters for women graduate students at Harvard. There are several dormitories for graduate students at Radcliffe (most girls in the Graduate School of Arts and Sciences are technically 'cliffies'). In the past, since Dean Wesley Bevins and his professional counterparts in the School of Design and the Divinity School were singularly uncooperative about assigning rooms in Hastings, Holmes, Dane, and the rest of the male dormitories to women, the poor girls were thrown into the jaws of the Cambridge landowning class. Fortunately, this era of exploitation is over.

— Voss

Fourth Estate

(Continued from page one)

Judge Stewart wrote that "Freedom of the press, hard-won over the centuries by men of courage, is basic to a free society. But basic too are courts of justice, armed with the power to discover truth." He continued, "The concept that it is the duty of a witness to testify in a court of law has roots fully as deep in our history as does the guarantee of a free press."

Last November, Mathias F. Correa, Esquire, Miss Torre's attorney, stated that he was ready to go to the Supreme Court to get an adjudication on the privilege of a newspaper reporter.

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Students

(Continued from page one)

gal Studies building, and the necessity for the present noise and inconvenience. An individual introduction of the students, which followed, proved the group to have a keen sense of humor.

Sixty-eight graduate students, representing 22 countries, are attending the Harvard Law School this year. Three more students, one each from Afghanistan, Pakistan, and the Fiji Islands are scheduled to attend, but had not, at last reports, arrived.

Twenty-two of these students are from the United States, eight from Canada, seven from the Philippines, and four from India. Three students come from Australia and Japan, and two from Belgium, Egypt, Germany, and Italy.

Countries represented by one student are Brazil, China (Taiwan), England, Finland, France, Israel, Lebanon, Mexico, Nicaragua, Poland, Spain, Sweden, and Venezuela.

Miss Yi-Yu Shih, the graduate student from China, is the first woman ever admitted to the bar of Taiwan, since the island became the headquarters of the Republic of China.

Six of the graduate students are law professors. One of these, Harry E. Groves, is Dean of Texas Southern University Law School.

— Binder

532 Enter Ames Games

Five hundred and thirty-two members of the first year class will argue in the Ames Competition this fall. These men will form 67 courts. Each court will be supervised by a second or third year student and will be advised by at least one member of the faculty.

The fall competition begins on October 15, when the first docket will be posted. Facts issuance, conferences, brief exchanges, and arguments are scheduled to follow until December 17, when the arguments for round 8, the final round, will be heard. By that time 798 judges will have read briefs and heard arguments for 266 cases.

According to Ky Ewing, 3L of University Park, Md., chairman of the Board of Student Advisers, three Law School reference librarians have agreed to give library tours to the first year courts. These are scheduled for October 14 through October 18.

In second year Ames Competition, 288 students will argue in 36 courts this fall. The 8 courts with the best records will advance to the quarter final rounds next spring. The first series of the qualifying round begins on November 10. Arguments will be held November 12, 14, and 18, and December 3, 4, 5, and 8. Substantial changes in the rules have been made since last year, David Shayne, 3L of Chicago, chairman of the Second Year Administrative Committee, reports.

Law Wives

Professor Benjamin Rowland of the Fogg Art Museum will address the Law Wives on October 15 at 8 p.m. in the Harkness Meeting Room, "Oriental Art."

A Saltonstall Is a Democrat

Strange things are happening in the Saltonstall clan. John Saltonstall, a native of Brookline, Mass., and a second cousin of United States Senator Leverett Saltonstall (R) of Massachusetts, has forsaken a long and deeply set family tradition and is running for a seat in Congress on the Democratic ticket.

Harvard Law and Graduate School Democratic Club members heard Mr. Saltonstall speak recently at the initiation of their 1958 campaigning activities. In introducing the candidate, Professor Abram Chaves, faculty advisor of the Club, pointed out that Saltonstall had departed from family patterns way back in 1938 when he entered Yale, rather than the Harvard Law School. His education had been that of a proper Boston Brahman up to that point, however; he had attended Groton, Exeter, and Harvard.

Law School Democrats are currently engaged in a feverish co-ed canvassing campaign on Mr. Saltonstall's behalf. Members gather every weekday night at 6:30 p.m. under the clock in Harkness Commons, and from there proceed to Saltonstall headquarters at 18 Tremont Street, where they branch out to go doorbell ringing and literature distributing. — Voss

Alumni Notes

LL.B. '26 — Henry Blumberg, LL.B. '30 — Elsdon C. Smith and LL.B. '44 — John S. Pennish have formed a partnership for the general practice of law under the name of Blumberg, Smith, Wolff and Pennish. They are located at 1 North La Salle Street, Chicago 2, Illinois.

LL.B. '37 — John M. Kitchen was editor-in-chief of a book entitled *Capital Gain v. Ordinary Income — Comparative Taxation of Real and Personal Property Transactions*, and wrote one of the eight papers therein published. The book was published by the Bobbs-Merrill Company, Inc. Mr. Kitchen is now practicing law in Indianapolis, Indiana, as a partner in the firm of Rauch, Chase and Kitchen.

LL.B. '48 — Frank Cohen has become associated with the firm of Hartman, Guilfoil and Albrecht as tax counsel. They are located in the Security Building, 319 North Fourth Street, Saint Louis 2, Missouri.

LL.B. '48 — Kenneth G. Weinberg has become associated with Fuerst and Fisher for the general practice of law under the firm name of Fuerst, Fisher and Weinberg. They are located at Suite 931, Society for Savings Building, Cleveland 14, Ohio.

LL.B. '51 — Paul L. Blawie, Bridgeport trial attorney, has been elected president of the Connecticut

Market

(Continued from page one)

outlay for plant and equipment will improve, but will not reach the highs of the previous decade. A similar situation exists in housing, where the great postwar demand has been largely met. And while automobile manufacturers are optimistic, whether or not the public will support the new car models is unknown.

Mr. Robinson, a graduate of Harvard College and the Harvard Business School, heads the largest mutual investment fund in the United States. Massachusetts Investors Trust has assets of well over one billion dollars, with all its investments, by terms of the company's charter, invested in common stocks.

— Cover

chapter, National Association of Claimants Compensation Attorneys.

LL.B. '55 Peter D. Mosher has formed a partnership with Albert J. Gaynor for the general practice of law under the firm name of Gaynor and Mosher. They are located at 2 East Avenue, Larchmont, N. Y. and 150 Broadway, New York 38, N. Y.

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Parties

(Continued from page one)

of 2 percent in Missouri (36,000 votes), 3 percent in Massachusetts (71,643 votes), 5 percent in California (259,000 votes) and 7 percent in Ohio (259,000 votes). Other states exact flat numerical minimums.

New York, Illinois, Massachusetts, and Ohio demand that the signatures obtained on nominating petitions represent a prescribed number of residents in a specified number of counties throughout the state. Apportionment requirements often result in giving disproportionate power to rural areas and discourages urban and, in some cases, rural centered groups from availing themselves of the election process.

Outdated Apportionment

For example, the Illinois statute states that a petition to nominate candidates for a new political party must be signed by at least 25,000 qualified voters, including at least 200 from each of at least 50 of the 102 counties in the state.

The New York statute compels even greater omnipresence. It reads: "An independent nominating petition for candidates to be voted for by all the voters of the state must be signed by at least 12,000 signatures of whom at least 50 shall reside in each county of the state. . . ."

The Illinois law was challenged by the Progressive Party just before the 1948 elections. The case reached the U. S. Supreme Court where it was argued that the statute's disproportionate favoring of rural counties violated the equal protection clause of the 14th Amendment. In a 6-3 decision, the court disagreed and upheld the law. Writing the dissent, Justice Douglas stated: "The notion that one group can be granted greater voting strength than another is hostile to our standards for popular representative government." He was referring to the fact that 25,000 signatures from 50 of the least populous counties could form a new party while the same number from 49 counties with 87 percent of the registered voters could not.

Regulations pertaining to authentication of signatures, even in states with liberal signature and apportionment legislation, provide further hurdles for small parties to overcome. Six states require individual notarization of every signature on a nominating petition.

In Missouri, each of the 36,000 names needed must be certified by a notary who personally knows the signer or by two witnesses who can swear to his identity.

Other Requirements

Early filing dates, often four to six months before the election, effectively bar eleventh hour protest or splinter parties and force the gathering of signatures before the acme of the public's political consciousness. In other states, the period within which signatures may be obtained is severely restricted. Pennsylvania, for example, requires that the total number of necessary signatures be obtained within a 20 day period.

The potential group from which signers may be solicited is even limited in many states. Prevented from signing an independent nominating petition are those who voted in a contemporary party primary as well as

voters affiliated with another party within a specified previous period.

Such state action has the effect of preventing voters from changing party connections during a campaign



William O. Douglas
Associate Justice
United States Supreme Court

after the primary elections or during the prescribed pre-election period.

One of the characteristics of an inflexible standard is the facility with which it can be abused in its enforcement. Thus, even when a minority party complies with all the major regulations there remains a fair possibility that the petition will be totally negated by a technical defect or omission often due to ambiguities in the election law.

As a final resort for the politically frustrated, the write-in vote is available in 47 states, and would probably be implied as a constitutional right in the absence of any express provision.

In practice, the write-in vote is a somewhat illusory privilege. No party has ever won an election in this manner, though an occasional independent has been elected this way. The experience of the Socialist Party is that most states, finding the write-in unwieldy, simply disregard them in submitting their count of the vote.

Restrictions Parallel Movements

Since 1948, when Henry Wallace's Progressive Party conducted a national campaign, minor parties, by their diminished activity, have not provided the underlying impetus for further state restrictions along the line of number, apportionment and authentication. Indeed, there was hardly any need to increase already severe requirements. But it is more than sheer happenstance that periods of minor party activity have been paralleled by a rash of restrictive enactments from the two party dominated legislatures. The thirties and early forties were such periods. In 1932 the Socialist Party made the North Carolina ballot with a petition of 10,000 signatures. Immediately thereafter the legislature enacted more stringent requirements. Only the Democratic and Republican Parties appeared on the election ticket in 1936.

Added to these legal obstacles have been a variety of pressures in the form of discriminatory judicial and administrative enforcement, and harassing, intimidating tactics by vigilante groups. The latter pressure has been expressed in the past by publishing petitions in newspapers to embarrass or black-list signers and even by physical violence against small party workers.

The constitutionality of even the harshest statutes has been maintained against claims of deprivation of due process, equal protection of the laws, and the right to vote. If the restrictions on access do not constitute an absolute bar and if the particular court gives weight to the write-in as an available alternative, these laws are deemed reasonable and therefore valid. Otherwise judicial review is

as broad as judicial discretion which thus far has taken the form of a "hands off the legislature" policy.

What is constitutional may still be unwise. This is revealed by an examination of the evils which these restrictions are allegedly designed to prevent.

It is contended that the signature requirements prevent the ballot from becoming the size of a blanket and thereby confusing the voter.

The "blanket size ballot" argument has some validity, but is attributed to the wrong cause. Rather than arising from an excess of parties, the long ballot has been due to a plethora of elective offices all the way from Governor to the county surveyor and the total listing of a state's presidential electors. With the replacement of the electors column by the names of the presidential and vice presidential candidates and the partial reduction of elective offices in many states, the problem of the long ballot has greatly diminished.

To overburden and sometimes suppress minority parties in order to simplify the ballot is using the guillotine to cure the toothache and recalls the ardent cry, "Quick, Susie, the hammer; there's a fly on baby's head."

It has also been asserted that ballot requirements have not unreasonably inhibited or actually kept minority parties off the election ticket. Rather, it is believed, the historical failure of third parties is due to non-legal factors rooted deeply in the American political system.

Impact of Harsh Restrictions

This position is untenable. First, it is historically false: there are numerous instances where parties have been kept off the ballot by onerous conditions or by technical disqualifications. Even the Republican Party was not spared in the 1918 Florida elections. Second, the fact that through great effort and expense minor parties have surmounted formidable obstacles does not reflect on the reasonableness of such barriers. On the contrary, they have forced parties to exhaust their financial and human energies in qualifying rather than in the conduct of a political campaign. Furthermore, the necessary concentration on ballot access in a few states has entirely curtailed possible attempts in other states. And, perhaps most important, the probability of overcoming an obstacle surely cannot properly be regarded as a reason for the creation of the obstacle in the first place.

Small Party Motivations

Another viewpoint espoused by exponents of ballot restrictions reasons as follows: The decision of third parties to act independently is motivated by a desire to replace one of the major party organizations. To accomplish this aim, it must draw support on a scale far larger than present ballot requirements, especially in view of our plurality election system. This requires organization and development through time. Collecting a prescribed number of signatures encourages contact with the individual voter and development of an extensive local organization without which a party cannot hope to win an election.

This view is based on the mistaken assumption that the primary motivation of small parties is winning elections. This may remain as a long term aspiration but the controlling objectives remain the more immediate ones.

When asked what motivations underlie their action, minority party

officials might answer along the following lines:

"As a rule we are vitally interested in some fundamental idea of government from which springs a definite platform of specific issues or, in the alternative, particular legislation not based on a distinct theory of government. An example of the former is the Socialist Party while the Prohibition Party represents the latter.

"By participating in the electoral process we wish to demonstrate the popularity of our platform so that it will gain more adherents or will be accepted as a policy of a major party. We provide an opportunity for those dissatisfied with the major parties to register protest votes which can tip the scales in a closely contested two-party election.

"In an era witnessing a growing trend for the two major parties to dispute over vague generalities and parade personalities as mechanisms of political appeal, we believe in concentrating on specific issues and basic principles which can be welded into a consistent program only because it is not necessary, as it is in the major parties, to conciliate a multitude of incompatible interests.

"We avoid the excessive compromise that breeds innocuousness principally because we are not seriously trying to win the next election. In their quest for power by electoral success the major parties must appeal to the broadest public possible. We escape this adulteration of our platform because we use the electoral process as a point of departure for our agitation, as a means not an end."

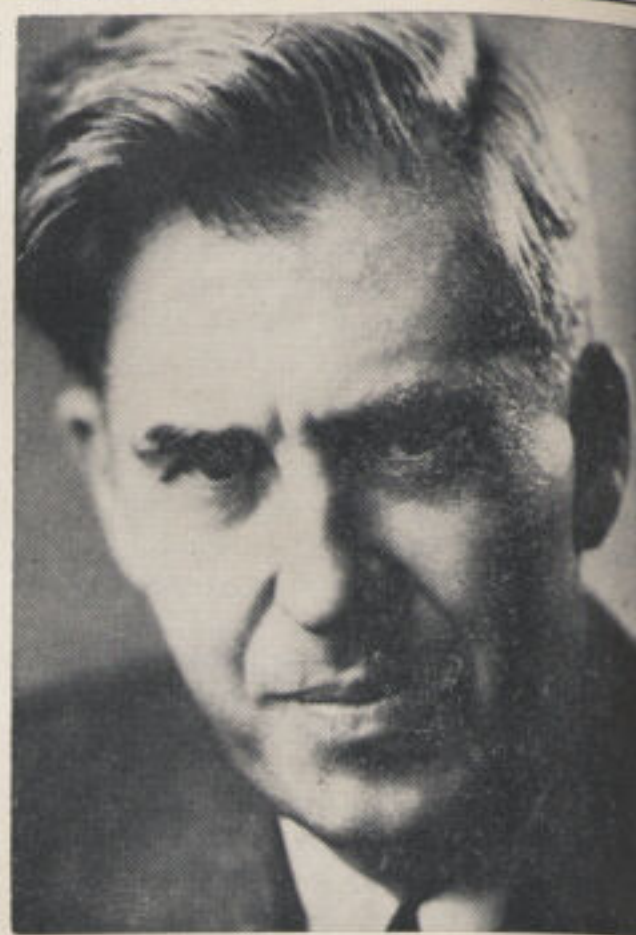
It can be seen from the foregoing how exclusion from the ballot can totally stifle the advancement of these perfectly legitimate aspirations. Access to the election slate not only permits the expression of public opinion but also has a high publicity value in marshalling greater support. It is the only practical way by which minor parties can say "Republicans and Democrats — take notice!"

Salutary Effect of Easier Access

This is no place to catalogue the contributions of minority parties in American history. Their importance, as any history text will attest, has been far greater than their size.

Herman Singer, editor of the *Socialist Call*, spoke of history when he stated that "minor parties have, by and large, contributed to American political life by submitting criticism, offering suggestions and challenging the values of existing parties, thus contributing toward the expansion of political discussion."

At a minimum, minor parties have many times in our history deeply stirred opinion and illuminated the murky atmosphere of politics with a



Henry Wallace

flash of idealism. From the standpoint of the electorate, this is bound to have substantial educative value.

Opening the ballot to more than two alternatives encourages citizen participation in the political process. The right to political dissent becomes nominal and can become dangerous without the steamvalve mechanism of placing minority candidates before the voters. Frustrating legal restrictions can only contribute to disillusionment with our democratic ideals.

The True Premise

It is perilous, however, to rest an advocacy of liberal ballot legislation on a utilitarian evaluation of minority parties. Such a foundation is too unstable, too fluctuating, and excessively subject to the whims of majority assessment. Rather, it is submitted, the right to present minority candidates before the electorate on equal terms with other parties derives from those basic rights inherent in a free society. And these rights stem from a tradition of unending struggle to preserve the free competition of the market place of ideas.

A democratic society should not dismiss a freedom as unimportant merely because it has comparatively little direct significance to the majority. We would do well to remember that suppression once sanctioned has epidemic qualities and that all of us are minorities in one framework or another.

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