

The Innocent Bystander



[1954]

JUSTICE MINTON'S ITINERARY:

At New Albany, Indiana, until Feb. 4 or 5
when leaves for

Fort Worth Texas. Mail address P. O. Box 4325.
Phone in care of Rosco or Herbert Minton,
Fort Worth

Staying in Fort Worth 4 or 5 days - back in
Washington about middle of February.

Memorandum:-

Miss Kelley, Secretary to Justice Minton, advised that the Justice wished you to be informed that he has gone to the Naval Hospital for a few days: he indicated that he did not spend a very pleasant night, that his cold was not improved, but that he felt he would be back in a few days -

k-

11;30am--Miss Kelley advises that Justice Minton has an upper respiratory infection, and that it will be three or four days before his return.-

October 12, 1949

Honorable Fred M. Vinson
Chief Justice of the United States
Washington, D.C.

My dear Mr. Chief Justice:

The following appointment to a position
under this office is submitted for your approval:

Olyus F. Hood, excepted appointment as Messenger
at \$2,963.40 per annum, effective October 12, 1949.

Mr. Justice Minton has requested Olyus F.
Hood for his Messenger.

Respectfully submitted,

THOS. E. WAGGAMAN

Marshal, Supreme Court, U.S.

APPROVED: Oct 12 1949

(sgd) Fred M. Vinson
Chief Justice of the United States

July 18th, 1950 -

Dear Shay:--

I have just returned to the office and finished reading your letter of the 13th. I wish that I could have been at the All-Star game with you, but the best I could do was to listen to intermittent reports via radio, which was not working any too well in the mountains. I called the shot when Kinner hit his home-run in the ninth- tying-up the game - then the radio went sour and we got spot reports until the 13th indicating that the game had continued scoreless from the ninth on - then we heard the announcement that Schoendienst had hit a home run and I felt it was all over. It surely was a thriller - old man Slaughter certainly played in that game, both on the offense and defense. Incidentally, I also picked the Nationals to win.

I got back from the Adirondacks on the 16th. I really had a most enjoyable and wonderful stay - away from everything.

I am having a conference this afternoon in connection with the status of the widows pension bill. The information which I have received is that the Judiciary Committee of the House pigeoned-holed it. I have not checked on the accuracy of this information, but will do so during the day, but if this information is correct it would appear that the bill has been tabled by the House Committee for the session. I had outlined the strategy which I thought would be the best to follow, which, in effect, was to await action by the Senate before making any moves on the House side, but when there are so many people interested in a proposition, it is probable that some of them got in a hurry for House action---and secured action by that body before the Senate acted.

The information I had when I left was that the Senate Committee would be favorable to the bill and that they were awaiting Senator Donnell's action upon the bill and certain amendments which had been presented to the Committee before taking it up for final action. I will do my best to get it brought-up again in the House if it gets thru the Senate. I only hope that the action by the House will not have the effect of killing the whole thing at this session.

I wish that it were so that I could say that I would be with you for the All-Star football game, but right at this time it doesn't look like I can make it - if I can, I will certainly be with you.

I expect to take a chance on the special term of Court for the purpose of receiving admissions to the Supreme Court Bar during the American Bar Association's convention here in September. Felix seemed to be very much in opposition, but it strikes me that it is something that we should do.

I know that you are having a good time with your grandchildren and your many friends.

You will never know what a tower of strength you were during your first term on the Court. I never had any doubt as to your ability to do the fine job you did, but it was difficult for me to visualize in advance the extent of the comfort I would receive in your just being around. We certainly had some tough ones, and we will have many more confronting us -- your ability and courage are the necessary ingredients to make your grandchildren proud of their grandpap.

Mrs. Vinson joins me in every good wish for you and yours.

Sincerely,

P.S.--Since dictating the foregoing, I have received information to the effect that the full committee of the House has not acted upon the pension bill, and it was indicated that a majority of the committee members preferred this bill to the salary increase bill; and, further, it was felt there was a good chance of getting such a bill reported.

On the Senate side, action by the sub-committee upon the bill had been deferred pending the return of its Chairman, Withers. It was felt that the bill could be reported, favorably, by the sub-committee promptly, and that action by the full committee in favor of the bill could be anticipated shortly thereafter---so.....we aren't in bad as shape as the earlier information that I received indicated.

F.M.V.---

Supreme Court of the United States
Washington 13, D. C.

New Albany Ind
July 13/50

CHAMBERS OF
JUSTICE SHERMAN MINTON

My dear Fred -
The All Star Game Tuesday
was the best ball game I ever saw. I was
Happy Chondlers guest & we thought of you
& talked of you often. My foot he charged me
with the duty of extending to you his
invitation to be his guest for the worlds
series. I told him with Court just opening I
doubted if you could accept. He invited me
too. He is very anxious to have you
accept if you can.

I sure wish you could have been at
Chicago - you would have enjoyed the
game & the occasion. The tragedy of the
day was the injury to Williams. I hope
it will be disabling only for this season at
most. He played great ball while in there
He went right up against left field wall

& took that terrific blow off Kiner's bat. I
never saw so many Circus Catches in the
outfield.

Tomorrow I go to Drunk Lick for the
State Bar association Meeting. After that
I am taking it easy until Court opens.
I may take in the All Star Football game
at Chicago Aug 11th - Would you come out
for that? Let me know - We will make it
a day for you just as you would like
it.

I have spent most of my time with my
grandchildren & it has been wonderful.
I hope you have gotten away for a
little rest & relaxation -

Mrs Minton joins me in all good
wishes to you & Mrs Vinson.

Sincerely
Shag

If you get out this week let me
know -

NOTED
SEP 12 1950
F.M.V.

*You are cordially invited
to attend the dedication of a marker
honoring the birthplace of
Justice Sherman Minton
on Wednesday, September thirteenth
Nineteen hundred and fifty
at three o'clock in the afternoon
Georgetown, Indiana*

File

September 13, 1950

Honorable F. Shirley Wilcox,
Treasurer of State,
State House,
Indianapolis, Indiana.

Dear Shirley:

The dedication of the marker at the birthplace of Justice Minton is a significant affair.

For his friends and neighbors, who know him best, to render him this signal honor is, of course, pleasing to him and his family. It is deserved. It signifies your pride in him and his accomplishments. That pride is well merited. You have had a right to be proud of him since his earliest days. His prowess on the athletic field, his scholastic attainments, his vigor and success as a lawyer, together with all the personal traits and characteristics that gain the love and respect of his fellows, brought him to the Senate of the United States in a trying period. I can personally testify to the stature which he quickly attained there. His ability as a lawyer and his honesty of purpose were recognized even by those who did not agree with him. His patriotism and love of country were not excelled.

He brought to the Supreme Court an experience of 33 years in the law as the active practitioner, the able legislator and the distinguished jurist. He came to us ripe in experience, possessed of the single purpose to do "Equal Justice under Law". So there should be no surprise that the conclusion of his first term saw the quantity and quality of productive capacity in high degree. On the bench and in the work of the conference room, as well as in his written utterances, he has shown objectivity and high purpose. I betray no secret when I say that it has been a genuine pleasure to be associated with Justice Minton on the highest court in the land.

It is a sweet thing for his neighbors and friends to accord him this tribute. It is not only recognition of his true worth but it bespeaks their respect for the law of which he is a symbol.

Sincerely,

(Signed) Fred M. Vinson

Supreme Court of the United States

**Memorandum*

September 8, 19~~4~~50

Miss Kelly, Justice Minton's secretary, says that the President is addressing his message to Mr. F. Shirley Wilcox, and she thought most of the other contributors would do likewise.

Georgetown is in the same county as New Albany - not more than 10 miles apart.

First Draft

Dear Shirley:

The dedication of the marker at the birthplace of Justice Minton is a significant affair. For his friends and neighbors, who know him best, to render him this signal honor is, of course, pleasing to him and his family. It is deserved.

I would not attempt to do a word picture of his youthful escapades, but I am certain that many of you can recall what this real American boy did in your midst.

This marker signifies your pride in Justice Minton and his accomplishments. That pride is well merited. You have had a right to be proud of him from his earliest days. His prowess on the athletic field, his scholastic attainments, his vigor and success as a lawyer, together with the personal traits and characteristics that endear a man to his fellows, caused you to send him to the Senate of the United States in a trying period. There he quickly attained stature concerning which I can testify. His ability as a lawyer stood him in good stead. His honesty of purpose was recognized by those who did not agree with him. His patriotism and love of country were not excelled.

The attributes of Shay Minton made his eight years of service on the United States Court of Appeals for the Seventh Circuit a distinguished one. No longer the advocate, he was the impartial judge.

He brought to the Supreme Court a rich experience in the law due to many years at the bar, six full years in the legislative halls, and eight years on the Circuit Bench. He came to us ripe in experience and possessed with one

purpose - that the poor and rich alike should receive equal justice under the law.

It has been a genuine pleasure to be associated with Justice Minton on the highest court in the land. Few, if any, "First Termers" have exceeded in quantity or quality his productive capacity. None have or could excel him in objectivity and high purpose.

It is a sweet thing for his neighbors and friends to accord him this tribute. It is not only a recognition of his true worth, but to me it bespeaks their respect for the law, of which he is a symbol.

Sincerely,

Supreme Court of the United States
Washington 13, D. C.

CHAMBERS OF
JUSTICE SHERMAN MINTON

RECEIVED
SEP 5 3 42 PM '50
CHAMBERS OF THE
CHIEF JUSTICE

September 5, 1950

Dear Mr. Chief Justice:

On Wednesday, September 13, a marker will be dedicated at the birthplace of Justice Minton in Georgetown, Indiana. Governor Schricker of Indiana will make the dedication speech, and the Justice's friends out home are working hard to make it a memorable occasion for him.

The committee on arrangements would very much like to have a note of greeting from you to read at the ceremony. I hope you won't think I am imposing on you in transmitting their request - I know how honored Justice Minton would be if you could send a little note.

This office will be glad to forward your greeting if you care to send one. If you prefer to send it direct, it should be addressed to:

Honorable F. Shirley Wilcox
Treasurer of State
State House
Indianapolis, Indiana

Thank you.

Sincerely yours,

Frances Kelly
Frances Kelly
Sec'y to Justice Minton

The Chief Justice

MINTON, SHERMAN, Associate Justice of the Supreme Court of the United States; born in Georgetown, Ind., Oct. 20, 1890; son of John Evan and Emma (Lyvers) Minton; L. L. B., Indiana University, 1915; L. L. M., Yale, 1916; married Gertrude Gurtz, August 11, 1917; children - Sherman, Jr., Mrs. J. H. Callanan, John Evan. Began practice at New Albany, 1916; mem. Stotsenburg, Weathers & Minton, 1922-25; member Shutts & Bowen, Miami, Fla., 1925-28; returned to New Albany, 1928; public counselor of Indiana, 1933-34; elected to the United States Senate on November 6, 1934 for term ending January 3, 1941; appointed administrative assistant to President Roosevelt January 8, 1941; nominated judge, U. S. Court of Appeals for 7th Circuit, May 7, 1941, took oath of office May 29, 1941; nominated Associate Justice of Supreme Court by President Truman September 15, 1949; confirmed October 4, 1949; took seat October 12, 1949. Served as captain infantry, U. S. Army, 1917-19. Member Phi Delta Theta, Phi Delta Phi, Elk.



VOLUME CX—NO. 143

WAR

U.S. Orders

ASSAIL TRUMAN DELAY ON U. S. COURT CHOICES

Judge Major Rips Stalling Tactics

BY CLAYTON KIRKPATRICK
President Truman's delay in nominating judges to fill three vacancies on the federal bench in Chicago was bitterly assailed yesterday by Chief Judge J. Earl Major of the United States Court of Appeals.

He asserted that reports on the delay "simmer down to the sordid proposition that somebody is more interested in politics than the courts."

Others Indorse Stand

Judge Major's denunciation was indorsed by Sherman Minton, associate justice of the United States Supreme court who formerly sat on the appeals bench here. Henry P. Chandler, director of the administrative office of the United States courts, also decried the man power shortage in the District court and said he hoped it would be remedied soon. She speakers addressed a joint meeting of Bar Association of the United States Court of Appeals and the annual judicial conference of seventh circuit of the court of appeals. Each organization is holding a two day conference in the Knickerbocker hotel.

Judge Major pointed out that congress nearly a year ago authorized two more district judges for Chicago because of the greatly expanded business of the court. The third vacancy was caused by the death of Judge Elwyn last July.

Letter Urges Action

A week ago the five district judges sent a letter to the President urging early action in filling the vacancies. Similar letters also went to Sen. Douglas (D., Ill.) and Sen. Dirksen (R., Ill.). Politicians report that the President is holding up the nominations while Rep. Sabath (D., Ill.) bargains with local Democrats for his usual spot on the 1952 slate of candidates.

Mr. Truman, discussing the judges' letter at a press conference, said he didn't like people who make public their letters to him before he has a chance to answer.

"If I were making any criticism of that letter," Judge Major said yesterday, "it would be that it should have been sent nine months ago and repeated once a week since. And it might help, it certainly could not make the situation any worse. If every lawyer in Chicago sent the President a telegram every morning before breakfast, or as soon thereafter as convenient, until the existing vacancies are filled.

"This long and unexplained delay is inexcusable and indefensible."

Many Could Fill Jobs

Major declared that at least 100 lawyers in Chicago would be a credit to the district bench.

"Of course," he remarked, "some of them might be Republicans, and it is too much to hope that lawyers of that kind of a reputation should be appointed. One of the crasse fallacies which seems to have long prevailed in this country, is that a federal judge when appointed must have the same politics as the administration."

Justice Minton said he sympathized with the plight of the judges. He said he wished he were back in the senate so he could help solve the situation. He added, "What Judge Major has said is true and I indorse it most heartily, except that he is too hard on the Democrats."

Minton is a former New Deal senator from Indiana. He was elevated to the Supreme court bench by President Truman.

PHILS C VICTORY OVER C

The Philadelphia Phillies defeated the Chicago Cubs 10-3 yesterday to sweep their third straight victory at Wrigley field. The Bob Rush and pitchers for the two run homers Nicholson, Scott Philadelphia Chicago Batteries-Meyer and Loh (8), Kelly (1) Barnes.

[Details in ...]

Harvard Best Milk and W

Residents of the county, and their cousin neighbors, thru their worst terday. The edvard's 10th anniversary by the merce.

Owen Perry said the crowd was more than previous year's pleasing affair. The big turn made it the Local police way squads crush of vehicles on "the milk The title da that dairy lion pounds of region's recei

Hold Ty

The morning two hour parade was white washed curb for the provided by The Lockport the ochelle by Lake Geneva.

Other high were Harvard the Allen-Hen school in Hebr

In the class petition, the took first with giraffe quaffing every inch of Bowman Dairy second, and equipment com

Harvard's M first in class B truckload of dresses & Son and heating second, and the pany, Harvard

Girl, 17,

At Speedway afternoon, Rector of agric crowd. Miss Alden, Mellen crowned Milk of six finalists milk producers honored at a school, sponsored Lions club.

Elwood Hall Stevenson coun Holstein heifer company for Brown Swiss Faultless Irene Duettsch, 21, of claimed "Miss A team from division, Fort Co

onstrated parade man, Borden, distributed 27 of milk.

Russian Jets Begin N

BERLIN, June 15—Russian force in Germany night maneuvers and bombers including the V Five air fields radius of Berlin on full night dis forces also are Thuringia, Saxo burg.

File

Supreme Court of the United States
Washington D. C.

Unvalley Ind
June 17/57 —

CHAMBERS OF
JUSTICE SHERMAN MINTON

My dear Fred — I just returned this morning from Chicago & the Judicial Conference — the most successful one ever held. They took occasion to present my portrait to the Court & I sat there and listened to them lying about me for a half hour but I enjoyed every minute of it! It was a nice affair.

Your opinion in the Dennis Case is receiving the highest praise out here. I think we rendered a service to our Country & that opinion of yours will come rapidly to be recognized as one of the Courts Greatest. I am proud to have been with you all the way.

The enclosed clipping from the Chicago Tribune is a typical distortion of news. It distressed me but I know the President knows the Chicago Tribune. My approval

Supreme Court of the United States
Washington D. C.

CHAMBERS OF
JUSTICE SHERMAN MINTON

was not at all of the jocular facetious remarks
about the President. In fact I took exception
in good humor to Earl's remarks as that sort
& that is what the article refers too in a
distorted manner about me saying Earl
was too hard on us Democrats. I did
speak of the urgency of the additional
judge in Indiana to also to Chicago & that
was all. Incidentally Judge Luther Fitzgerald
of the U. S. of Indiana is now critically ill
in the Hospital in Chicago. We could find
out very little about him except no one
could see him not even his wife & that he
had been receiving shock treatments. My worry
that young Strong judge has broken his health
by his ever burden of work.

As another term of Court passes into
history I want to thank you for your
services & always kind consideration

Supreme Court of the United States
Washington 13, D. C.

CHAMBERS OF
JUSTICE SHERMAN MINTON

your hour I have me. My greatest wish is
is to be associated with you & to have the
Comforting assurance that I can always
depend on you Come hell or high water.

Mrs Minton joins me in affectionate
good wishes to you & Mrs Vinson & has
a good memory & Call me if you
need me for anything -

Sincerely
Moz

The Chief Justice
Washington, D.C.

August 7, 1950

Dear Shay:

A week ago today, the Judiciary Committee of the Senate reported the widows' pension bill unanimously. Call of the calendar was to have taken place last Friday, but consideration of the appropriation bill prevented it. I have heard that the calendar is to be called tomorrow, Tuesday. I think there is a very good prospect for its passage in the Senate, either on the call or by its being called up for consideration. There is a lot of sentiment favorable to its consideration and passage.

I hope that we can get it through the Senate shortly as it will have to run the gauntlet in the House, but I am inclined to think that it may become law at this session.

With every good wish to you and yours, in which Roberta joins me, I am

Sincerely,

(Signed) Fred M. Vinson

Honorable Sherman Minton,
Associate Justice of the Supreme Court,
New Albany, Indiana.

FMV:McJH

Supreme Court of the United States
Washington 13. D. C.

CHAMBERS OF
JUSTICE SHERMAN MINTON

March 6, 1951

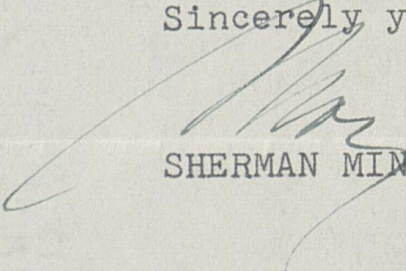
Dear Mr. Chief Justice:

Each spring a group from the Foreign Student Division, DePauw University, Greencastle, Indiana, visits Washington.

This year the students will be here from March 17 to March 21. They have expressed a desire to meet you, and I have written them that while you have a very crowded schedule, I knew you would be glad to see them if you could fit it in.

This group doubtless will contact my office on Monday, March 19, to arrange a definite hour to come to my chambers. I will check with your office after the DePauw group has phoned to see if you can see them for a moment or two.

Sincerely yours,



SHERMAN MINTON

The Chief Justice

Supreme Court of the United States

Memorandum

File

_____, 194____

The only thing that
happened to him
is he remains an
alien! You made
a fine presentation

5/7/51

Phoz

Dear Peggy: I understand the Chief Justice and Justice Minton have been interested in the placement of "Chief" Myers. Justice Minton tried to reach Senator Clements before he left for Indiana, but the Senator was out of town, so the Judge told me to talk with the Senator for him.

Frances

Full

Wednesday, June 6, 1951

Dear Judge:

I talked with Senator Clements of Kentucky this afternoon concerning Mr. Robert L. Myers, 1710 West 6th Street, Los Angeles 17, Calif.

He said he was very anxious to help Chief Myers but that his difficulty was in knowing just where to turn - he knew of no openings that would interest Mr. Myers. He did talk with John Manning at Louisville, who heads the OPS for Kentucky and who knows Mr. Myers, and Mr. Manning is keeping him in mind for any possible post. Mr. Myers is not an attorney, but Mr. Manning thought perhaps something as a business analyst might turn up - the trouble being that the salary would not be in line with what Mr. Myers has been used to.

The Senator also said if you or the Chief Justice would find him a "hole to run thru" to place Mr. Myers, he would be glad to carry the ball; he suggested that perhaps thru your contacts on Pennsylvania Avenue, you might locate a spot in a Government agency, and then he would do the leg work for you.

Frances

P. S. I am sending a copy of this note to the Chief Justice's Office for his information.

F K

Supreme Court of the United States

Washington 13. D. C.

U. S. Just
Aug 3/51

CHAMBERS OF
JUSTICE SHERMAN MINTON

My dear Chief -

Now you are
bob nobbing with the Aristocracy
where you are with Ty Cobb -
my great idol in Baseball -
I sure would like to meet
him & hear him talk of the
~~golden~~ ^{Regal} days of Base ball - I
amend - This may be sudden
in the money sense but
never in the sportsman's
sense. I hope that Bill passes
Congress exempting B.B.
from the Sherman Act.

Supreme Court of the United States
Washington D. C.

CHAMBERS OF
JUSTICE SHERMAN MINTON

I didn't bother to read the Loose
Magazine article about the Court.
Though what they say about me
is true but I know damned
well what they say about you
is not. How does that little
spirit who was nervous in a
Court room get so high &
mighty?

I am getting anxious about the
President in *S. v.* Frankly I hope
he doesn't run. It would only
shorten his life & few more
years would not add a Cubit
to his stature as Statesman or
Political Leader.

I am sorry he got tangled up with

August 6, 1951

Dear Shay:

I enjoyed your letter of the 3rd, and from it I know that you are "up and at 'em."

Old Ty Cobb certainly was well received at the ball park and before the Congressional Committee. His 'heads up' play on the diamond will never be forgotten by us old-timers, and the present-day sports writers do a very good job in keeping him at the top. I do not know what Congress will do in regard to the legislation before it affecting baseball. It would seem to me that they have gone afield in attempting to run the game from the committee room. Happy is in town and is appearing today.

The Look article was a repetition of the New Republic article written by this chap last year. I read it, but I never knew before that I was a "lazy old man." There seems to be about three angles at which he levelled his blast: (1) I was inclined to think he didn't like Truman's appointees; (2) I was inclined to think that he differed with the philosophy of 7/9ths of the Court; and (3) I had a notion that he was anticipating something that will not happen.

I saw the President for a minute at the dinner given for George Schoene-
man, and he told me it made him hot under the collar and that he felt like "writing a letter" to this chap. Then he laughed and said that he finally decided maybe he had written too many letters. After that he said seriously that this attack was made because he had appointed four of us to the Court. There is one thing about it - the Court will not be pressured in this manner from doing what they believe to be right under law.

You know, Shay, that chap may not have liked some of our decisions. Upon reflection, I am inclined to think that he didn't.

It was nice of you to write me this note with your views about many different angles, and it was mighty fine of you to make that long trek in the hot weather to that little town in Kentucky, where I first saw the light of day, when they threw that party for me. It will be hard for anything to take away the memories of that occasion, and it was awfully nice of you to join me.

- 2 -

Roberta is not at all well, but she joins me in wishing for you and Mrs. Minton and your whole gang all the happiness that can come your way.

Your friend,

(Signed) Fred

Honorable Sherman Minton,
Associate Justice of the Supreme Court,
New Albany, Indiana.

SUPREME COURT OF THE UNITED STATES

Nos. 80, 81 AND 82.—OCTOBER TERM, 1951.

Edward J. Keenan, Petitioner, 80	v.	
C. J. Burke, Warden, New Eastern State Penitentiary.		
Walter Jankowski, Petitioner, 81	v.	On Writs of Certiorari to the Supreme Court of the Commonwealth of Pennsylvania.
C. J. Burke, Warden, New Eastern State Penitentiary.		
Orville Foulke, Petitioner, 82	v.	
C. J. Burke, Warden, New Eastern State Penitentiary.		

[November 26, 1951.]

Memorandum by MR. JUSTICE MINTON, dissenting.

These cases only illuminate the error of this Court in *Townsend v. Burke*, 334 U. S. 736. I would not compound the error. I would overrule *Townsend* rather than send these petitioners back to be proceeded against nicely. Their guilt is not questioned. They say, "If we had only had a lawyer, *maybe* we would not have received such long sentences." Yet, the sentencing judge gave two of the petitioners much shorter terms than the maximum provided by statute. They complain not so much of the sentences they received but the manner in which they received them.

Admit the sentencing judge was facetious, even that he bulldozed the petitioners—he sentenced them all within the limits authorized by law. Maybe the judge's con-

duct called for a curtain lecture. At most, that was a matter for the Pennsylvania Supreme Court, and that court did not see even an error of state law in the judge's conduct, let alone a federal constitutional question. We sit only to determine federal constitutional questions, not to scold state trial judges. It is utterly incomprehensible to me how a judge can commit a denial of federal due process by being facetious in the sentencing of defendants where the sentences he imposes are within the limits prescribed by statute. I would affirm.

SUPREME COURT OF THE UNITED STATES

Nos. 80, 81 AND 82.—OCTOBER TERM, 1951.

Edward J. Keenan, Petitioner,
80 v.

C. J. Burke, Warden, New
Eastern State Penitentiary.

Walter Jankowski, Petitioner,
81 v.

C. J. Burke, Warden, New
Eastern State Penitentiary.

Orville Foulke, Petitioner,
82 v.

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On Writs of Certiorari
to the Supreme Court
of the Commonwealth
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Admit the sentencing judge was facetious, even that he bulldozed the petitioners—he sentenced them all within the limits authorized by law. Maybe the judge's con-

duct called for a curtain lecture. At most, that was a matter for the Pennsylvania Supreme Court, and that court did not see even an error of state law in the judge's conduct, let alone a federal constitutional question. We sit only to determine federal constitutional questions, not to scold state trial judges. It is utterly incomprehensible to me how a judge can commit a denial of federal due process by being facetious in the sentencing of defendants where the sentences he imposes are within the limits prescribed by statute. I would affirm.

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v.

C. J. Burke, Warden, New
Eastern State Penitentiary.

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v.

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Eastern State Penitentiary.

Orville Foulke, Petitioner,

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C. J. Burke, Warden, New
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Admit the sentencing judge was facetious, that he even bulldozed the petitioners—he sentenced them all within the limits authorized by law. Maybe the judge's conduct called for a curtain lecture. At most, that was

a matter for the state court, and that court did not even see an error of law in the judge's conduct, let alone a federal constitutional question. We sit only to determine federal constitutional questions, not to scold state trial judges. It is utterly incomprehensible to me how a sentencing judge can commit a denial of federal due process in the sentencing of defendants where the sentence he imposes is within the limits prescribed by statute. I would affirm.

[Oct 1951]

File

Supreme Court of the United States
Washington 13, D. C.

Mundog

CHAMBERS OF
JUSTICE SHERMAN MINTON

My dear Chief -
Thanks for your letter -
I am sorry because you got involved
in my "boogache" + that I fell on my
face as soon as we started.

This is my first day to sit up + it
isn't for long at a time.

I listened to all that Notre Dame
M.M. gave - It was a fantastic
performance - unmatched in the
game's history -

I hope to see you soon - Again my
thanks + with affectionate regards,

Sincerely
Mog

October 10, 1951

Dear Shay:

Mighty sorry that you are out of commission temporarily. I miss you very much, but want you to take good care of yourself before you try to get back into the harness.

There was an AP story on Monday to the effect that I had "back trouble" and was not present at the opening of the Court. My sister read it Monday evening and called me. She could hardly believe that I wasn't out of commission. I tell you this, not because of this story, but if I am to be held accountable for everything that happens to a member of the Court, I want you to be particularly careful in your conduct - otherwise than getting a strained back - after you get back to work.

Tom told me you were worrying about not being here, and I knew you would, too, but forget it. It can happen to any of us, and the main thing is to take your time in getting back into the ring. There will be lots of punching during the rest of the session.

Your friend,

[Signed] Fred

Honorable Sherman Minton,
Associate Justice of the Supreme Court,
Washington, D. C.

October 17, 1951

Dear Shay:

I enjoyed the clipping about little Brooks very much, and appreciate your sending it to me. She is really some gal!

The reports I have been getting about you have been good, and I hope they continue that way. In the meantime, may I repeat what I have already told you - be sure to take care of yourself and come back when you are fully recovered. That is the most important thing.

With kindest regards and every good wish,

Sincerely,

(Signed) Fred

Honorable Sherman Minton,
Associate Justice of the Supreme Court.

Exl

Supreme Court of the United States
Washington, D. C.

March 12/52

CHAMBERS OF
JUSTICE SHERMAN MINTON

My dear Chief -
This down place
is no good with you away!
Sherry & get well but don't
make the mistake of getting
out too soon.

The New Hampshire thing
should not have happened.
I wish the President had
followed his own good
judgment & stayed out of
there - This can only

seem to embarrass him - The reports I
get from my State are most discouraging.
Of course we are the worst State in
the Union at the moment as you know.
The worst of it is our people seem
to be liking it.

Take Care of yourself with
affectionate & warm wishes for your
full & speedy recovery

Sincerely
Thos

May 29, 1953

TO:
✓ The Chief Justice
Mr. Justice Reed
Mr. Justice Frankfurter
Mr. Justice Burton
Mr. Justice Clark

I'm sorry to inform you that the luncheon I had planned to give on Tuesday, June 2, is off.

Justices Black, Douglas, and Jackson would be unable to attend, so I thought it better to wait until some date when all of us could be present.

SHERMAN MINTON

NOTED

MAY 29 1953

F.M.V.

Supreme Court of the United States
Washington, D. C.

CHAMBERS OF
JUSTICE SHERMAN MINTON

New Albany Ind
Aug 22/53

My dear Chief - In the absence of
the decess of the Grandfather
Justice Beerton I entrust you
to the Accient & de Crepit order
of Grandfather. My heartiest
Congratulation to all - About
'96 he should be our Candidate.
I can assure you there is
nothing more satisfying than
a grandchild.

I have been very close to home
all summer. It has in many

was born a most difficult summer.
Mrs. Minton has not been well & I have not
left her at all. She had me very much
alarmed for a while. She lost weight &
had no appetite & has a secondary anemia.
She was concerned as I was. The doctors
assure her she has no organic trouble &
that helped our state of minds much.
However all concern is not gone.

I hope you have had a very good
summer. So far August has been very
agreeable. John Cody my sole surviving ^{old}
partner & I took our wives to Cincinnati
& a ball some. It was a very enjoyable
day & a good game which John & I
both enjoyed & the women suffered
through. We also took a trip to Southern
Illinois to spend a week with Earl
Mojo. To get away rather takes Gertrude
mind off of herself & her indisposition
has made me wake up & talk & do a
little bit more & not to be so dependent.
I had lunch with Judge Shuck Miller
& Roy Shelbourne this week - your sons

Mess has turned for we
talked much about you.

He is beginning to slip & the
G.O. is in low repute now.
I have seen evidence of it
on all sides. There should be
no question about winning the
House next year -

Will grandpa I'll be seeing
you with affectionate good
wishes,

Sincerely
Roy

CHAMBERS OF THE
CHIEF JUSTICE
Aug 24 9 32 AM '53

RECEIVED

New Albany, Ind.

August 22, 1953

My dear Chief:

In the absence of the dean of the Grandfathers, Justice Burton, I welcome you to the Ancient and Decrepit Order of Grandfathers. My heartiest congratulations to all. About '96 he should be our candidate. I can assure you there is nothing more satisfying than a grandchild.

I have been very close to home all summer. It has in many ways been a most difficult summer. Mrs. Minton has not been well, and I have not left her at all. She had me very much alarmed for a while. She lost weight and had no appetite and has a secondary anemia. She was concerned as I was. The doctors assure her she has no organic trouble, and that helped our state of minds much. However, Ole Concern is not gone.

I hope you have had a very good summer. So far August has been very agreeable. John Cody, my sole surviving law partner, and I took our wives to Cincinnati to a ball game. It was a very enjoyable day and a good game which John & I both enjoyed and the women suffered through. We also took a trip to Southern Illinois to spend a weekend with Earl Major. To get away rather takes Gertrude's mind off of herself and her indisposition has made me wake up and take hold a little bit more and not to be so dependent

I had lunch with Judge Shack Miller and Roy Shelbourne this week. Your ears must have burned for we talked much about you.

Ike is beginning to slip and the G O. P is in low repute now. I have seen evidence of it on all sides. There should be no question about cornering the House next year.

- 2 -

Well, Grandpa, I'll be seeing you. With affectionate good wishes,

Sincerely,

Shay

August 24, 1953

Dear Shay:

I accept your nomination and election to the Ancient and Decrepit Order of Grandfathers. Roberta and I try to be convinced that he is the only grand-child. However, in recalling the seraphic smiles which I have seen on the faces of Grandpas Black, Reed, Douglas, Jackson, Burton, Clark and yourself, I realize that those of us who are only Grandpa once must take a back seat.

Roberta is "getting ready" for the Kentucky trip which we will make as soon as I return from the Bar Association meeting in Boston this week.

I certainly regret that your partner is not feeling well this summer, and sincerely hope that "Ole Concern" will soon depart.

I was up in the Adirondacks for two and a half weeks with Joe Davies and a couple of our bridge-playing friends, and really had a rest. Then I spent four days with Judge Watkins at his camp near Fairmont, West Virginia. Charlie Goren was there, and we had most enjoyable bridge games and a very pleasant visit. Otherwise, I have had a very calm, placid vacation. I get to the office almost every day, and look after the matters which come across my desk. I have been working on the certs and appeals, too.

I know you enjoyed your weekend with Earl Major. He is a grand guy in my book.

Give Shack Miller and Roy Shelbourne my regards if you see them again. I wish I could get to Louisville. A lot of my long-time friends are checking out down there. I cannot realize that Bill Duffy is gone. He was a great chap, and I believe the One Great Score will record that he played the game as He would have him play it.

I have been watching the ball games on television and listening to them over the radio, and it is terribly discouraging to realize that the Nats just miss having a fairly good team. Last night there were 11 men left on again. But I am glad that Ted Williams is hitting his .480 even though it is in large part at the expense of the Nats. The old slugger can still lay the wood on the ball.

- 2 -

I saw Hugo Black at the Clark wedding. Bob Jackson is around and Stanley Reed was in for a couple of days. Tom Clark is just about rested up since the wedding which was very, very nice as was the reception at the Chevy Chase Club. But, it is very quiet and I miss you a lot.

Sincerely,

Fred
alias Grandpa

Honorable Sherman Minton,
New Albany, Indiana.

FMV:McH

RECEIVED

AUG 24 9 30 AM '53

CHAMBERS OF THE
CHIEF JUSTICE

August 21, 1953

MEMORANDUM TO:

✓The Chief Justice
Mr. Justice Black
Mr. Justice Reed
Mr. Justice Frankfurter
Mr. Justice Douglas
Mr. Justice Jackson
Mr. Justice Burton

You will recall that the Court sent Mr. Justice Clark's daughter a Silver Tray as a wedding present.

The bill has now been received from Martin's - \$225.00 for the tray (including the engraving) and \$3.75 sales tax, total \$228.75. If you will send your check for \$28.59, payable to Martin's, to this office, we shall be glad to pay the bill.

Frances Kelly
Sec'y to Mr. Justice Minton

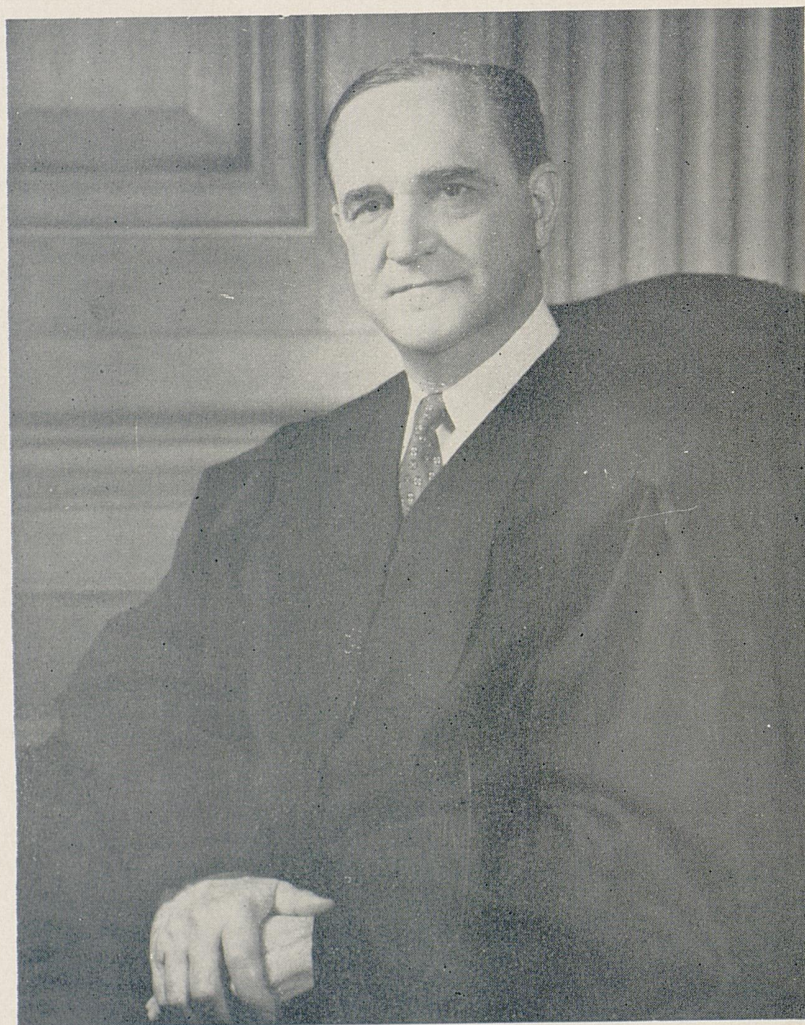
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TEXAS BAR JOURNAL

Vol. XII

DECEMBER 1949

No. 11



SHERMAN MINTON

United States Supreme Court Justice

(Page 546)

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TEXAS BAR JOURNAL

Official Publication of the State Bar of Texas

VOL. XII

DECEMBER 1949

No. 11

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The State Bar of Texas maintains a central office at 930 Littlefield Building in Austin as a service to its members. All matters affecting the welfare of the profession or members of the Bar receive careful attention.

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The JOURNAL is published as a service to the profession. Contributions to the JOURNAL are welcomed, but the right is reserved to select material to be published. Publication of any article or statement is not to be deemed an endorsement thereof.

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Announcing

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Committees Vital to State Bar Work



Some of the most important and effective work of the State Bar is carried on by the standing and special committees. It is most gratifying to your officers and directors that so many of the ablest and busiest lawyers of Texas are willing to give unsparingly of their time and talent in promoting the welfare of the profession.

All of the chairmen and committee members serve without remuneration and in most instances must defray their own expenses. Many of these committees hold one or more meetings during the year.

In some way the effectiveness of certain key committees must be improved. Committee reports are not filed with the president or secretary until a few weeks before the convention. The time available at the convention for discussion of reports is limited under recent schedules. The BAR JOURNAL has a department called Section-Committee Activities, and all committee chairmen are urged to send news items about their committee activities, discussions and proposals—even tentative ones—to the BAR JOURNAL so that lawyers generally can be informed during the year of what the committees have under consideration. The final committee reports published in the June BAR JOURNAL can then summarize the year's work and recommendations.

In selecting the personnel of the committees two principles need to be borne in mind—continuity and change. Continuity is needed in order to undertake long-range programs and pursue a consistent policy. Change is needed to prevent stagnation and encourage new ideas and fresh viewpoints.

Unfortunately, many new committee members begin their duties in complete ignorance of the background, the aims and objectives of their committee. In order to overcome this situation your Board of Directors has created a committee to make an intensive study of all Bar work and then (a) clearly define the functions of each committee, and (b) make recommendations as to the consolidation or elimination of present committees, or the creation of new ones.

This work will be directed by Mr. Jas. L. Shepherd Jr., a distinguished past president of the Bar. He will be assisted by the chairmen of all the present standing committees.

Your officers and directors are indeed happy to pay a deserved tribute to our committee members and to commend them for their faithful and unselfish service.

Allen Crowley

Sherman Minton Named to Supreme Court

(See Cover)

Sherman Minton of Indiana took the oath as a justice of the Supreme Court of the United States October 12 in a White House ceremony.

Justice Minton, 59, former Democratic senator and recently a federal circuit court judge, was sworn in by Chief Justice Fred M. Vinson. President Harry Truman handed him his commission. The new associate justice succeeds the late Justice Wiley B. Rutledge.

Justice Minton was born in Georgetown, Ind., but his family moved to New Albany when he was a small boy. He was educated at Indiana University, where he was a football and baseball player. He received his law degree from Indiana in 1915 and followed it with a year of graduate work in law at Yale.

Enters Army

When the first World War began, Justice Minton left his law practice in New Albany to enter the Army. An infantry captain, he was a staff officer under General Pershing.

For three years in the 1920s he practiced law in Miami, Fla., but then returned to New Albany. He was public counselor of the Indiana Public Service Commission when he was elected to the U. S. Senate. His Senate desk was next to that of then Senator Harry Truman of Missouri and the two became close friends.

Active on Committee

In the Senate he displayed strong "New Dealer" views and was active on the Senate's lobby investigating committee. In 1938, he received wide publicity when he introduced legislation to place federal curbs on the nation's press. His bill incurred the displeasure of newspaper editors and publishers generally, although the measure was not passed.

In 1937 he voted to support President Roosevelt's plan to add new justices to the Supreme Court to the number of those over age 70 who did not retire. At that time, the controversial court reorganization bill would have enlarged the court from nine to fifteen members.

Justice Minton was defeated for re-election to the Senate in 1940 and returned to Indiana. President Roosevelt soon called

him back to Washington, however, to name him one of his administrative assistants.

On May 7, 1941, President Roosevelt appointed Justice Minton to the Seventh U. S. Circuit Court of Appeals, headquartered at Chicago and embracing the States of Indiana, Illinois and Wisconsin.

A Protestant, a Mason and an Elk, Justice Minton is married to the former Gertrude Curtz and they have three children.

'Bench and Bar' Series Aids Senior Law Students

Prominent Texas attorneys are appearing as speakers on the "Bench and Bar" lecture series inaugurated by Dean Page Keeton for senior law students in the University of Texas School of Law.

Designed to acquaint law students with practical aspects of the practice of law, the series emphasizes a respect for and an understanding of the institutions which have made the legal profession a great profession.

The series contemplates a weekly lecturer during the remainder of the school year by other members of the Bar. Speakers to date have included Fred Weeks, Tyler; Leo Brewer and Josh Groce, San Antonio; Albert P. Jones, Houston; and Dan Moody, Austin.

Mr. Weeks discussed the examination of witnesses, while Mr. Brewer dealt with the closing of a real estate transaction. Mr. Groce went into the preparation and trial of a personal injury suit from the defendant's point of view, and Mr. Jones spoke on some of the practical aspects of Workmen's Compensation. Mr. Moody discussed the selection and persuasion of juries.

The lecture series is sponsored by the State Bar of Texas, the Law School and the University of Texas chapter of the legal fraternity, Phi Alpha Delta.

Speakers are chosen by a committee of Travis County Bar members, Coleman Gay, John Stayton and Frank Erwin.

\$8 annual Bar dues equals less than one 3-cent stamp daily, less than one-half cup of 5-cent coffee daily, less than a 5-cent cigar every other day.

Notations on Applications For Writs of Error

by GORDON SIMPSON of Dallas

At its last annual convention, on July 2, 1949, the State Bar of Texas adopted a resolution offered by the Bar Association of Dallas, requesting the amendment of Rule 483, Texas Rules of Civil Procedure, so that this rule would read, in part, as follows:

"In all cases where the judgment of the Court of Civil Appeals is a correct one and where the principles of law declared in the opinion of the court are correctly determined, the Supreme Court will refuse the application with the docket notation 'Refused.' In all cases where the Supreme Court is not satisfied that the opinion of the Court of Civil Appeals in all respects has correctly declared the law, but is of the opinion that the application presents no error which requires reversal, the Court will deny the application, with the notation 'Refused. No Reversible Error'; *provided that when such notation is made the Court shall indicate by an appropriate memorandum the particular part of the opinion of the Court of Civil Appeals which is not approved.*" (Italics supplied.)

Gives Authoritativeness

The amendatory language proposed by this resolution is italicized. Its effect would be, by requiring a written opinion by the Supreme Court in every instance in which the Supreme Court marked an application "Refused. No Reversible Error," to give authoritativeness to every opinion, in whole or in part, written by the Courts of Civil Appeals in cases which came before the Supreme Court upon applications for writs of error within its jurisdiction.

This resolution is an outgrowth of a more or less pronounced dissatisfaction among members of the Bar with the practice of denying applications for writs of error upon the ground that no reversible error is presented to the Supreme Court.

In view of the importance of this matter to the Bench and Bar generally, an analysis of the implications and effects of this proposal seems timely. Specifically we may ask, are the members of the Bar entitled

to expect or demand of the Supreme Court that its action in declining to grant a hearing in a case commit it to an affirmative expression on the legal principles involved in the decision?

Prior to 1927 the refusal by the Supreme Court to review a decision of the Court of Civil Appeals implied neither approval nor disapproval of the reasoning or legal principles announced in the opinion of the Court of Civil Appeals. In 1927 the Supreme Court was empowered to give authoritativeness to opinions of the Courts of Civil Appeals by

use of the notation "Refused" in denying applications for writs of error. What, then, is the signification of the notation "Refused. No Reversible Error," and is the Supreme Court meeting its responsibility for stabilizing and making uniform the law of the land when it uses this stamp?

Applications for writs of error to the Supreme Court of Texas have been coming on to be considered for 57 years. The mechanics of this consideration culminate in marking the application by means of a stamp bearing that notation which the court concludes appropriate. The following are the several notations which have been used through the years: Granted; Refused; Dismissed, W.O.J.; Dismissed, W.O.J.—Correct Judgment; Refused for Want of Merit; Refused, No Reversible Error. It is with the significance of these notations, and particularly the last mentioned one, that this discussion is concerned.

Some background would be of interest in approaching this study. From the effec-



"Unwilling to jeopardize satisfactory situation"

tive date of the Texas Constitution of 1876 up to September 1, 1892, criminal appeals had been entertained by the Court of Appeals, a court of final resort in criminal litigation, and civil appeals had been entertained by the Supreme Court except that the Court of Appeals, in addition to its criminal appeals jurisdiction, considered civil appeals from county courts. Only five years after the institution of this system, (February 9, 1881) the press of business in the Supreme Court impelled the Legislature to create a Commission of Appeals of three judges to assist the court. Its business continued to multiply and effective April 1, 1891, the number of these commissioners was increased to six.

System Overhauled

Upon these and no doubt many other considerations, the people of Texas, under the leadership of the greatly respected Chief Justice, John W. Stayton, completely overhauled their court system at a special election held August 11, 1891, by adopting an amendment rewriting Article 5 of the Constitution. Under this amendment, Courts of Civil Appeals with final jurisdiction upon questions of fact and in certain other cases were created. A Court of Criminal Appeals was created which supplanted the Court of Appeals, and no longer did this tribunal, as thus reorganized, entertain civil jurisdiction.

The Supreme Court became a court of law only and except in case of original proceedings such as habeas corpus, mandamus and the like, litigants could reach it only after a Court of Civil Appeals had ruled upon the controversy. The commissioners to assist the Supreme Court were discontinued. It is of interest to note that three of them, C. C. Garrett, B. D. Tarlton and H. C. Fisher, were appointed by Governor Hogg as chief justices of the three Courts of Civil Appeals which the Legislature then created.

Delays Eliminated

It was widely thought that the existing delays in deciding cases would be eliminated by this new system of appeals. The Supreme Court had been reaching a decision of cases some one and one-half to two years after the date of the district court judgment, and this delay was a source of much distress and concern to the Bench, the Bar and the litigants.

The Supreme Court promulgated rules of procedure for itself and the Courts of

Civil Appeals on October 8, 1892, 84 Texas 695, 20 S.W. v. However, these rules did not deal with the problem now under consideration. But to a certain extent, the statutes did. Article 943, R.S. 1895, which was originally enacted by the 1st Called Session of the 22nd Legislature in 1892 (Chap. 14, p. 19) provided that:

"If it shall appear to the supreme court from an inspection of the petition and record that there is error in said judgment of the court of civil appeals, it shall grant the writ * * *."

Under this language of the 1892 statute, it would appear that the refusal of an application for a writ meant that the Supreme Court took the view that there was no error in the judgment of the Court of Civil Appeals. And at an early stage in this practice, Chief Justice (then Associate Justice) Gaines announced that in rejecting an application for a writ of error, the Supreme Court approved the result reached by the Court of Civil Appeals but did not necessarily approve its opinion. *Fleming v. Texas Loan Agency*, 87 Tex. 238, 27 S.W. 126. Also see *Brackenridge v. Cobb*, 85 Tex. 448, 21 S.W. 1034; *Davis v. Lanier*, 94 Tex. 455, 61 S.W. 385.

Statute Re-enacted

This statute of 1892 was re-enacted in substantially the same language at the Regular Session of the 27th Legislature in 1901 (Chap. 53, p. 122) and was carried forward in the 1911 codification as a part of Article 1544. The first notable departure from the language thus used came in 1913 when the 33rd Legislature at its Regular Session (Chap. 55, p. 107) rewrote Article 1544, R.S. 1911, to read:

"If, upon the examination of the petition for writ of error, the Supreme Court shall find the case to be one of which it may take jurisdiction, and that there is such a difference of opinion among the judges of the court from which the cause shall come, or such a difference between the decision brought in question and a decision of another court, as is specified in Article 1521,* or that the question involving the validity of a Statute was erroneously decided, or that, in a case involving the revenue laws of a [sic] State, or to which the Railroad Commission is a party, any question of law material to its correct decision was erroneously decided, or that such an error is shown as is contemplated by subdivision 6 of Article 1521,** the court shall grant the writ for the purpose of deciding the question as to which the difference exists, or of correcting the erroneous decision and rendering the judgment in which

(Continued on Page 570)

Increased Bar Fee Need Is Told

Endorsed by PAST PRESIDENTS of the Texas Bar

Statistics* show that Texas has next to the lowest State Bar dues of any state in the Union—yet Texas lawyers receive the maximum in services. Even with limited funds, the State Bar of Texas manages to publish a monthly Bar Journal, to sponsor Legal Institutes in all parts of the state and to hold a state-wide convention annually.

It is interesting to note the Bar fees of the various states, as shown in the following chart:

State	Amount Annual Dues	Does It Publish A Bar Journal?
Alabama	\$25.00	Yes, quarterly
Minnesota	25.00	Yes, monthly
District of Columbia	18.00	Yes, monthly
Rhode Island	15.00	No
Missouri	12.00	Yes, monthly
Oregon	12.00	No (bulletin)
Wisconsin	12.00	Yes, monthly
California	10.00†	Yes, bimonthly
Delaware	10.00	No
Idaho	10.00	No
Iowa	10.00	No (bulletin)
Illinois	10.00	Yes, monthly
Louisiana	10.00	No
Michigan	10.00	Yes, monthly
Nebraska	10.00	No
Nevada	10.00	No
New Jersey	10.00	No
New Mexico	10.00	No
New York	10.00	Yes, bimonthly
North Dakota	10.00	No
Oklahoma	10.00	Yes
Pennsylvania	10.00	Yes, quarterly
South Carolina	10.00	No
South Dakota	10.00	Yes, quarterly
Washington	10.00	No
Wyoming	10.00	No
Ohio	8.00	Yes
Georgia	7.50	Yes, quarterly
Utah	7.50	Yes, bimonthly
Indiana	7.00	No
Maryland	7.00	No
Arizona	5.00	No
Arkansas	5.00	No
Colorado	5.00	No
Connecticut	5.00	Yes, quarterly
Florida	5.00	Yes, monthly
Kansas	5.00	Yes, quarterly
Massachusetts	5.00	Yes, quarterly
Mississippi	5.00	No
New Hampshire	5.00	No
North Carolina	5.00	No
Tennessee	5.00	No
Vermont	5.00	No

*Statistics from *American Judicature Journal* supplemented by later figures.

†To be raised to \$12.00 in 1950.

State	Amount Annual Dues	Does It Publish A Bar Journal?
Virginia	5.00	No
West Virginia	5.00	No
Texas	4.00	Yes, monthly
Kentucky	3.00	Yes, quarterly
Maine	3.00	No
Montana	3.00	No

Twenty-six states with higher Bar dues than Texas do not publish any kind of Bar Journal. Out of the 49 states, some 45 have larger annual Bar dues than Texas. Only 3 states have smaller dues. Only 18 states and the District of Columbia publish a separate Bar Journal; of those 19, some are quarterly and bimonthly, while the TEXAS BAR JOURNAL is a monthly.

The average lawyer probably does not realize that the TEXAS BAR JOURNAL is recognized as one of the best Bar Journals in the United States. In addition to its usual contents, every few years the TEXAS BAR JOURNAL publishes the only official edition of the Civil Procedure Rules. The last publication of the Rules cost \$5,000, which is approximately four times the normal cost of a regular issue of the TEXAS BAR JOURNAL.

Neither does the average lawyer know of the faithful work and interest of the officers and directors of the State Bar, who serve, without pay, for the betterment of the profession and to the extent of the Bar revenue.

Post-graduate Education

Recent Boards of Directors and State Bar officers have decided that one of the most valuable functions which the State Bar can sponsor is post-graduate education for lawyers. There can certainly be no quarrel with the statement that our Legal Institutes, with the top-notch experts as speakers, have proven most popular. Over 1,400 lawyers attended the 21 State Bar-sponsored Institutes in the year ending last June.

Institute lectures stimulate knowledge and spread information. Even in specialized fields such as federal taxation, the average lawyer can acquire a casual knowledge of the pitfalls and dangers involved in ordinary legal transactions.

The attendant publicity in newspapers

and radio broadcasts causes the lay public to realize that lawyers are keeping abreast of the times. Good public relations is another direct result of the Institutes.

No Compensation Paid

We understand that no compensation has been paid to the Institute lecturers but that only their traveling expenses have been paid. The \$4,000 expended by the State Bar on Institutes last year covered, in addition to the lecturers' travel expenses, publicity and travel expenses of the committee that planned the Institutes, which had to meet several times during the year to work out the Institute program.

The Texas Bar convention annually draws about a fifth of the state's lawyers, which is a large percentage, perhaps the largest attendance at any State Bar convention. These annual meetings stimulate interest of lawyers in their profession and in Bar Association work—and they stimulate the interest of the lay public in the legal profession.

Convention Expense

The annual convention expense, borne by the State Bar of Texas, has risen since the war from about \$1,500 to a present cost of about \$3,500. To continue these fine meetings in 1950 and thereafter, additional funds must be provided.

The State Bar Rules (which are published in Vernon's Revised Civil Statutes, following Article 320a) require certain expenses to be paid, such as actual travel expenses of the 21 District Grievance Committees, Board of Directors and officers, annual convention and annual election.

Actual travel expenses in Texas amount to much more than in other states, because of the distances involved. States of smaller area naturally have smaller travel expenses for their Bar officers and committeemen.

Worthy Functions

Many other worthy functions of the Bar could well be carried out if more funds were available. The enactment of additional Uniform State Laws is a place where funds could well be spent. While the State of Texas should do its part, the State Bar should also contribute a fair share.

Funds should also be available for work in the public relations field, legal aid work, assistance to the Legislature on research and legal draftsmanship, improvement of our committee work and prevention of un-

The accompanying article is sponsored by the former presidents of the Texas Bar Association and State Bar of Texas. They are:

Allan D. Sanford, Waco (1914-15)
Frank C. Jones, Houston (1916-17)
Robert W. Stayton, Corpus Christi (1924-25)
*T. W. Davidson, Marshall (1925-27)
George E. Shelley, Austin, (1931-32)
Henry P. Burney, San Antonio (1935-36)
D. A. Simmons, Houston (1937-38)
Ben H. Powell, Austin (1938-39)
Angus G. Wynne, Longview (1939-40)
*Few Brewster, Temple (1940-41)
Gordon Simpson, Tyler (1941-42)
Claude E. Carter, Harlingen (1942-43)
Major T. Bell, Beaumont (1943-44)
*Joseph B. Dooley, Amarillo (1944-45)
Jas. L. Shepherd Jr., Houston (1946-47)
H. Grady Chandler, Austin (1947-48)
R. G. Storey, Dallas (1948-49)

*Because of judicial position, prefers not to be included as sponsor.

authorized practice by lay groups.

To fully accomplish all of these things, however, the Bar dues in Texas would have to be raised far in excess of what is now proposed. The State Bar of California, a very active Bar, with 15,000 lawyers, has an annual Bar dues income of more than \$150,000; the State Bar of Texas, with 9,900 lawyers, has an annual Bar dues income of \$39,600.

Breakdown of Funds

For a breakdown on how the Bar funds have been spent each year since the creation of the State Bar of Texas in 1939, lawyers will find an audit in the August issue of the TEXAS BAR JOURNAL each year. Last year \$13,500 was spent in excess of current income out of surplus accumulated in the war years when Bar activities were at a minimum. The facts speak for themselves.

Bar Finances

If you have not done so already, may we request all lawyers to read the preceding articles giving information about our State Bar Association finances appearing in the October and November BAR JOURNALS.

Your State Bar director, elected by you and fellow attorneys in your Congressional District, can advise you further. Directors give of their time without compensation. They are experienced in Bar Association work. Make it a point to talk to them.

Let's get busy and make our State Bar continue to function, without being hampered by finances. A relatively small amount paid by every lawyer will do it.

Work of the U. S. Supreme Court

by FRED M. VINSON
Chief Justice of the United States

Chief Justice Hughes once began a speech before the American Law Institute by telling about a letter he had received from a small boy who said that his teacher had told him to get some information, and he wondered if the Chief Justice had any. The boy did not specify any particular subject—anything in stock would serve.

The Chief Justice hoped that his listeners would be equally considerate, or at least "willing to hear how the branch of the government that has neither the purse nor sword is getting on." I wish to ask for a similar indulgence while I touch briefly upon a number of subjects concerning the work of the federal courts.

Once again this year the Supreme Court ended its term with all business having been disposed of. That statement has much less meaning today than formerly, for a similar order has been entered in each of the 20 preceding years.

The days before passage of the 1925 Act, when it took 18 to 24 months for the Court to reach a case on its docket, are forgotten, and it is assumed by everyone, as it should be, that the Supreme Court is current in its work. The Court will soon have been operating under its basic jurisdictional statute for a quarter of a century, and experience has eloquently proved the wisdom of its architects.

Obligatory Jurisdiction

As you well know, the obligatory jurisdiction of the Court, other than its original jurisdiction as set out in the Constitution, is restricted to cases in which the validity of a treaty or statute of the United States is drawn in question and the decision is against its validity, to cases in which the validity of a state statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States and the decision is in favor of its validity, and to review of certain district court decisions which, by statute,

are appealable directly to the Supreme Court.

All other cases come within the Court's discretionary jurisdiction, and, as has been the custom for some years past, the Court takes such cases only when at least four justices feel that the public importance of the question presented requires its consideration by the Supreme Court.

This selective process is one that consumes much of the Court's time, and its importance is often overlooked because of the more general public interest in the Court's published opinions. Throughout the year, in term time and vacation alike, each justice considers carefully every appeal and petition for certiorari or other relief filed with the Clerk, together with responses and records in each

case. Since the number of such applications has reached approximately fifteen hundred in each of the past several years, you can well understand the magnitude of the task.

Serious Misconception

During the past term of Court, only about 15% of the petitions for certiorari were granted, and this figure itself is considerably higher than the average in recent years. While a great many of the 85% that were denied were far from frivolous, far too many reveal a serious misconception on the part of counsel concerning the role of the Supreme Court in our federal system. I should like, therefore, to turn to that subject very briefly.

The Supreme Court is not, and never has been, primarily concerned with the correction of errors in lower court decisions. In almost all cases within the Court's appellate jurisdiction, the petitioner has already received one appellate review of his case. The debates in the Constitutional Convention make clear that the purpose of the establishment of one supreme national tribunal was, in the words of John Rutledge of South Carolina, "to secure the national



*"Dissenting opinion is
of value"*

rights & uniformity of Judgments."

The function of the Supreme Court is, therefore, to resolve conflicts of opinion on federal questions that have arisen among lower courts, to pass upon questions of wide import under the Constitution, laws, and treaties of the United States, and to exercise supervisory power over lower federal courts. If we took every case in which an interesting legal question is raised, or our *prima facie* impression is that the decision below is erroneous, we could not fulfill the Constitutional and statutory responsibilities placed upon the Court.

Immediate Importance

To remain effective, the Supreme Court must continue to decide only those cases which present questions whose resolution will have immediate importance far beyond the particular facts and parties involved. Those of you whose petitions for certiorari are granted by the Supreme Court will know, therefore, that you are, in a sense, prosecuting or defending class actions; that you represent not only your clients, but tremendously important principles, upon which are based the plans, hopes, and aspirations of a great many people throughout the country.

Petitions for Certiorari

Lawyers might be well-advised, in preparing petitions for certiorari, to spend a little less time discussing the merits of their cases and a little more time demonstrating why it is important that the Court should hear them. By that I do not mean that the petition should paraphrase the standards set out in Rule 38 of the Supreme Court Rules, as so many petitions do now. What the Court is interested in is the actual, practical effect of the disputed decision—its consequences for other litigants and in other situations. A petition for certiorari should explain why it is vital that the question involved be decided finally by the Supreme Court. If it only succeeds in demonstrating that the decision below may be erroneous, it has not fulfilled its purpose.

Our 1948 term was a busy one. The number of cases disposed of during the term amounted to 1,434—a total surpassed only in the 1946 term, my first on the Court, when 1,520 appeals, petitions, and applications were disposed of. These figures take on added significance when compared with the statistics for the pre-war years,

1929—1940, when the Supreme Court handled an average of only 937 cases a year. Thus the post-war years have shown an increase of over 50% in the volume of applications directed to the Supreme Court. This fact calls for some explanation.

In Forma Pauperis Statute

In 1930, the Supreme Court received 22 petitions for certiorari filed under the *in forma pauperis* statute, which provides that the Supreme Court and other federal courts may grant leave to poor persons to proceed without payment of filing fees upon the filing of an oath of poverty. Each year thereafter, the number of *in forma pauperis* petitions for certiorari grew larger until, in 1946, a total of 528 were received. Most of these petitions came from prisoners, state and federal, who challenged the legality of their convictions or detention in post-trial proceedings. Last term 455 such petitions were filed.

Other Kinds of Relief

In addition, requests for other kinds of relief, such as original writs of habeas corpus, mandamus, prohibition, and the so-called common law writ of certiorari, have mounted each year until they reached a peak of 247 last term. Most of these applications were also filed by prisoners under the *in forma pauperis* section of the Judicial Code. The total of these petitions for certiorari and other relief thus reached 702 last term, of which 686 had matured and were acted upon.

Post-Conviction Relief

What that means, therefore, is that in each of the past three years, a little less than one-half of the matters received by the Court were applications from prisoners seeking post-conviction relief. It also means, however, that the Regular Appellate Docket work of the Court—that is, the appeals and petitions for certiorari which come up through the usual procedural channels—has not increased significantly in the past quarter-century.

The tremendous increase in the number of *in forma pauperis* applications has not brought about a corresponding increase in the total number of cases granted review. Last term only 18 such cases—approximately 4% of the petitions—were granted, as compared with 22% of the Appellate Docket petitions. This is not hard

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Tidelands Case

Answer of the State of Texas

In the Supreme Court of the United States, October Term, 1949, No. 14, Original, United States of America v. State of Texas:

Motion for Leave to File

The State of Texas, by its Attorney General, asks leave of the Court to file its answer to the complaint filed herein by the United States of America.

—Price Daniel, Attorney General of Texas.

Answer

Now comes the State of Texas, by its Attorney General, and says in answer to the complaint herein:

I

Answering paragraph I of the complaint, defendant denies that this Court has jurisdiction of this cause under Article III, Section 2, Clause 2, of the Constitution of the United States.

II

Answering paragraph II of the complaint, defendant denies:

1. That plaintiff now is, or ever has been, the owner of the lands, minerals, or other things underlying the Gulf of Mexico within the area described in the complaint, except such specifically described tracts or parcels thereof as have been acquired by plaintiff from defendant by deeds of conveyance or condemnation;

2. That plaintiff now is, or ever has been, possessed of paramount rights in, or full dominion or power over, the lands, minerals, or other things underlying the Gulf of Mexico within the area described in the complaint, except those same paramount governmental rights and the same dominion and power which, under the Constitution of the United States, plaintiff possesses over privately owned lands and over lands beneath all other navigable waters within the United States.

III

Answering paragraph III of the complaint, defendant admits that it claims rights, title, and interests in said lands, minerals, and other things, subject to the paramount governmental rights and powers which, under the Constitution of the United States, plaintiff possesses over privately owned lands and over lands beneath all other navigable waters within

the United States. Except as to those specific tracts or parcels acquired by plaintiff from defendant by deeds of conveyance or condemnation, defendant admits that its title and rights are adverse to the claim of ownership which the Attorney General seeks to assert on behalf of the United States. Defendant admits that its claims are adverse to any other rights which the Attorney General claims for the United States in excess of the governmental rights, dominion, and power which, under the Constitution of the United States, the plaintiff possesses over privately owned lands and over lands beneath all other navigable waters within the United States. Defendant denies that its claims are adverse to, or that they have been held or exercised adversely to, the aforesaid constitutional rights, dominion, or power of the United States. On the contrary, defendant says that its title and rights have been held and exercised subject to, and without any interference with, any paramount constitutional right or power possessed, exercised, or properly sought to be exercised, by the United States.

IV

Defendant admits the allegations contained in paragraph IV of the complaint.*

V

Answering paragraph V of the complaint, defendant admits that it has negotiated and executed leases with various persons and corporations covering certain lands and minerals in the area described in the complaint. Defendant admits that these lessees have paid to the State substantial sums of money, entered upon said lands, and drilled wells for the recovery of such minerals, but denies that these acts, or any of them, were in violation of any rights of the United States. Defendant admits that some, but denies that all, of the wells drilled on these lands have been producing petroleum, gas, or other hydrocarbon substances, which the lessees of defendant have removed, taken, and used, paying defendant the royalties

*The Complaint of the United States was published in the March 1949 TEXAS BAR JOURNAL at pages 113 and 137.

and other considerations as specified in the respective leases. Defendant denies that any of such acts of these lessees constituted a conversion of such petroleum, gas, or other hydrocarbon substances. As fully set forth in paragraph III hereof, defendant denies that the State has not recognized the constitutional rights of the United States. Defendant admits that the State has not paid to the United States either the value of, or any royalties on, any petroleum or other things taken from such lands. Defendant denies that the United States is entitled to the value of, or any royalties on, any petroleum or other things taken from such lands, or to any other monies derived by the State from the area. Defendant denies that it has knowledge or information sufficient to form a belief as to the truth of the averments that its lessees have not recognized the rights of the United States and that these lessees, or any of them, have not paid to the United States either the value of, or any royalties on, any petroleum or other things taken from the lands described in the complaint.

VI

Defendant denies each and every allegation contained in paragraph VI of the complaint.*

VII

Answering paragraph VII of the complaint, defendant admits that the State of Texas has claimed, and does now claim, full and complete ownership of the lands, minerals, and other things underlying the Gulf of Mexico within the boundaries of the State of Texas, except such specifically described tracts or parcels thereof as have been acquired by plaintiff from defendant by deeds of conveyance or condemnation, and that this claim is subject to those paramount governmental rights and the same dominion and power which, under the Constitution of the United States, plaintiff possesses over privately owned lands and over lands beneath all other navigable waters within the United States. Defendant admits that the State of Texas will continue to claim such ownership for itself and to exercise all the rights incident thereto. Defendant denies that any of the acts of the State or any of its lessees or of any other person acting under or pursuant to State authority constituted, or will constitute, a trespass

upon the lands alleged to be in controversy, or any part thereof. Defendant denies that it or any of its lessees or anyone acting under authority of the State of Texas will be in violation of any rights of the United States in taking or using the minerals or other things from, in, or under the lands alleged to be in controversy. Defendant denies that the United States will suffer irreparable, or any, injury and that there is no adequate remedy except by this action.

VIII

Defendant denies each and every allegation in the complaint not herein admitted, controverted, or specifically denied.

Affirmative Defense of Prescription

Under its claim of ownership and of sovereign rights as an independent nation, the Republic of Texas, from March 2, 1836, to December 29, 1845, had open, adverse, exclusive, and uninterrupted possession and exercised jurisdiction and control over the lands, minerals, and other things underlying that part of the Gulf of Mexico within its boundaries, established at three marine leagues from shore by Act of its First Congress on December 19, 1836. This claim and the rights so exercised were recognized and acquiesced in by the United States and other major nations of the world.

Thereafter, the terms of the annexation agreement between the United States and Texas recognized and preserved Texas' claim and its rights thereunder. The State of Texas, as successor to the Republic of Texas, not having ceded, transferred, or relinquished its claim or rights to the United States, has continued to assert and exercise them, subject to and without interference with those constitutional powers which the Federal Government possesses over these and all other lands beneath navigable waters within the United States. During this period of more than 100 years, the State of Texas, subject to and in full recognition of the aforesaid constitutional powers of the Federal Government, has continued to hold open, adverse, exclusive, and uninterrupted possession over the lands, minerals, and other things lying beneath the Gulf of Mexico within the original boundaries of the State, and has continued to exercise jurisdiction and control thereover without dispute, challenge, or objection by the United States. On the

(Continued on Page 578)

*March 1949 TEXAS BAR JOURNAL, pp. 113, 137.

Continuing Education for Lawyers

by JOHN E. MULDER, Philadelphia, Pa.
Director, Continuing Legal Education Committee

The average lawyer doesn't have, or doesn't take much time to keep himself up to date on the law, or on the "how to do it" aspects of his work. One easy way of making that possible is by the use of concisely written practical literature, literature of value on the library shelf and in connection with lecture courses, institutes, seminars, etc.

That literature is being conveniently supplied by the Committee on Continuing Legal Education of the American Law Institute collaborating with the American Bar Association, with headquarters at 133 South 36th Street, Philadelphia 4, Pennsylvania.

The Committee also assists state and local Bar associations and other lawyer organizations to provide continued training for lawyers throughout the country. Once the state and local organizations are set up, the Committee aids in providing lecturers, literature and advice on the conduct of lecture programs, institutes, etc., under the sponsorship of the state and local groups. A brochure, describing the work of the Committee in detail, is available upon request.

The Subscription Plan

In order to make the literature and the organization better known to the members of the Bar, the Committee announces a subscription plan, pursuant to which for an annual sum of \$10 per year, subscribers will be entitled to receive six publications on important subjects of the law. Separate copies of each pamphlet are available at \$2 per copy.

The content of the literature in the **First Series** is here described. It is contemplated that additional series will follow in succeeding years. Any subscriber already possessing one or more of the pamphlets will be entitled to receive a corresponding number of publications to be included in the second series.

First Series

Following are the pamphlets included in the **First Series**. The first three are available immediately; the remaining three will be mailed to subscribers early in 1950.

Legal Problems in Tax Returns, by Thomas P. Glassmoyer and Sherwin T. McDowell of the Philadelphia Bar. A 100-page text dealing in practical problem form with the problems confronting a lawyer who is called upon to prepare Federal Income Tax Returns of individuals. It is useful for a one-day institute on the subject but it is also a most helpful document for use in the lawyer's library. It is designed particularly to meet the needs of general practitioners but will also be valuable to lawyers experienced in tax work.

Lifetime and Testamentary Estate Planning, by Harrison Tweed and William Parsons of the New York Bar. A concise text, instructing particularly the general practitioner both as to the law and as to methods of planning the disposition of estates of clients, both *inter vivos* and testamentary. Tax as well as non-tax problems are included. An additional feature of this pamphlet is that it contains a selected group of forms of wills and trust instruments, made more useful because the forms are annotated with cross references to the main text.

The Drafting of Partnership Agreements, by John E. Mulder of the Philadelphia Bar and Marlin M. Volz of the University of Wisconsin Law School. This textual pamphlet follows the form of that mentioned above entitled "Lifetime and Testamentary Estate Planning." It contains sample forms of general and limited partnership agreements, discusses the law of partnerships briefly, based upon the Uniform Acts and contains extensive comments on the forms.

Labor Law and Labor Negotiations, by Marcus Manoff of the Philadelphia Bar. This is a practical guide to the general practitioner as to what labor law is and how to handle labor negotiations. It is complete and up to date.

Basic Accounting for Lawyers, by Barton E. Ferst of the Philadelphia Bar. This is a short text designed to instruct the average lawyer on basic principles of accounting so that he will be able to under-

stand the financial papers of his clients.

Price and Service Discriminations Under the Robinson-Patman Act, by Cyrus Austin of the New York Bar and S. Chesterfield Oppenheim of George Washington University Law School. This pamphlet deals with a subject of importance to every lawyer representing business enterprises whose activities cross state lines. Not many lawyers are aware of the importance of the subject.

Other Literature

Additional publications of the Committee, not included in the subscription plan, and literature in progress, are as follows:

Syllabus on Estate Planning, by George E. Cleary and William Parsons of the New York Bar. A detailed syllabus on tax and non-tax aspects of estate planning. \$0.75 per copy.

Basic Accounting for Lawyers, by Barton E. Erst. A detailed syllabus for a one-day lecture course (mimeographed). \$0.50 per copy.

Legal Problems of Small Businesses, by Leonard Sarner of the Philadelphia Bar. A detailed outline on organizational, operational and tax problems of small businesses (photo print). \$1.50 per copy. To be published in text form in 1950.

Bankruptcy and Arrangements, by Leon Forman of the Philadelphia Bar. An outline on proceedings in straight bankruptcy and arrangement proceedings under Chapter XI of the Bankruptcy Act (mimeographed). \$0.25 per copy. To be published in text form in 1950.

Additional literature on currently important subjects will be published from time to time.

S. W. Foundation Announces 5 Institutes

Five legal institutes of major consequence are being planned by the Southwestern Legal Foundation, Dallas, for presentation during the coming year.

President R. G. Storey, Dallas, has announced a taxation institute Feb. 10, 11, 1950; an institute on antitrust laws and pricing regulations March 24, 25; a labor law institute April 7, 8; a life insurance institute May 11, 12; and an oil and gas institute in the fall of 1950.

There will be registration fees for persons who are not members of the Foundation. For further information inquiries should be addressed to Gordon R. Carpenter, Executive Secretary, Southwestern Legal Foundation, Dallas 5.

Subjects to be covered follow:

Taxation, Feb. 10, 11

This institute will deal with federal taxation of family partnerships; tax problems involved in the sale of a business; federal taxation of carried and net profit interests in connection with oil and gas; recent federal tax legislation; pending federal tax legislation; and current problems of the Bureau of Internal Revenue in Tax Administration. Outstanding tax practitioners and representatives of the Bureau will speak.

Antitrust Laws, March 24, 25

This institute, of special interest to both the businessman and the lawyer, will present a rather comprehensive program on antitrust laws and price regulations, both state and federal. Representatives of the Attorney General of the United

States and of Texas, Federal Trade Commission, Interstate Commerce Commission, and other federal and state departments will discuss subjects including basing point prices, Robinson-Patman Act and all antitrust laws. Viewpoints of government, large and small business, the legal profession and university representatives will all be presented.

Labor Law, April 7, 8

This institute will deal with the latest decisions, trends and problems affecting management and labor.

Life Insurance, May 11, 12

This institute, of particular interest to the insurance executive and the insurance counsel, will deal with life insurance, its significance and history; pensions and pension trusts; group insurance; business insurance; non-forfeiture provisions and settlement options; taxes and life insurance, community property problems; investments; estate analysis and the position of life insurance in estate planning.

Oil and Gas, Fall of 1950

At this time the oil and gas library at the Legal Center will be formally dedicated. Specific topics for discussion will be announced later.

A. N. Moursund, San Antonio; Sam Neathery, Houston; Ira Butler, Fort Worth; Jeff D. Stinson, Dallas; and Ralph W. Yarborough, Austin, have been reappointed to the State Board of Law Examiners. Mr. Moursund is chairman of the board and H. P. Steinle, Austin, secretary.

Section-Committee Activities

Legal Education, Institutes

G. W. Parker Jr., Fort Worth, and Gordon R. Carpenter, Dallas, chairman and executive secretary, respectively, of the Legal Education and Institutes Committee, report that legal institutes will be held in Corpus Christi and Waco November 18, in Harlingen December 3, Austin December 9 and Longview December 10.

Tentative institutes have also been scheduled for Mercedes and Lubbock in February, Galveston in March and Bryan, Tyler and Amarillo in April. Houston will have an institute in May.

John R. Anthony, Houston, discussed the examination of abstracts when he spoke at the institute in Temple November 9, sponsored by the Bell-Lampasas-Mills Counties Bar Association. Mr. Anthony went into the mechanics of examination, the title opinion and the valid title objections of his subject.

R. N. Gresham, San Antonio, dealt with "Planning and Drafting Wills" when he spoke at the Temple Institute, and Josh H. Groce, San Antonio, discussed the preparation and trial of negligence cases from the standpoint of defendants. State Bar President Allen Crowley, Fort Worth, spoke at a banquet following the day's session.

J. V. Hammett, Lampasas, president of the Bell-Lampasas-Mills Counties Bar Association, reports that R. A. Kilpatrick, Cleburne, chairman of the Unauthorized Practice of Law Committee of the State Bar, discussed his committee's work.

Mr. Hammett also reports that following State Bar President Crowley's address all members of the Bell-Lampasas-Mills Bar in attendance unanimously voted to support the proposed \$8 Bar fee.

Speakers at the Corpus Christi institute November 18 will be Carlos Masterson, Angleton, who will discuss discovery, production of documents

and admissions, and Leo Brewer, San Antonio, whose subject is "Declaratory Judgments."

Scheduled for the Waco institute November 18 are Henry Strasburger, Dallas, Earl Cox, Houston, and Julius F. Franki, Austin. Mr. Strasburger's subject will be the preparation and trial of negligence cases from the defendant's standpoint, while Mr. Cox will discuss the same subject from the plaintiff's standpoint. Mr. Franki will deal with "Discovery, Production of Documents."

Criminal Law

Cecil Storey, Longview, chairman of the statewide committee recently appointed to suggest amendments to the Penal Code and Code of Criminal Procedure, reports that the committee had its first meeting in Austin October 21.

The committee instructed Secretary R. J. (Jack) Utecht, Austin, to write all district and county attorneys, district and county judges in Texas, members of the 51st Legislature, presidents of all local Bar Associations in Texas and members of the State Bar's Criminal Law Committee, requesting suggested changes and revisions of the Penal Code and Code of Criminal Procedure. Chairman Storey urges all persons contacted to reply at their earliest convenience and before January 15 if possible.

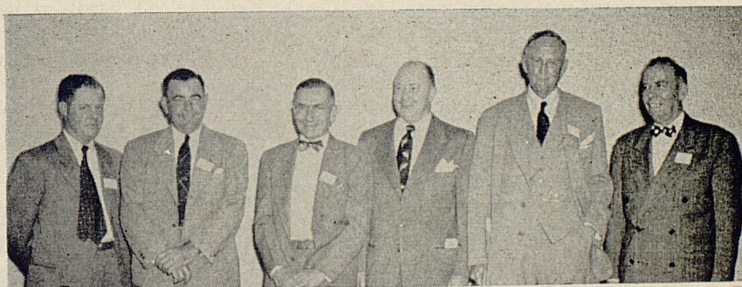
Mr. Storey explained that the committee has selected an able and experienced attorney with reference to the criminal laws to aid in digesting and assembling all information received from the various sources. It is then the committee's purpose to appoint subcommittees to study the various suggestions made and report to the committee as a whole their findings, conclusions and recommendations.

The next meeting of the committee will probably

The speakers and some of the lawyers attending the legal institute in Temple November 9 are shown in these two pictures. Upper picture, left to right, are J. V. Hammett, Lampasas, president of the Bell-Lampasas-Mills Counties Bar Association; Josh H. Groce, San Antonio; John R. Anthony, Houston; State Bar President Allen Crowley, Fort Worth; R. N. Gresham, San Antonio; and R. A. Kilpatrick, Cleburne.

Messrs. Groce, Anthony, Gresham and Kilpatrick spoke during the institute, while Mr. Crowley was the banquet speaker.

Lower picture, left to right, are John M. Alexander, Moody; Sylvester Lewis, Lampasas; M. M. White, Belton; Chester V. Crawford, Kilgus; J. J. Byrne, Lampasas; Harry Flentge, Gatesville; Jarrard Secest, Temple; George Carter, Marlin; and Wesley Dice, Belton.



be in January, Mr. Storey thought, as it is expected that the Governor will call the Legislature into session that month and many of the committee members are members of the Legislature. The committee discussed the magnitude and importance of the work intrusted to them and expressed the desire to go into the matter very carefully and not too hastily.

Mr. Storey thought it likely that it may be some time before the committee can have a report ready to submit to the Legislature.

In the meantime, this committee, through its chairman, suggests to any and all members of the Texas Bar or interested laymen that it will appreciate and give consideration to any suggestions from them pertaining to the matters covered in the resolution.

Suggestions should be sent to R. J. (Jack) Utecht, Secretary, Capitol Station, Austin.

The 51st Legislature passed H.C.R. No. 80, authorizing the Speaker of the House, Lieutenant-Governor, judges of the Court of Criminal Appeals and the Governor to appoint the committee to suggest amendments to the Penal Code and Code of Criminal Procedure.

Members of the committee appointed by the Speaker are Cecil Storey, Longview; Robert Casey, Houston; Tom Cheatham, Cuero; Eugene Williams, San Antonio; and Doyle Willis, Fort Worth.

Appointed by the Lieutenant-Governor were Howard A. Carney, Atlanta; R. A. Weinert, Seguin; Crawford Martin, Hillsboro; K. B. Corbin, Lamesa; and W. A. Shofner, Temple.

The Court of Criminal Appeals appointed D. B. Wood, Georgetown, and Dallas Scarborough, Abilene; and the Governor appointed William McCraw, Dallas; R. J. (Bob) Long, Austin; and Dan Jackson, Houston.

Junior Bar

Twenty-one attorneys attended the executive committee meeting of the State Junior Bar of Texas in Dallas October 8.

Kelley Smith, Tyler, reported that he was distributing literature from the Practicing Law Institute in order to stimulate wide participation in the program of continuing legal education.

Scranton Jones, Fort Worth, reported that the Fort Worth Junior Bar was stressing legal aid and codification of city ordinances as its current projects. Brien Dillon, Marvin Hanz and C. B. Wheeler reported on activities of the Junior Bars of Houston, San Angelo and Texarkana.

Charles O. Shields, Dallas, explained the program undertaken by the Dallas Junior Bar to emphasize a study of usury and relations with law students at Southern Methodist University.

Orrin W. Johnson and John Peterson reported on activities of the Harlingen and Amarillo Junior Bar organizations which are in the process of formation.

R. G. Storey Jr., Dallas, described activities of the Relations with Law Students Committee. He recently attended a meeting with Dean Page Keeton of the University of Texas Law School and other attorneys on this question. The committee is emphasizing the practical side of the law to law students by conducting tours of places

of legal interest and by attempting to obtain initial contact with law students upon their entrance into the profession.

E. Greer Hardwicke, Fort Worth, indicated that the legal aid program was functioning in a smooth manner in the large cities and cities with law schools, but that it would require a great deal of work to inaugurate a successful legal aid program in Fort Worth.

Next meeting of the executive committee will be in San Antonio Jan. 28, 1950.

Citations and Notices In Probate

Supplementing his discussion of *Mitchell v. Rutter* and the validating act as part of the second installment of his article, "Problems of Title to Real Estate Incident to Probate Proceedings," appearing in the October issue of the TEXAS BAR JOURNAL, John R. Anthony offers this further thought:

"If there is any question as to the applicability of Rule 101 to personal citations to be issued and served on minors 14 and over and on persons alleged to be of unsound mind as required by Article 4116 (in guardianship), then, to be absolutely safe in practice against direct attack, until the Supreme Court resolves the question, *either* (1) two personal citations must be issued and served, one being strictly in accordance with Rule 101, *and* another directed to the officer as per Rule 15 commanding him to summon or cite the minor or person alleged to be of unsound mind to appear and answer, etc., *or* (2) a combination form to satisfy both rules must be issued and served as done in Gonzales County, being first *directed to the officer* as provided by Rule 15, commanding him to summon John Doe, a minor over 14 (or a person alleged to be of unsound mind), to appear and answer, etc., by delivering to him a true copy of the following citation and notice, to wit:

"The State of Texas—To John Doe, a minor 14 years of age or over (or a person alleged to be of unsound mind, as the case may be): You are hereby cited to appear and answer, etc."

Allred, Connally Named

James V. Allred and Ben C. Connally, both Houston attorneys, have been sworn in as new federal district judges for the southern district of Texas.

Nominated by President Truman September 23, both were unanimously approved by the U. S. Senate October 12.

Judge Allred, 50, former Governor of Texas, previously served three years on the federal bench under an appointment by the late President Roosevelt.

Judge Connally, 39, a veteran of World War II, is the son of Senator Tom Connally.

In Chambers



We Learn

Bruce L. Miller is now engaged in the private practice of law at Hereford. Admitted to the Texas Bar in 1937, Mr. Miller was associated with the Houston law firms of Cutrer & Murfee and Latimer Murfee before the war. A combat intelligence officer for five years, Mr. Miller served in India, China and the Marianas with a B-29 air force group. Since the war he has taken post-graduate studies at Harvard Law School and was then associated with the New York City law firm of Clark, Carr & Ellis before returning to Texas.

* * *

In private practice at Lubbock since leaving the county attorney's office the first of the year, John Steele has offices at 204 Conley Building.

* * *

Eugene F. Liggett, formerly in practice in Brownsville, has opened offices in the Empire State Bank Building for the general practice of law in Dallas. Mr. Liggett was county attorney of Giles County, Tenn., prior to the war, and served in the Army Air Corps in the North African and Italian campaigns. At the end of the war, he was associated with the office of the Foreign Liquidation Commissioner in the Department of State as counsel in Rome.

* * *

An Assistant Attorney General of Texas since Jan. 1, 1947, Artie Stephens resigned November 1 to resume the private practice of law in Sulphur Springs. Mr. Stephens was county attorney of Hopkins County prior to his entrance in the Navy during World War II.

* * *

William N. Hensley, criminal district attorney of Bexar County, has announced the appointment of Leo C. Tynan Jr. and Richard J. Woods as assistant district attorneys. They replace Bert W. Thompson and Charles E. Biery, who recently resigned to enter private practice in San Antonio. Mr. Tynan is a 1949 graduate of St. Mary's University Law School. Mr. Woods was formerly associated with the Guaranty Title Company in San Antonio.

* * *

After about three and a half years service in the motor transportation division of the Railroad Commission's office in Austin as a legal examiner, Jas. W. Bassett has been transferred to the oil and gas division as senior examiner, Rule 37, where his work will have to do with oil and gas matters. Mr. Bassett was county attorney of Hunt County six years and then practiced law in Amarillo before moving to Austin.

George E. B. Peddy has moved his offices from the Bankers Mortgage Building to 1124 Commerce Building Addition in Houston. Mr. Peddy will continue to engage in the private practice of law.

* * *

Howell J. Mueller, Arthur W. Mueller and Henry Grun, heretofore practicing law under the firm name of Mueller & Mueller, have announced that their former associate, Pat Legan, has now become a partner under the firm name of Mueller, Mueller, Grun & Legan. Offices of the firm remain at 1404 Alamo National Building, San Antonio.

* * *

An August 1949 graduate of the University of Texas Law School, George R. Killam Jr. has opened his offices at 2501½ Avenue S for the general practice of law in Snyder.

* * *

Ben L. Cox and Bryan Bradbury, members of the Abilene firm of Cox & Bradbury, announce the association of Homer G. Montgomery in the general practice of law at Abilene. Mr. Montgomery received his LL.B. degree from the University of Texas and was admitted to the Bar in May 1949. An infantry sergeant during World War II, Mr. Montgomery served in the European theatre.

* * *

Raymond P. Elledge Jr. is practicing law in Houston with the firm of Elledge & Elledge, officed in the Second National Bank Building. Mr. Elledge received his LL.B. degree from the University of Texas Law School in January 1949 and was admitted to the Bar in May.

* * *

George M. Luhn, San Antonio attorney, has moved his offices from the South Texas Building to 501 Milam Building.

* * *

Joe J. Fisher and Joe H. Tonahill, members of the firm of Fisher & Tonahill, announce the association of Ward W. Markley in the general practice of law at Jasper.

* * *

Walter Ely, former Texas attorney, is a partner in the Los Angeles, Calif., law firm of Betts, Ely & Loomis. A law graduate of the University of Texas, Mr. Ely was associate editor of the *Texas Law Review* and a member of Phi Delta Phi legal fraternity. He was an Assistant Attorney General of Texas before entering the U. S. Marine Corps in 1941. Before his discharge in 1944, Mr. Ely was awarded a silver star for action in the Guadalcanal campaign. He received his Master of Laws degree from the University of Southern California.

Harold L. Kennedy, former Washington attorney for the Mid-Continent Oil & Gas Association, has joined the legal staff of the Ohio Oil Company's Houston division, according to an announcement by **A. M. Gee**, general counsel for the company. In addition to his general legal duties in Houston, Mr. Kennedy will be in charge of the Washington office of Ohio Oil. A native of Palestine, Texas, Mr. Kennedy was graduated from the University of Texas Law School and admitted to the Bar in 1938.

* * *

Chas. G. Lyman, **Sam Pittman**, **Tom Pogue** and **Phil Schraub** have formed the firm of Lyman, Pittman, Pogue & Schraub for the general practice of law in Corpus Christi. Mr. Lyman and Mr. Schraub are both former assistants to the district attorney, while Mr. Pittman was a member of the firm of Pittman & Pope. Mr. Pogue was trial lawyer for the city attorney.

* * *

An assistant to District Attorney **Will Wilson**, Dallas, since Jan. 1, 1947, **Tom C. Unis** has resigned to join the Dallas law firm of Strasburger, Price, Holland, Kelton & Miller, officed in the Gulf States Building. Mr. Unis received his law degree from the University of Texas in 1941, served four years in the Navy during the war. A naval lieutenant, he was attached to the staff of Vice Admiral **G. E. Murray**, air commander for the Pacific, and served aboard the aircraft carrier *Nassau*.

Joe Spurlock, Fort Worth attorney, has announced the association of **Homer N. Shelton**, who received his law degree from Baylor University Law School last June. Mr. Shelton served with the U. S. Marine Corps three years during the war. Mr. Spurlock's offices are at 1105 Electric Building.

* * *

An August 1949 graduate of the University of Texas Law School, **W. J. Ehlert** has begun his law practice in Brenham, where he has offices in the First National Bank Building.

* * *

John Lawhon, who resigned recently from the Texas Liquor Control Board, has resumed the private practice of law in Troup.

* * *

Edward Elliott has opened offices in the Glenn Building for the general practice of law at Center. Mr. Elliott attended Stephen F. Austin College in Nacogdoches until he entered the Army in 1942. Upon his discharge in 1946, he entered Baylor University, where he studied law. He received his law degree and passed the Bar examinations in July 1949.

* * *

U. S. Attorney **Warren G. Moore**, Tyler, has announced the appointment of **George French** of Daingerfield, county judge of Morris County, as a special U. S. assistant district attorney. Judge French has previously served as county attorney and also district attorney of Morris County. He is a graduate of Texas Christian University and Cumberland University, Lebanon, Tenn.

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Joe Bailey Humphreys and **W. D. Julian Jr.** have formed the firm of Humphreys & Julian for the general practice of law in Crockett. Offices are in the Millar & Berry Building. A former city attorney and county attorney for Crockett and Houston County, Mr. Humphreys has practiced at Crockett since 1935. Prior to that time he was with the Dallas law firm of Bailey, Nickels & Bailey. Mr. Julian received his B.B.A. and LL.B. degrees from Baylor University, and he served with the Navy during World War II.

* * *

William S. Jameson of El Paso has resigned as a member of the 51st Legislature to move to San Saba, where he is a partner of Representative **Reuben Senterfitt** in the general practice of law.

* * *

District Attorney **Will Wilson**, Dallas, has announced the resignation of Assistant District Attorneys **Warren Paul New** and **John Tinnerello**. Mr. New joined Mr. Wilson's staff after his graduation from Southern Methodist University Law School last year. He is opening his own offices in Denver City, Yoakum County, for the private practice of law. Mr. Tinnerello, who had served with Mr. Wilson since Jan. 1, 1948, has entered private practice in Dallas.

* * *

W. M. Taylor Jr. became judge of the newly-created 134th District Court in Dallas October 17, when his father, Supreme Court Justice **W. M. Taylor**, administered the oath of office to him. He was engaged in private practice in Dallas when the late Governor **Jester** appointed him to the district court.

* * *

Gen. Robert J. (Bob) Smith, president of Pioneer Air Lines since early 1946, practiced law in Dallas with the firm of **Clark & Rice** from 1933 until the outbreak of World War II, when he went to Washington to negotiate the Air Transport Command contract with the nation's commercial airlines. He also became affiliated with Braniff Airways as executive vice-president in October 1937. Gen. Smith later volunteered for active duty, was commissioned a lieutenant colonel in the ATC, Washington. He was sent to North Africa and later commanded bases from Tripoli to Karachi, India. Discharged early in 1946, he joined Pioneer as its president and at the same time assumed command of the 309th Bomb Division Reserve, one of the nation's four such Air Force divisions. Gen. Smith is a member of the Dallas and American Bar Associations and the State Bar of Texas.

* * *

R. Stansell Clement, Lamesa attorney, has announced the association of **John H. Splawn Jr.** in the general practice of law at Lamesa. Mr. Splawn taught in a vocational high school in Alaska two years before entering George Washington University Law School in Washington, D. C., where he received his LL.B. degree in 1942. During the war he served with General Patton's 3rd Army in Europe. After separation from service in 1946, he was elected county judge of Wise County, serving in that capacity for two years.

James E. Nugent has opened his offices in the Davis Building for the general practice of law at Kerrville. Mr. Nugent holds a mechanical engineering degree and a law degree from the University of Texas. During the war he was a Navy pilot, and he worked as experimental designer for North American Aviation prior to the war. After his discharge, he was employed as an experimental test engineer for Packard Automotive, marine division, before resuming his studies at the University. He was admitted to the Bar last summer.

* * *

Bryce A. Taylor has opened offices in the Yarbrough Building for the general practice of law at Burnet. Mr. Taylor recently returned from two and a half years employment with an oil company in Colombia and Venezuela. He received his law degree from the University of Texas in 1946.

* * *

Arthur Holland has opened offices in the First National Bank Building at Belton, where he is engaged in the general practice of law. For the past four years Mr. Holland has been with the judge advocate section at Camp Hood, administering the Federal Torts Claims Act and doing some court-martial work.

* * *

Three recent graduates of the University of Texas Law School have opened offices in San Angelo for the general practice of law. **Curt F. Steib** and **Truett Smith** both have offices in the Central National Bank Building, and **Francis Culhane** has offices in the McBurnett Building. Mr. Steib served in the U. S. Coast Guard from 1938 to 1946, including three years during the war on convoy duty on the North Atlantic. He graduated with honors from the University Law School last August. Mr. Smith served two years in the Army during the war, including 14 months in France and Germany. He also graduated from the UT Law School in August. Mr. Culhane served in the Army two and a half years, including eight months in France and Germany. He graduated from the University Law School last May.

* * *

Royce Adkins, a 1949 graduate of the University of Texas Law School, has opened offices in the Oates Building at Haskell, where he is engaging in the general practice of law.

* * *

Luke E. Robinson is now associated with **Sam K. Hocker** in the general practice of law at Clarksville, where they have offices in the Red River National Bank Building. Mr. Robinson was attending the University of Texas Business Administration School when he entered the Army in 1942. During the war he saw service in the European theatre as a field artilleryman. Upon his return, he entered the University of Texas School of Law, and he graduated last August.

* * *

Nueces County Attorney **James C. Martin** has announced the appointment of **Charles R. Porter Jr.** as an assistant county attorney, following the resignation of **Faires P. Wade**. Mr. Porter holds B.B.A. and LL.B. degrees from the University of

Texas. During the war he was skipper of an LCT in the Pacific theatre for 19 months. He has practiced law in Corpus Christi since his admission to the Texas Bar early in 1949. W. R. Anderson Jr. is also an assistant county attorney under Mr. Martin.

* * *

H. S. Harris Jr. and Perry D. Pickett have formed a partnership for the general practice of law at Midland, where they have offices at 305 Leggett Building.

* * *

Rex G. Baker Jr. has been admitted to partnership in the firm of Berry, Richards & Baker, officed in the Commerce Building at Houston.

* * *

Calvin B. Garwood and W. C. Crow Jr. have opened offices at 1905 Second National Bank Building for the general practice of law in Houston.

* * *

Charles Albidress Jr. has announced the association of John J. Herrera in the general practice of law in Houston, where they have offices at 740 Scanlan Building.

* * *

Elbert Roberts and John A. Hugghins are members of the new firm of Roberts & Hugghins. Offices are at 412 Scanland Building, Houston.

* * *

State Representative John B. McDonald has opened offices in the Municipal Building for the general practice of law at Palestine. A law student in the University of Texas when he was elected to the Legislature, Mr. McDonald passed the Bar examinations in August. During World War II, he served in both the Merchant Marine and Navy.

Labor Law

International Union, United Mine Workers of America v. United States of America,F. 2d, (C.C.A.D. of C. 1949), cert. denied U. S. (Nov. 7, 1949).

The Union (United Mine Workers of America) and the companies (numerous coal operators) agreed, among other things, to create a welfare and retirement fund, payments to same to be by the coal operators and operated by three Trustees.

In short, the Trustees could not agree upon the operation of the fund. One Trustee resigned.

John L. Lewis, as president of the Union, notified two representatives of the operators that a dispute concerning the pension fund had arisen and asked them to settle the dispute by collective bargaining. Said representatives replied, in substance, that individually they had no authority and suggested all signatories to the collective bargaining contract be contacted.

On March 12, 1948, Lewis wrote the officers and members and all the local unions involved to the effect, that the operators had dishonored the contract and defaulted under its provisions. The production of coal decreased gradually in the next 8 days from 2,226,000 tons to 344,000 tons. And 224,371 miners stopped work in a five-day period.

The President of the United States, on March 23, acting under the authority of the Labor Management Relations Act of 1947, created a Board of Inquiry. Upon obtaining the report by said Board the President directed the Attorney General to petition in the name of the United States to enjoin the continuance of the strike.

The Attorney General, on April 3, 1948, filed a complaint for injunctive relief, requesting that the Union be enjoined from "continuing the strike now in existence," etc.

A temporary restraining order issued the same day, directing that the Union be restrained from continuing the strike now in existence.

On April 7 the Government filed a petition for a rule to show cause why the Union and Lewis should not be punished for civil and criminal contempt for violation of the temporary restraining order. A hearing was set on April 14.

Prior to April 14, Senator Bridges was selected as the third Trustee. On April 11, the three Trustees met and began consideration of the pension plan.

Lewis Sent Telegrams

On April 12, Lewis sent two telegrams, the first saying in part: "Your voluntary cessation of work should now be terminated." The second said: "Pensions granted. The agreement is now honored."

Following the hearing which began on April 14, the court found the defendants guilty of criminal contempt and fined the Union \$1,400,000 and Lewis \$20,000.

The only question involved on appeal was whether "people must obey a temporary order issued by a court which seeks to maintain conditions until it can determine its authority in the dispute."

The court *Held*, that "an order issued by a court with jurisdiction over the subject matter and the persons, in a case within its general powers, must be obeyed until reversed by orderly and proper proceedings."

The Union argued that it was not guilty of contempt because there was no evidence of a strike or an authorized stoppage of work. The court answered that the record contained substantial evidence in support of the trial court's finding that Lewis and the Union had wilfully violated the temporary restraining order. Namely, that Lewis and the Union did not insist that the miners return to work on April 5, when the restraining order was served upon them, but rather

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on April 12, when the dispute was settled satisfactorily to Lewis and the Union.

The court emphasized that the Union and Lewis were not convicted for causing the walkout. The conviction herein was for deliberately failing to comply with the court's temporary restraining order of April 3.

The Union argued that it could not be held liable for the acts of the miners in stopping work. The court answered that the evidence was overwhelming that the walk-out was concerted, but, regardless, the Union was held responsible for failing to exercise its powers to cause its miners to resume work.

The Union and Lewis argued that the fines were excessive. In answer to this contention, the court pointed out that only a year prior they had been fined half the amount herein for similar conduct.

The Supreme Court of the United States in denying certiorari reaffirms the rules it laid down previously in *United States v. Mine Workers*, 330 U. S. 258, 12 L. C. ¶ 51, 239 (1947).

* * *

Leroy Graham, et al. v. Brotherhood of Locomotive Firemen and Enginemen,U. S., 17 L. C. Par. 65,399 (Nov. 7, 1949) (Op. by J. Jackson).

Twenty-one Negro firemen brought this suit alleging, in substance, that the Brotherhood (a white man's union) was their sole collective bargaining representative but, that notwithstanding, the Brotherhood negotiated agreements with the southern railroads which, solely because of their race, deprived them of rights and job assignments to which their seniority would entitle them. The complaint prayed for a preliminary injunction issue, enjoining the Brotherhood against any further discriminatory practices.

The trial court entered an order granting the injunctive relief.

Venue Improperly Laid

On appeal the Circuit Court of Appeals for the District of Columbia held that venue was improperly laid in the District of Columbia, reversed the trial court's order, and in remanding the case, ordered that it be transferred to the Northern District of Ohio, 175 F. (2d) 802.

The Supreme Court of the United States reversed the judgment of the Court of Appeals, reinstated the injunctive order of the trial court and remanded the cause to the trial court for further proceedings consistent with its opinion.

On the venue question the court held that a party asserting a right under the Constitution or federal laws may invoke either the general venue statutes or the special District of Columbia statutes which permits an action to be maintained if the defendant is "found" within the District.

The Brotherhood maintained that the Norris-LaGuardia Act, 29 U. S. C. Sec. 101 et seq., deprived the District Court of jurisdiction to grant relief by injunction. In overruling this argument the Supreme Court in reliance on *Virginia R. Co. v. System Federation*, 300 U. S. 515, 1 L. C. Par. 17,022 (1937), held "that the Norris-LaGuardia Act did not deprive federal courts of jurisdiction to compel compliance with positive mandates of the Railway Labor Act, 45 U. S. C.

Sec. 151 et seq., enacted for the benefit and protection, within a particular field, of the same groups whose rights are preserved by the Norris-LaGuardia Act.

The Brotherhood insisted that the *Virginian Case*, *supra*, was distinguishable on its facts in that it did not involve a labor dispute. The Supreme Court rejected the Brotherhood's invitation to so limit the term, "labor dispute," and also to hold now that a labor dispute was not involved in the *Virginian Case*, *supra*.

In its opinion the court also reminded that in *Steele v. Louisville & Nashville R. Co.*, 323 U. S. 192, 9 L. C. Par. 51,188 (1944) the court's position on the effect of the Norris-LaGuardia Act in cases of this kind was made clear, though the issue was not specifically passed upon.

Court Reaffirmed Principle

The Court reaffirmed the principle of the *Steele Case*, *supra*, concluding that the Railway Labor Act imposes upon the Brotherhood the duty to represent all members of the craft without discrimination and invests a racial minority of the craft with the right to enforce that duty.

This case settled once and for all the effect of the Norris-LaGuardia Act upon the right to obtain injunctive relief under the Railway Labor Act when the court said as follows:

"If, in spite of the *Virginian*, *Steele* and *Tunstall Cases*, *supra*, there remains any illusion that under the Norris-LaGuardia Act the federal courts are powerless to enforce these rights, *we dispel it now*. The District Court has jurisdiction to enforce by injunction petitioners' rights to non-discriminatory representation by their statutory representative."
—Edited by WARNER F. BROCK of Houston.

—O—

International Bar to Meet In London Next July

The third conference of the International Bar Association will be held in London July 19-26, 1950, Amos J. Peaslee of New York and Washington, secretary general, announced recently.

Host organizations will be the Law Society of England and the General Council of the Bar of England.

Topics included on the program are the constitutional structure of the United Nations; international justice; conflicts of laws in the field of divorce decrees, laws of succession and the laws of commercial instruments; legal problems in connection with international economic cooperation; patents and trademarks; international fiscal law; international criminal law; the character and scope of the rights asserted or exercised by states in the Western Hemisphere over coastal waters and appurtenant subsoil, and others.

The 1948 conference was held at the Palace of Peace in The Hague.

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Association Activities

Abilene Attorneys Hear Brooks On 'Small Claims Courts'

ABILENE, Oct. 1. Maurice Brooks, Abilene attorney, spoke to members of the Abilene Bar Association on "Small Claims Courts." President Dallas Scarborough introduced the speaker, and R. C. Grisham was in charge of arrangements for the luncheon meeting. Attorneys from Baird, Cross Plains, Hamlin, Rotan, Anson, Stamford, Winters, Ballinger and Albany attended.

Kilpatrick, Adler, Stahl Speak To Bell-Lampasas-Mills Bar

TEMPLE, Nov. 16. R. A. Kilpatrick of Cleburne, chairman of the Unauthorized Practice of Law Committee of the State Bar of Texas, spoke to members of the Bell-Lampasas-Mills Bar Association. Melvin F. Adler of Fort Worth also discussed methods of preventing the unauthorized practice of law. Elmer Stahl of San Antonio discussed work being accomplished by the San Antonio Bar Association along that line. Vice-President Joe Carroll presided, and guests included L. M. Stinnett of Gatesville, George McCall of Weatherford and William C. Church of San Antonio.

Robert S. Vance Elected President Bowie County Bar Association

TEXARKANA, Sept. 29. Robert S. Vance was unanimously elected president of the Bowie County Bar Association, succeeding Judge Herbert Line. H. H. Taylor was unanimously elected vice-president, and Stuart Nunn, secretary-treasurer.

Dallas Lawyers Hear Winters On Legal Aid Program

DALLAS, Nov. 19. Glenn R. Winters of Ann Arbor, Mich., spoke to members of the Dallas Bar Association on "Legal Aid and the Legal Profession." Mr. Winters is secretary-treasurer of the American Judicature Society.

Nov. 12. Felix Atwood, Dallas attorney, addressed members of the Dallas Bar on "Tax Savings through Living and Testamentary Dispositions of Property."

Nov. 5. Land Commissioner Bascom Giles discussed the land program in Texas when he spoke to members of the Dallas Bar. He especially dealt with statutes concerning public lands in Texas, and he answered questions from his audience at the conclusion of his address.

Oct. 29. District Judge Sarah T. Hughes, Dallas, discussed the juvenile court, its methods of

operation and what lawyers can do to assist in its success, when she spoke to members of the Dallas Bar.

Dallas Criminal Lawyers Hear Judge Beauchamp Speak

DALLAS, Oct. 20. Judge Tom L. Beauchamp of the Court of Criminal Appeals was guest speaker at a luncheon meeting of the Dallas County Criminal Bar Association. He praised the association "for being frank in your purpose to lead yourselves out of whatever groove others have placed you in." Judge Beauchamp said that criticism of court decisions which are based on so-called legal technicalities is ill-founded. "Decisions can't be based on public sentiment," he said. "We've got to have rules of law and we've got to follow them. My idea of a criminal lawyer," Judge Beauchamp said, "is a man who knows enough law to go into a courtroom and try a case and who has the ability to stand up and defend the position he takes."

El Paso Lawyers Hear Davis, Elfers

EL PASO, Oct. 11. H. A. Davis, assistant chief of the El Paso Fire Department, told members of the El Paso Bar Association that Americans pay an annual toll in lives by fire four times greater than that exacted by polio without making a concerted effort to remedy the situation. E. B. Elfers, El Paso Bar president, cautioned members of the dangers attendant to lifting of rent control in El Paso and urged attorneys to consider the public welfare and band together if the situation tends to get out of hand with the ending of rent control.

Broadfoot Discusses Continuance At Fannin County Bar Meeting

BONHAM, Sept. 29. Judge A. S. Broadfoot spoke on "Continuance in Criminal Cases," when he spoke to members of the Fannin County Bar Association. President H. A. Cunningham presided, and A. L. McRae was program chairman. Gene Stone was appointed to arrange the next monthly meeting.

Miss Spiller Elected President Houston Federal Bar Chapter

HOUSTON, Nov. 2. Lou Nora Spiller was elected president of the newly-organized Houston chapter of the Federal Bar Association. Harry J. Bivin was named vice-president and James L. Rothchild, secretary-treasurer. The organization is open to attorneys who are or have been employed by the federal government.

*Fort Worth Junior Bar Hears
Smith on Bankruptcy*

FORT WORTH, Nov. 10. Glenn Smith, referee in bankruptcy for the northern district of Texas, spoke to members of the Fort Worth Junior Bar Association on "Federal Bankruptcy Procedure." President Scranton Jones appointed Beale Dean public relations chairman, and announced that speakers have been scheduled to discuss specialized fields of law during the next few months.

*Galveston Attorneys Urge
New Courthouse*

GALVESTON, Oct. 19. Members of the Galveston County Bar Association unanimously endorsed a committee report calling for a new courthouse. The report was submitted by Louis M. Gernsbacher, chairman of the committee appointed to study the question. Serving with him were Owen D. Barker, Louis J. Dibrell, W. E. Greer, E. H. Thornton Jr., Dudley W. Peterson and James A. Piperi. President Donald M. Markle asked the committee to continue to represent the Bar Association in cooperation with the Galveston Planning Group in furthering the courthouse bond issue.

*Supreme Court Judges Griffin, Harvey
Guests at Gray County Bar Banquet*

PAMPA, Oct. 27. Supreme Court Associate Justices Meade F. Griffin and Ralph H. Harvey were honor guests at a banquet given by the Gray County Bar Association. Other guests included attorneys and their wives from Amarillo and other Panhandle cities. President Curtis Douglass introduced the Supreme Court justices, both of whom spoke. Approximately 150 persons attended the banquet.

*Houston Bar Honors Allred, Connally
With Testimonial Banquet*

HOUSTON, Nov. 3. Six hundred people attended a banquet sponsored by the Houston Bar Association in honor of James V. Allred and Ben Connally, both of whom were recently appointed to federal judgeships in the southern district of Texas. Justice Joseph C. Hutcheson Jr. of the U. S. Fifth Circuit Court of Appeals was main speaker, and President Leon Jaworski presided. Charles I. Francis introduced Judge Allred and Albert P. Jones introduced Judge Connally.

*Flores, Mandel, Fitzgibbon
Elected by Laredo Bar*

LAREDO, Sept. 25. Francisco J. Flores was elected president of the Laredo Bar Association, succeeding Elmore H. Borchers. Max A. Mandel was elected vice-president and John E. Fitzgibbon was elected secretary. Guest speaker at the meeting was Herbert Petry, Carrizo Springs attorney, who spoke on the work of the United Nations. Harold J. Dean of Carrizo Springs was also a guest.

*Lubbock Bar Endorses Court,
Schedules Legal Institute*

LUBBOCK, Oct. 1. Members of the Lubbock County Bar Association unanimously authorized a committee to complete its draft of a bill calling for a Lubbock County Court-at-Law. George Berry is chairman of the committee and appointed to serve with him were James Milam, C. L. Harris, John Lee Smith and G. H. Nelson. Members also voted to sponsor a legal institute in Lubbock December 10. President George W. McCleskey appointed Roy Bass chairman of a committee to make plans for the institute.

*Fred Chandler Elected President
Mitchell County Bar*

COLORADO CITY, Oct. 17. Fred C. Chandler was elected president of the Mitchell County Bar Association, succeeding John M. Worrell in the office. John Moore was named vice-president and George Leonard was elected secretary-treasurer. Judge A. S. Mauzey presided over the meeting.

*Neel Discusses Land Titles
At Nueces Bar Meeting*

CORPUS CHRISTI, Oct. 8. C. B. Neel, Corpus Christi attorney, told members of the Nueces County Bar Association that land titles is the most fascinating branch of the law. He discussed in detail "How to Examine an Abstract," and pointed out that half of the land in Nueces County would belong to Mexicans if it were not for the statute of limitations. President C. Burt Potter presided over the meeting, which was arranged for by Program Chairman Cecil E. Burney.

*San Antonio Lawyers Hear
Spears on Advertising*

SAN ANTONIO, Oct. 31. Adrian Spears, chairman of the public relations committee, spoke on "Institutional Advertising by Bar Associations," when he addressed fellow members of the San Antonio Bar Association. Mr. Spears and his committee have made a six-months study of the subject and he presented their findings to the association.

Sept. 26. Dr. Tate Miller, Dallas, immediate past president of the Texas State Medical Association, revealed "A Doctor's View of the Lawyer," when he addressed members of the San Antonio Bar Association.

*Jerry Giesler Honored
By Wichita Falls Bar*

WICHITA FALLS, Nov. 19. Jerry Giesler, well-known Los Angeles, Calif., attorney, was guest of honor at a reception and banquet attended by 250 members of the Wichita Falls County Bar Association and their guests. Mr. Giesler gained nation-wide fame by successfully defending Hollywood stars Charlie Chaplin and Errol Flynn. The program was arranged by J. W. McCormick, Frank Ikard and Edgar Mann. All former members of the Wichita Bar and lawyers in that area were invited to attend.



Insurance Decisions



Standard Accident Insurance Company v. Skidmore (Civil Appeals, Texarkana) 222 S.W. 2d 344 (writ refused).

This is an interesting workmen's compensation case involving the extra territorial provisions of the Workmen's Compensation Act of Texas. The facts reveal that Skidmore was a workman employed by the Oklahoma Contracting Company to lay pipelines for various concerns. He was first employed at Winnsboro, Texas, in 1947, and later worked at various places in Texas from time to time. The work for the company was intermittent and there would often be a period of time between the various jobs caused by the company having to move its machinery from one place to another.

The company moved its operations to the State of Arkansas and Skidmore went to Arkansas in November and reported to work. After he had worked in Arkansas for about a month, he sustained accidental injuries while in Arkansas. Following the injury, it appears that Skidmore's employer reported to the Arkansas Workmen's Compensation Commission the fact of claimant's injury. This action on the part of the employer was done without the knowledge of Skidmore. The Arkansas Commission took jurisdiction of the claim and made an award of 12 weeks at \$20.00 per week, which award was paid by the insurance company.

The record revealed that Skidmore did not file a claim with the Arkansas Commission nor did he authorize anyone else to file it for him. He received the check from the insurance company at his home in Texas from the insurance company at Dallas, Texas, and it was cashed by him in Texas. Within the time required by law, Skidmore filed his claim with the Texas Industrial Accident Board, which Board took jurisdiction of his claim and made its award.

Held: Under the circumstances shown, no election was made by Skidmore so as to bind him by the Arkansas Commission's award and prevent him from presenting his claim before the Texas Industrial Accident Board. The Court further held that Skidmore did not lose his status as a Texas employee under the circumstances revealed. Judgment awarding compensation was affirmed.

* * *

McDonald v. Alamo Motor Lines (Civil Appeals, San Antonio) 222 S.W. 2d 1013.

Plaintiff sued the Alamo Motor Lines for damages on account of injury to his right hand and arm, alleging that his right hand and arm had been damaged to such extent that he does not have normal control of the movements of said hand and fingers and cannot write normally. Upon the trial, McDonald testified that he was an insurance solicitor engaged in the business of selling life, health and accident insurance and that after his injury, he was severely handicapped in making out applications for insurance, as his hands bothered him so much he could not write.

It was developed that McDonald carried a

health and accident policy with his employer, American Bankers Life Insurance Company. He made out a proof of loss upon the policy by filling in a form in his own handwriting and also wrote by hand several letters to the insurance company regarding the matter. These instruments, as well as a specimen of McDonald's handwriting made prior to the time of the injury, were offered in evidence of Alamo Motor Lines "for impeachment purposes."

The question arose as to whether or not these instruments were rendered inadmissible because of their tendency to inform the jury of the fact that McDonald carried health and accident insurance, which was an irrelevant matter insofar as the issue of liability as between the parties was concerned.

Held: The issue of McDonald's ability to write after the accident was material, and the mere coincidental circumstance that the written instruments offered related to insurance did not make them unavailable for impeachment purposes. The Court also held that where the matter of insurance was not wilfully and improperly inserted into the case and no motion for mistrial is made at the time, no reversible error is shown.

* * *

Little Rock Furniture Manufacturing Company v. Dunn (Supreme Court) 222 S.W. 2d 985.

This was a suit growing out of the collision between an automobile and a parked truck at night. One of the issues involved "proper lookout" and the Court defined that term in his charge as meaning such a lookout as an ordinarily prudent person would have kept under the same or similar circumstances. Following this definition, the Court submitted the issue as to whether or not the motorist failed to keep a proper lookout. This issue was followed by one inquiring whether or not such failure to keep a proper lookout constituted negligence.

The Supreme Court held that where the Court had defined the term "proper lookout" as he did that it then became unnecessary to submit the following issue as to whether or not such failure constituted negligence since the finding on the main issue, in the light of the definition given, amounted to a finding of negligence.

This case also involves an interesting point concerning conflict in jury's findings. When the verdict was returned, the trial court called counsel for both parties to the bench and asked them to tell him whether, in their opinion, there was any conflict in the answers of the jury's verdict. Whereupon, both attorneys stated that they did not believe that there were any conflicts. The Court received the verdict and discharged the jury.

On appeal, the appellant complained of conflicts in the jury's verdict. The Court of Civil Appeals (218 S.W. 2d 527) held that the counsel for appellant had waived the conflict by his action in advising the Court that there were no conflicts. However, the Supreme Court held that this action on the part of the Court of Civil

Appeals was not correct, using the following language:

"We do not hold, however, that in a case of a fatal conflict in answers the parties can waive the conflict. The law seems to be established that such a conflict can not be waived by the parties and that a judgment on a verdict containing such a conflict must be set aside."

* * *

Western Union Telegraph Company v. Hinson (Civil Appeals, Amarillo) 222 S.W. 2d 636.

In this case, complaint was made of the failure of the trial judge to include the element of "new and independent cause" in his definition of "proximate cause." There was no evidence of any act or omission of any agency outside the plaintiff and the defendant which contributed to cause the injury.

Held: That the evidence did not raise the issue of new and independent cause or any element thereof. The controlling issues in this case must be determined wholly by the acts or omissions of the parties to this suit or their agents. There were no outside agencies operating to cause the injuries about which appellee complains. It has been held that the acts or omissions of either party to an injury suit such as this cannot raise the issue of a new and independent cause. Such can be raised and attributed only to some outside agency operating to cause such injury.

* * *

Travelers Insurance Company of Hartford, Connecticut v. Hobbs (Civil Appeals, San Antonio) 222 S.W. 2d 168.

This was a workmen's compensation case brought by beneficiary of deceased policeman killed by an automobile on a highway near Corpus Christi, Texas. The facts reveal that Robert L. Hobbs, a City Policeman, employed by the City of Corpus Christi, and his wife were walking arm in arm on Horner Road on the night of November 25, 1947. Mrs. Hobbs was going to the grocery store and her husband was either on the way to the store or on the way to the Police Station. The evidence showed that he was off duty at the time of the accident but there was also evidence that the Police Department had a rule which provided that while patrolmen were technically off duty an officer was not relieved from taking proper action if the occasion arose requiring same. While the man and his wife were walking down the road, he was struck by an automobile and killed. Immediately before he

was struck by the car, Hobbs pushed his wife into water in the drainage ditch on the side of the road.

Held: That the driver of the automobile which struck Hobbs was violating the law in driving on the wrong side of the road and also driving at an excessive rate of speed. A presumption will arise that the police officer will do his duty and that the fact that the officer pushed his wife into the water is evidence of the fact that he not only had heard the car but realized the great danger that existed and that he pushed his wife into the water to prevent her from being struck by the automobile. This would be appropriate action for a police officer to take under the circumstances and the fact that the person pushed in this instance happened to be his wife did not prevent such action from being that of a police officer in the course of his employment. Recovery allowed by the trial court was affirmed.

—Edited by CLAUDE WILLIAMS of Dallas.

○

Attorney Wanted

Attorneys between the ages of 35 and 50 interested in practicing in West Texas are requested to communicate with State Bar Secretary Wm. J. Park, Austin.

There is only one active attorney in the county, which has a population of about 10,000, and Mr. Park has been requested to forward names of attorneys who may be interested.

○

Shivers Honored

Governor Allan Shivers received his first honorary degree since he became chief executive of Texas last summer when East Texas Baptist College at Marshall bestowed the degree of Doctor of Laws upon him October 24.

Dr. H. D. Bruce, president of the college, conferred the honor.

○

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Mineral Law



Robert v. Swanson (Eastland C.C.A.) 222 S.W. 2d 707.

An oil and gas lessee granted an oil payment to A. G. Swanson, being in the form of a grant of 1/16 of 7/8 of the oil produced, saved and sold until the grantee had received the sum of \$90,000.00 in money, said oil "to be delivered to said grantee herein free and clear of all cost and expense of whatsoever kind and nature at the pipe line to which said lessee, its successors and assigns, shall connect the well, wells, tanks or other delivery point, or to whom lessee may sell the same at the well, wells, tanks or other delivery point, until said grantee shall have received" \$90,000.00. Oil was discovered on the premises but no pipe line connection was available, and the oil was hauled to refineries.

Subsequently the oil was hauled about 40 miles to tanks erected by the lessee adjacent to the Hamlin station on the Humble Pipe Line. The oil payment payee by a revocable agreement evidenced by a letter agreed to accept payment at a price which was 40 cents per barrel less than the price at which it was being sold by the lessee from his tanks to the Humble Pipe Line Company under a division order which was executed by both the lessee and the oil payment payee but which authorized Humble to account to the lessee for all of the oil so delivered.

Held: The oil payment contract entitled the payee to receive \$90,000.00 out of the oil free and

clear of all expense, and the lessee was not entitled thereunder to charge the payee with the expense of delivering the oil to a market. However, the subsequent agreement with reference to delivery at Hamlin station was a valid contract binding on the payee until revoked in accordance with its terms, since the oil payment contract did not specify the point of delivery and did not require the lessee to make delivery at Hamlin.

* * *

Davis, et al., v. Field, et al., (Fort Worth C.C.A.) 222 S.W. 2d 697.

A homesteader, prior to completing his period of occupancy, attempted to convey "one-half of the mineral that has or may be discovered on the land." Thereafter the homesteader completed his occupancy of the land for the three-year period, and gave a quitclaim deed to another containing no mention of this mineral grant, and the latter subsequently secured a patent from the State.

Held: Estoppel by deed did not apply to give the grantee, or his heirs or assigns the benefit of after-acquired title, because in the instrument itself, as well as under the law, the grantee was charged with notice that grantor had no right to make a present conveyance of the minerals, and that any severance or attempted severance of the minerals would be an attempted fraud on the State.

* * *

Frels v. Schuette, (Galveston C.C.A.) 222 S. W. 2d 1006.

The owner in fee conveyed land by a deed in which the grantor retained a one-half interest in any oil, gas or other minerals "during her lifetime, after which however, the said oil, gas and other mineral rights shall belong unto" the grantees. Subsequently, the grantees conveyed the land by general warranty deed containing no reservation of mineral rights. Thereafter, the predecessor in title, who had retained a one-half interest in the minerals during her lifetime, died.

Held: Whatever title the grantees in the deed reserving in the grantor a life estate in one-half of the minerals obtained upon the death of such grantor passed immediately upon her death to their own grantees under their general warranty deed, and it is of no legal importance whether their grantees had actual or constructive notice of such prior reservation at the time of the execution of the general warranty deed to them.

* * *

Amerada Petroleum Corporation v. Cheesman, (San Antonio C.C.A.) 223 S.W. 2d 74.

The guardian of a minor made application to the Probate Court for authority to execute an oil and gas lease upon an undivided one-half interest in Lots 19 and 20 of Block 2 of an addition to the Town of Bloomington, Victoria County, Texas. The interest was described as a one-half interest in the notice given of this application. In the order of the Probate Court granting the application the guardian was authorized to execute an oil and gas lease of the entire undivided interest of the ward to Amerada Petroleum Corporation. The lease executed by the guardian purported to be a lease of the entire mineral fee in

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said Lots 19 and 20. The minor actually owned the entire fee and not merely an undivided one-half interest in said lots.

Subsequently, D. C. Cheesman obtained an oil and gas lease covering an undivided one-half interest of the minor in said lots. The trial court ruled that Amerada Petroleum Corporation and D. C. Cheesman each owned an oil and gas lease covering an undivided one-half interest in Lots 19 and 20; that said property was susceptible to partition in kind; and that a fair partition could be effected by awarding to each party a lease as to a single lot.

It appeared that Amerada Petroleum Corporation owned mineral leases on the lands adjoining said two lots on the east, south and west. It had pooled its interest in Lots 19 and 20 into a unit of 19.8 acres on which unit it had drilled two producing wells within 200 feet of the easterly line of Lot 20 awarded to Amerada.

Held: The guardian's power to lease was restricted to the undivided one-half interest stated in the application and notice. The mineral leasehold estate under the two lots was of equal value and the trial court properly ordered a partition in kind rather than a partition by sale. In reply to Amerada's argument that the Railroad Commission would grant a permit to drill only one well on the two lots and that whichever owner first secures a permit to drill such well on his lot will be able to drain all of the oil from underneath the other lot, the Court stated that it could not anticipate what action the Railroad Commission would take with reference to the granting of a permit to drill but that the Court must assume that the Commission will handle this matter in some way that will be fair and just and equitable between the two owners.

—*Edited by* A. W. WALKER JR., Dallas, and H. P. PRESSLER, Houston.

Notations on Applications---Simpson

(Continued from Page 548)

a correct decision thereof shall result."

*This conflict consisted of instances where a Court of Civil Appeals held differently from a prior decision of that or any other Court of Civil Appeals or of the Supreme Court.

**This subdivision adds to cases of which the Supreme Court shall have appellate jurisdiction those "in which, by proper application for writ of error, it is made to appear that the Court of Civil Appeals has in the opinion of the Supreme Court, erroneously declared the substantive law of the case, in which case the Supreme Court shall take jurisdiction for the purpose of correcting the error."

It would appear that this enactment contemplated that the Supreme Court was under a duty to grant an application for a writ of error whenever there was a Court of Civil Appeals decision by a divided court, or whenever there was a conflict, or whenever a question involving a statute or the revenue laws of the State or the Railroad Commission was erroneously decided, or when the Court of Civil Appeals had, in the Supreme Court's judgment, erroneously declared the substantive law of the case.

However, in an opinion concurring in the action of the Supreme Court in refusing a writ of error on January 10, 1917, in the case of Terrell v. Middleton, 108 Tex. 14, 191 S.W. 1138, Associate Justice Hawkins expressed the view that the rule as stated by Chief Justice Gaines in the Fleming case, *supra*, was still the law. And it is undoubtedly true that up until the effective date (June 14, 1927) of the amendment by the 40th Legislature at its Regular Session (Chap. 144, p. 214), a refusal of an application for a writ of

error did not necessarily approve the opinion of the Court of Civil Appeals either in whole or in part.

Indeed, as pointed out by Justice Hawkins in the Middleton case and as stated later in the City of San Angelo v. Deutsch, 126 Tex. 532, 91 S.W. (2d) 308, 312, a refusal of an application prior to the effective date of the 1927 amendment might not even mean that the questioned judgment, much less the opinion, was correct, since the applicant for the writ may have waived his right to complain of an erroneous ruling in both the opinion and the judgment by failing to urge the error. In passing, however, it is to be observed that instances of failure to preserve valid complaints are comparatively rare.

Interesting Departure

The mandatory *shall* in the 1913 enactment (that is, that if certain errors, conflicts or dissents were found upon an inspection of the application and record, the Supreme Court should grant the writ) was omitted in an amendment enacted by the 35th Legislature in 1917 at its Regular Session (Chap. 75, p. 140). But a very interesting departure was written into this measure. After stating that the Supreme Court had jurisdiction of the usual type of matters (i.e., where there was a divided Court of Civil Appeals, a conflict, the construction or validity of a statute or the revenue laws, Railroad Commission litigation), the Supreme Court was given jurisdiction in any other case where the jurisdiction of the Court of Civil Appeals

was not final and it was made to appear *that an error of law had been committed by the Court of Civil Appeals of such importance to the jurisprudence of the State as in the opinion of the Supreme Court, required correction.* In this latter class of cases, the court might, in its discretion, the enactment provided, grant the writ for the limited purpose of revising the decision in the respect in which it was found erroneous.

Connotation Enlarged

The connotation of the order "Dismissed, W.O.J." was enlarged by this 1917 enactment to include cases in which an error was not "of such importance to the jurisprudence of the State as in the opinion of the Supreme Court, required correction." See *Decker v. Kerlicks*, 110 Tex. 90, 95, 216 S.W. 385, 386; *Holland v. Nimitz*, 111 Tex. 419, 429, 239 S.W. 185, 187; *National Compress Co. v. Hamlin*, 114 Tex. 375, 385, 269 S.W. 1024, 1028. The connotation of the order "Refused" was not changed; but no doubt the divergence of opinion among lawyers as to exactly what this order meant was emphasized the more by the act.

Approval of Opinion

Nevertheless, there is no reason to suppose that this particular order ever, before 1927, necessarily signified an approval of the opinion of the Court of Civil Appeals in any case. The opinion in an "error refused" case might be wholly right or wholly wrong or even somewhat of both, all depending upon whether the pronouncements it contained were fully presented to the Supreme Court in the application for a writ of error; and this application, as Justice Hawkins remarked in the Middleton case, does not go into the court reports.

Now in 1927 the 40th Legislature amended a policy which had obtained substantially unchanged in Texas for 35 years and provided a means of raising opinions of Courts of Civil Appeals in cases where applications for writs of error were refused virtually to the same dignity as opinions of the Supreme Court itself. (Chapter 144, p. 214, Reg. Sess. 40th Leg.) This amendment was calculated to give more authenticity to sound opinions of Courts of Civil Appeals and to afford the Bench and Bar the benefit and advantage of a more numerous body of authoritative

pronouncements. The amendment was effective 90 days after March 16, 1927, the date of adjournment of the session at which it was passed. It read, in part:

"In all cases where the judgment of the Court of Civil Appeals is a correct one and where the principles of law declared in the opinion of the court are correctly determined, the Supreme Court shall refuse the application; in all cases where the judgment of the Court of Civil Appeals is a correct one but the Supreme Court is not satisfied that the opinion of the Court of Civil Appeals in all respects has correctly declared the law, it shall dismiss the case for want of jurisdiction."

This was unequivocal and clarion language. It simply and plainly stated that after the effective date of the amendment, a refusal of an application for a writ of error placed the stamp of the Supreme Court's approval upon the opinion in the case.

Perplexing Uncertainty

No matter how clarifying and helpful to the Bar the 1927 amendment may have been as it respected orders of refusal, great and understandably perplexing uncertainty immediately arose about the order "Dismissed, Want of Jurisdiction." Did this order mean that the court actually had no jurisdiction or did it mean merely that the judgment of the Court of Civil Appeals was a correct one but that the court's opinion could not be wholly approved, or forsooth, did it mean that the applicant for the writ, though having a good point, waived it by failing to bring it forward?

New Kind of Order

These perplexities continued to plague the Bench and Bar until the Supreme Court, by an amendment effective March 1, 1939, added a new kind of order to the three which had been used since 1892. Rule 5a, 131 Tex. v. This new action was denoted by the stamp "Dismissed, W.O.J.—Correct Judgment." The amendment provided that in cases beyond the jurisdiction of the Supreme Court, the application should be stamped "Dismissed, W.O.J.," and in cases where the Court of Civil Appeals judgment was a correct one but the Supreme Court was not satisfied that the Court of Civil Appeals opinion in all respects correctly declared the law, the application should be stamped "Dismissed, W.O.J.—Correct Judgment."

So beginning on March 1, 1939, a fourth stamp notation was added to those, that is, Granted, Refused and Dismissed, W. O.J., which had been employed by the Supreme Court since 1892.

Rule-making Power

When full rule-making power was given the Supreme Court by the 46th Legislature at its Regular Session in 1939 (Chap. 25, p. 201), the court supplanted with Rule 483, effective September 1, 1941, that part of Article 1728, R.S. 1925 as amended in 1927, which had to do with Supreme Court action upon applications for writs of error.

But the substance of the 1927 amendment, as clarified by Supreme Court Rule 5a of 1939, was left unchanged. However, the latest of the four Supreme Court stamps enumerated above was changed by Rule 483 in that the notation "Dismissed, W.O.J.—Correct Judgment" was changed to read "Refused for want of merit." There was no change in the significance of the action, only in terminology.

Yet one more change in Supreme Court action upon applications occurred in 1946. The second sentence in Rule 483 as originally adopted had read:

"In all cases where the judgment of the Court of Civil Appeals is a correct one but the Supreme Court is not satisfied that the opinion of the Court of Civil Appeals in all respects has correctly declared the law, it will refuse the application with the docket notation, 'Refused for want of merit'."

This sentence was changed in 1946 to read:

"In all cases where the Supreme Court is not satisfied that the opinion of the Court of Civil Appeals in all respects has correctly declared the law, *but is of the opinion that the application presents no error which required reversal*, the court will deny the application, with the notation "*Refused, No Reversible Error*." (The new language in the amendment is italicized.)

It will be observed that in the last amendment, for the first time affirmative provision was made by rule for those instances in which a Court of Civil Appeals judgment and opinion may both be quite erroneous, but if the applicant for the writ fails to bring forward the point, his application will be refused as presenting no reversible error.

The implications when a writ is marked "Granted" are, of course, obvious. In this connection, however, it is interesting to

note that although no provision of the rules requires it, the Supreme Court has for more than two decades made a practice of noting upon which grounds or points it grants writs of error. These notations, while important to heed, do not at all mean that when a writ is granted, the whole case is not before the court for consideration. Applicants for writs who have continuing confidence in points urged but not enumerated in the court's notation should by no means abandon the assignments but, to the contrary, should continue to argue them.

Readily Understand

As to orders refusing writs, the Bench and Bar can, under present rules, understand readily the import of Supreme Court action refusing unqualifiedly an application for a writ of error or action dismissing one for want of jurisdiction. It is only with the action "Refused. No Reversible Error" that uncertainly continues to prevail. Even with this type of action, there should be little confusion. It connotes that the opinion of the Court of Civil Appeals in such a case cannot be depended upon implicitly as a correct pronouncement of the law. It does not mean that the opinion is either entirely wrong or partly right. It means what the rule says, namely, that the Supreme Court is not satisfied that the questioned opinion has in all respects correctly declared the law but is of the opinion that the petitioner for the writ has presented no reversible error in his application.

No Uncertainty Should Exist

As to the stamp "Dismissed, W.O.J.," no uncertainty should exist. It goes without saying that this action denotes that the Court deems itself without jurisdiction. Of course, care should be taken to consult the constitutional provisions and statutes in effect at the time this type of order is entered, since the Supreme Court's jurisdiction has been altered from time to time by changes in both the organic law and the statutes.

This concludes the study of the particular matter assigned for this discussion. In closing, it is to be observed that the so-called "No Reversible Error" notation has met with much objection. So did the "Want of Merit" action, and so, too, did the "Correct Judgment" notation. It would be

ideally desirable but practically impossible to improve upon the situation. The aspiration of lawyers to get an authoritative pronouncement of the law in their cases is understandable and is certainly frustrated when they lose in the Supreme Court with their petitions stamped "Refused. No Reversible Error." However desirable it would be to obtain from the Supreme Court authoritative pronouncements upon every point decided by the Courts of Civil Appeals, the volume of the work and the care required to accomplish it present insuperable barriers in the way of the Supreme Court's undertaking so Herculean a task.

Categorical Statement

Perhaps the categorical statement that this task would be one impossible of performance calls for some elaboration. The resolution adopted at the last annual meeting of the State Bar of Texas requests the Court to indicate in this class of cases "by an appropriate memorandum the particular part of the opinion of the Court of Civil Appeals which is not approved." Both the utility and desirability of that kind of action are apparent. But the Supreme Court simply could not write these memoranda and continue to keep abreast of its docket.

Before World War II approximately 1500 cases were being decided each year by the 11 Courts of Civil Appeals. The present volume is tending toward the pre-war levels and is certain ultimately to exceed it. The figures show that applications for writs of error are filed in approximately 50 per cent of the cases. (These statistics are based upon information contained in the Annual Reports of the Texas Civil Judicial Council and strike

a 10-year average. Of the applications filed, 19 per cent are granted, 8 per cent dismissed for want of jurisdiction, 19 per cent refused and 54 per cent refused, no reversible error. All percentages are approximate but substantially accurate.)

Typical Year

Thus, in a typical year, gauged by pre-war experience, the court would write opinions in 150 cases where writs were granted besides opinions in direct proceeding and certified question cases. This together with work on the application and motion dockets keeps the court quite busy. It would be accurate to estimate that the court devotes one-third of its time to applications for writs of error alone. If there were added to this full complement of work the duty of writing memoranda in some 400 additional cases annually (i.e., the "No Reversible Error" cases), the task would immediately become greater than the court could perform.

Work Underestimated

The work that would be involved in writing memoranda in "No Reversible Error" cases should not but is apt to be greatly underestimated. Writing law is certainly one of the most exact and exacting of sciences. Loose statements in brief or hastily drawn drafts have been responsible for wide departures from established precedents and inevitably lead to confusion. To avoid this danger, the court would first, as of course it does now, have to study the record and the opinion of the Court of Civil Appeals in each case, consult the briefs and read the authorities.

Next it would have to assign to a member the duty of indicating the part of the opinion which is disapproved. This memorandum would have to be circulated and later submitted to a conference for court approval. In some cases there would be dissents or concurrences or both. For instance, see *Terrell vs. Middleton*, supra, where Justice Hawkins concurred in a refusal of an application for a writ of error in order to explain why it was not granted. His opinion occupies 12 pages in the *Southwestern Reporter*. Later Justice Yantis dissented in a six-page opinion, 108 Tex. 14, 193 S.W. 139. This is not typical, but it has happened and may well occur again.

These proposed memoranda would be authoritative pronouncements upon which all would be entitled to rely. A careful and

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unhurried preparation would be absolutely indispensable. To winnow out of Court of Civil Appeals opinions what was thought to be inexact, inapplicable or incorrect and simply state that it was disapproved would be almost meaningless and certainly most unsatisfactory unless the Supreme Court went further and said why. To say why would entail such a vast amount of additional work that the court would soon face again an overburdened docket and would inevitably start falling behind.

Justice Delayed

The truism that "Justice delayed is justice denied" has contributed largely to the Supreme Court's present plan, a plan under which it has proved it can keep up with its docket. Appellate dispositions in Texas are and for some time have been prompt. But gratification for this promptness would soon give way to vexatious delays and hardships if the court undertook the vast task requested of it by the resolution adopted at the Fort Worth convention last summer.

Information contained in the above article relating to the meaning of the various notations used by the Supreme Court on applications for writs of error in declining to review the decision of the Court of Civil Appeals is summarized in the table appearing below. While the information here presented is not exhaustive, it will furnish a convenient guide in most instances to the significance of the notation.

Notation	Date ¹	Statute or Rule Defining Notation	Meaning
Refused	Sept. 1, 1892 to June 14, 1927	None. Cf. Acts 1892, 1st C. S., Ch. 14, p. 20; Art. 943, R. S. 1895; Art. 1544, R. S. 1911; Art. 1746, R. S. 1925.	Supreme Court approved result reached by C. C. A. but did not necessarily approve opinion. <i>Brackenridge v. Cobb</i> , 85 Tex. 448, 21 S. W. 1034; <i>Fleming v. Texas Loan Agency</i> , 87 Tex. 238, 27 S. W. 126. Refusal might not even mean approval of result reached, where error was not preserved and presented to Supreme Court. See <i>Terrell v. Middleton</i> , 108 Tex. 14, 17, 191 S. W. 1138, 1139; <i>City of San Angelo v. Deutsch</i> , 126 Tex. 532, 540, 91 S. W. 2d 308, 312.
	June 14, 1927 to present	Acts 1927, Reg. Sess., ch. 144, p. 214, amending Art. 1728, R. S. 1925; Rule 483, Texas Rules of Civil Procedure.	Judgment of C. C. A. correct and principles of law declared in opinion correctly determined. <i>Hamilton v. Empire Gas & Fuel Co.</i> , 134 Tex. 377, 383, 110 S. W. 2d 561, 565; <i>Ohler v. Trinity Portland Cement Co.</i> , Tex. Civ. App., 181 S. W. 2d 120, 123.
Refused for Want of Merit; Ref. Want Merit; Ref. W. M.	Sept. 1, 1941 to Feb. 1, 1946	Rule 483, Texas Rules of Civil Procedure.	Judgment of C. C. A. correct but Supreme Court not satisfied that opinion in all respects has correctly declared the law.
Refused. No Reversible Error. Ref. N. R. E.	Feb. 1, 1946 to present	Rule 483, Texas Rules of Civil Procedure.	Supreme Court not satisfied that opinion of C. C. A. in all respects has correctly declared the law, but is of the opinion that the application presents no error which requires reversal.

¹Date of Supreme Court's action on the application. See tables of cases reviewed, published in the Texas Reports, for exact date of action.

An analysis of the records in the office of the Clerk of the Supreme Court shows that the time of pendency of causes in which writs are granted from the filing of the application to a decision of the case has been:

In 1920, 30.6 months.
In 1930, 15.3 months.
In 1940, 18.2 months.
In 1949, 4.1 months.

These figures are based upon the history of 50 cases casually selected in each year listed. The current figures represent about as speedy a disposition as is either possible or desirable.

Under the existing system of periodical equalization of the dockets of the Courts of Civil Appeals, they are virtually up with their work and I think are doing a fine job. The Supreme Court is up with its work and in my judgment is performing well its many duties. I believe that the lawyers of Texas, upon further reflection, will be unwilling to jeopardize this generally satisfactory situation by insisting upon the sweeping change requested by the convention's resolution.

Notation	Date	Statute or Rule Defining Notation	Meaning
Dismissed; Dismissed for Want of Jurisdiction; Dismissed WOJ	Sept. 1, 1892 to July 1, 1917 ²	None. Cf. Acts 1892, 1st C. S., ch. 15, §5, p. 26; Art. 996, R. S. 1895; Art. 1591, R. S. 1911; Acts 1892, 1st C. S., ch. 14, p. 20; Art. 940, R. S. 1895; Art. 1521, R. S. 1911, and amend- ing acts.	Lack of jurisdiction in Supreme Court to consider application. Examples: jurisdiction final in C. C. A., <i>Burnett v. Powell</i> , 86 Tex. 382, 24 S. W. 788, 25 S. W. 17 (boundary suit), <i>Gulf, C. & S. F. R. Co. v. Buford</i> , 85 Tex. 430, 21 S. W. 678 (amount in contro- versy), <i>Meade v. Leon & H. Blum Land Co.</i> , 85 Tex. 513, 22 S. W. 514 (question of fact); defective application, <i>Homes v. City of Henrietta</i> , 91 Tex. 318, 42 S. W. 1052; application filed too late, <i>Schleicher v. Runge</i> , 90 Tex. 456, 39 S. W. 279; subject matter of controversy has ceased to exist, <i>Robinson v. State</i> , 87 Tex. 562, 29 S. W. 649; judgment of C. C. A. not one which "practically settles the case", <i>Gulf, C. & S. F. R. Co. v. Riordan</i> , 85 Tex. 511, 22 S. W. 514 (1892-1913).
	July 1, 1917 ² to June 14, 1927	Cf. Art. 1591, R. S. 1911, and Acts 1917, Reg. Sess., ch. 75, p. 141, amending Art. 1521, R. S. 1911; Arts. 1728 and 1821, R. S. 1925.	Same as above, except extended to include cases otherwise within jurisdiction of Su- preme Court where error committed, if any, was not "of such importance to the juris- prudence of the State as in the opinion of the Supreme Court required correction." <i>Decker v. Kerlicks</i> , 110 Tex. 90, 95, 216 S. W. 385, 386; <i>National Compress Co. v. Hamlin</i> , 114 Tex. 375, 385, 269 S. W. 1024, 1028.
	June 14, 1927 to March 1, 1939	Acts 1927, ch. 144, p. 214, amending Art. 1728, R. S. 1925; Art. 1821, R. S. 1925.	(1) Lack of jurisdiction in Supreme Court to consider application. See examples above. (2) In cases within jurisdiction of Supreme Court, judgment correct but Supreme Court not satisfied that opinion of C. C. A. in all respects has correctly declared the law. <i>Bain Peanut Co. of Texas v. Pinson & Guyer</i> , 119 Tex. 572, 574, 34 S. W. 2d 1090, 1091. (Cf. "Refused" prior to 1927.)
	March 1, 1939 to present	Supreme Court Rule 5a, 131 Tex. v; Rule 483, Texas Rules of Civil Procedure.	Lack of jurisdiction in Supreme Court to consider application. See examples above. <i>Wood v. Bankers Life & Loan Ass'n of Dallas</i> , 132 Tex. 505, 125 S. W. 2d 262.
Dismissed for Want of Jurisdiction— Correct Judgment; Dismissed, WOJ— Correct Judgment; Dism. Judgm. Cor.	March 1, 1939 to Sept. 1, 1941	Supreme Court Rule 5a, 131 Tex. v.	In cases within jurisdiction of Supreme Court, judgment correct but Supreme Court not satisfied that opinion of C. C. A. in all respects has correctly declared the law. <i>Republic Ins. Co. v. Highland Park Ind. Sch. Dist.</i> , 133 Tex. 545, 125 S. W. 2d 270.

²The 1917 act provided that it should become effective on July 1, 1917, but that it should not affect business before the Supreme Court at that time. Records in the clerk's office indicate that applications filed after July 1, 1917, were not acted on by the Supreme Court until after January 1, 1919.

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U. S. Court --- Vinson

(Continued from Page 552)

to account for since most of the petitions are prepared by prisoners without legal assistance and are without legal merit. The burden involved in filing, recording, and examining six or seven hundred such petitions a year is, however, very considerable, especially since they follow no particular form, are sometimes handwritten, and usually contain so much that is superfluous that the real issues are difficult to uncover.

The task of identifying and handling these petitions was made considerably easier by the establishment in 1945 of a so-called Miscellaneous Docket. Prior to that time, all appeals and petitions for certiorari, including those filed by prisoners *in forma pauperis*, were placed on the Appellate Docket, while applications for other types of relief went unnumbered and were not placed on any docket unless a motion for leave to file was granted by the Court.

With a view toward better identification of these miscellaneous matters, and in order to provide a more accurate account of the Court's work, the Miscellaneous Docket came into existence. Since 1947 all *in forma pauperis* petitions have been placed on that docket, together with all applications for prohibition, mandamus, habeas corpus, quo warranto, and other miscellaneous relief, whether or not filed *in forma pauperis*. The Appellate Docket as it now exists thus approximates rather closely the Appellate Docket of the early 1930's. The Miscellaneous Docket reflects the tremendous increase in the volume of *in forma pauperis* petitions and applications for extraordinary types of relief.

The rights of a prisoner who claims the denial of a federally protected right to petition the Supreme Court is an extremely important one. Many, if not most, of the cases in which the Court has spelled out the requirements of a fair trial under the Due Process Clause of the Fourteenth Amendment have come up as *in forma pauperis* petitions. However, the fact that the volume of such petitions has reached the six-hundred mark in each of the past three or four years and that 96 out of every 100 have little or no legal merit suggests that something should be done to try to stem the flow. I firmly believe, despite the burden, that the right to petition the Supreme Court should remain and

should not be made any more difficult.

The key to the problem, as I see it, lies in the post-trial procedures and policies adopted by the states. If a state provides a well-defined method by which prisoners can challenge their convictions, and if their allegations are aired in open hearings, most of the charges are either not proved or are found to be far outside the protection of the Due Process Clause. Faced with these facts, the prisoner sees little advantage in further appeal. But until he receives such a hearing, his allegations remain unchallenged and his persistence knows no bounds.

I feel safe in estimating that over 75% of the *in forma pauperis* petitions filed last term were cases in which the petitioner had not received a post-conviction hearing in a state court. This problem has been especially acute in the case of prisoners in Illinois, where an average of 49% of the *in forma pauperis* petitions have originated in the past three years. Happily, a new Illinois state statute provides a definite, comprehensive post-trial remedy, and I am confident that the next few years will show a marked decline in the number of petitions from that state.

To be concrete, the states should aid in the solution of this problem in several ways. In the first place, they should set up clearly defined post-trial procedures by which prisoners may obtain hearings into the legality of their detention. If the blind alleys are eliminated and the procedure is made definite and precise, the prisoner knows how to challenge his conviction, and he is put to the proof. If his allegations are not borne out by the facts, that is the end of the matter. If his allegations are proved true, the question of unfairness or illegality of his conviction is one of primary importance to the state. It should be to the state's advantage to have that ques-

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tion of law fully and fairly developed in the state courts.

In the second place, the state should require that the judge who hears the application shall set out clearly and unambiguously the reasons for his denial of relief, if the prisoner is found to be lawfully imprisoned. Entry of such an order will enable the state to make quick disposition of subsequent applications made by the prisoner upon the same allegations, and, in addition, it will serve as a basis upon which state appellate courts and the Supreme Court can rely in reviewing lower court action.

Once these steps have been taken, the right of a prisoner to challenge his conviction, which is certainly one of the most important rights inherent in the concept of Due Process of Law, will be secured. And I am convinced that the result of the adoption of such a policy will, in the long run, be a saving of time, labor, and expense to states.

I should like to turn for a moment to the subject of dissents. From the amount of comment we hear concerning the dissenting ways of the Supreme Court, I presume that it is a subject of some interest to you. Last term's statistics reveal a jump in the number of dissenting opinions, from 70 during the 1947 term, to 90, while the number of concurring opinions remained roughly the same, 33 as compared with 31 the preceding year.

While 90 dissenting opinions in a term when only 114 signed Court opinions were handed down seems to indicate a new high in vocal disagreements, most commentators fail to take into consideration several facts which tend to make these statistics somewhat misleading. In the first place, the 90 dissenting opinions do not represent dissents in 90 cases. In a number of instances more than one dissenting

opinion was filed, so that the actual number of cases in which there were dissenting opinions was only 70.

Perhaps more important in presenting a true picture of the Court's work, however, is the fact that in addition to the 114 signed opinions, which disposed of 147 petitions and appeals, 91 additional cases were decided on their merits, for the most part without opinion other than per curiam orders of affirmative, reversal, or dismissal. Sixty-six of these decisions were entered without dissent.

In the second place, the very nature of the Supreme Court's jurisdiction is such that the easy cases, the clear and indisputable cases, very seldom come before the Court. Our discretionary certiorari jurisdiction encompasses, for the most part, only the borderline cases—those in which there is conflict among lower courts or widespread uncertainty regarding problems of national importance.

The point I am making may be illustrated by considering the area of disagreement among lower courts in the cases which the Supreme Court decided with signed opinions last term. Of 127 such lower court decisions, 16 represented conflicts between circuits, 37 were cases in which appellate courts had reversed trial courts, while in four other cases Courts of Appeals had disagreed with the decisions of administrative tribunals. Furthermore, in 21 cases in which there was no conflict between courts, one or more judges of the appellate courts had dissented.

Even these figures do not tell the whole story. They do not reflect conflicts between federal district courts or state courts, nor do they show the substantial uncertainty surrounding a number of cases of first impression, notably statutory construction questions, which the Court took because of their importance without waiting for conflicts to arise. Considering, therefore, the importance and difficulty of the cases which the Court must decide, it is not strange that there is some of the same disagreement on the Court as exists among others of the Bench and Bar concerning the questions decided.

But I would not be understood as decrying the Supreme Court's dissenting opinions or minimizing their value. While it is true that division on the Court tends to break down what Chief Justice Stone has called "a much cherished illusion of

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certainty in the law and of infallibility of judges," my brother Douglas has pointed out, in a speech before the Section of Judicial Administration of the American Bar Association, that certainty and unanimity in the law are possible only under a fascist or communist system, where, indeed, they are indispensable. Democracy, in other words, must contemplate some division of opinion among judges, as among lawyers and other human beings, for unvarying unanimity can result only from some power that directs the judges to decide cases one way rather than another.

The dissenting opinion itself is of value in many different respects. For example, an opinion circulated to the Court as a dissent sometimes has so much in logic, reason, and authority to support it that it becomes the opinion of the Court. I must confess that the writer of the original Court opinion usually fails to see the error of his ways and turns his opinion into a dissent, so that the sum total of opinions is not reduced. But my point remains: A dissenting opinion may have immediate effect in the decision of cases.

In the second place, the dissent gives assurance to counsel and to the public that the decision was reached only after much discussion, thought, and research—that it received full and complete consideration before being handed down.

In the third place, a dissent may have far-reaching influence in bringing to public attention the ramifications of the Court's opinion and by sounding a warning note against further extension of legal doctrine, or the dissenter's conviction that existing doctrine has been unduly limited.

And, finally, to quote Chief Justice Hughes, "A dissent in a court of last resort is an appeal to the brooding spirit of the law, to the intelligence of a future day, when a later decision may possibly correct the error into which the dissenting judge believes the Court to have been betrayed."

I do not mean by what I have said that unanimity is not desirable or that the Court does not seek long and earnestly to find it in every case. I believe, however, as Chief Justice Hughes also pointed out, that it is more important that the independence of the judges should be "maintained and recognized than that unanimity should be secured through its sacrifice."

Address delivered by the Chief Justice before the Assembly of the American Bar Association Sept. 7, 1949, at St. Louis, Mo.

TIDELANDS CASE

(Continued from Page 554)

contrary, the United States, both in international agreements and in its domestic affairs, has recognized and acquiesced therein. The United States is thereby precluded from asserting or claiming any right, title, or interest adverse to the ownership and rights of the State of Texas as thus recognized and acquiesced in by the United States both while Texas was an independent nation and since it has been a member of the Union.

Therefore, in addition to its other defenses, defendant says that the State of Texas, under the doctrine of prescription, has established such ownership and sovereign rights in the area as preclude the granting of the relief prayed for by the Federal Government in this case.

Wherefore, the defendant prays that the plaintiff take nothing by its complaint herein, that plaintiff's suit be dismissed with prejudice, and that defendant recover its costs and expenses herein incurred.

PRICE DANIEL

Attorney General of Texas

November 9, 1949.

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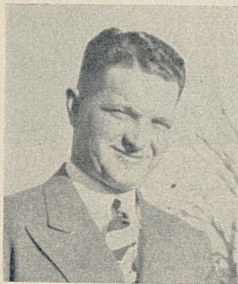
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LUTHER C. SCARBOROUGH



Luther Cecil Scarborough, foreman of the Col-Tex Refinery and Colorado City attorney, died March 17, following a heart attack suffered while he was attending a party given by refinery officials. Mr. Scarborough had been an employee of the refinery for the past 23 years.

The son of Minnie and R. L. Scarborough, he was born Aug. 14, 1906, at Natchitoches, La., where he attended grade and high schools and Louisiana State Normal. He later attended LaSalle Extension University, Chicago, receiving his LL.B. degree.

Mr. Scarborough was admitted to the Texas Bar in 1937. He was a member of the Baptist Church, Masonic Lodge and State Bar of Texas, and he was an active participant in civic affairs of his city.

Mr. Scarborough married Dahlia Weatherford in 1933 and she survives him. Also surviving are their son, Robert Daniel Scarborough, a student at Baylor University.

SAWNIE R. ALDREDGE



Sawnie Robertson Aldredge, 58, Dallas attorney, died at his home in Dallas May 13. A well-known lawyer, he was mayor of Dallas from 1921 to 1923, during the turbulent era of the Ku Klux Klan.

Mr. Aldredge was born Nov. 13, 1890, in Dallas. His parents were the late District Judge George N.

Aldredge and Betty Aldredge. After receiving his preliminary education in Bryan High School at Dallas, Mr. Aldredge attended Columbia, Tenn., Military Academy one year, Southwestern University at Georgetown one year, and then entered Cornell University, Ithaca, N. Y., where he received a Bachelor of Arts degree. Mr. Aldredge studied law in the University of Texas School of Law in 1913-15, and he was admitted to the Texas Bar in 1914.

Mr. Aldredge practiced law in Dallas from 1915 until his death, with the exception of the time he served in World War I. He was a lieu-

Memorials

tenant in the air service. His only public office was as mayor of Dallas, but he was generous with his time, experience and abilities in furthering the best interests of his community. In his law practice, he specialized in corporation and trust estate practice.

Mr. Aldredge was the first agency counsel for the Dallas office of the Reconstruction Finance Corporation, serving from 1932 until 1944. He was general counsel for Southern Methodist University from 1933 until 1949.

Active in organized Bar work, he was a member of the constitutional committee of the Dallas Bar Association at the time of his death. He was also an active member of the State Bar of Texas and American Bar Association. He was a member of the Masonic Lodge, Hella Temple Shrine, Kappa Alpha fraternity, Dallas Country Club and Idlewild Club.

Survivors include his wife, the former Mary Ella Batts, whom he married in 1915; a son, Sawnie Robertson Aldredge Jr., a daughter, Mrs. J. B. McEntire Jr.; a brother, George N. Aldredge; and a granddaughter, all of Dallas.

THOMAS H. CASEY



Death came to Thomas Henry Casey, 74, lifelong resident of Burkeville, March 20. He suffered a heart attack. He had practiced law in Newton County since 1898, and at one time was county attorney of Newton County.

Born Nov. 27, 1874, at Burkeville, he was the son of Henry James and Delilah M. Casey. He received his formal education from Burkeville public schools, Blum College at Burkeville and the University of Texas, graduating with the Law Class of 1898. He was a classmate of U. S. Senator Tom Connally.

Mr. Casey practiced law in Burkeville from his admission to the Texas Bar in 1898 until his death. He was the second oldest practicing attorney of the First Judicial District. Mr. Casey was a member of the State Bar of Texas and the First Judicial District Bar Association. A member of the First Baptist Church, he had taught the men's Bible class for many years.

In 1908, Mr. Casey married Virgil P. Talbot and she survives him. Also surviving are three sisters, Mrs. Lottie Wilson and Mrs. Lena Downs of Burkeville, and Mrs. Anne Morrison of San Antonio.

JOHN W. CULP



John Weaver Culp, 61, well-known Gainesville attorney, died October 14, following a heart attack suffered less than four hours before his death. Mr. Culp had practiced law in Gainesville for 40 years and he had been both mayor and city attorney of Gainesville.

Born April 5, 1888, at Gainesville, he was the son of George H. Culp, an attorney, and Lula Savage Culp. Upon completing elementary and high schools in Gainesville, he entered the University of Texas, where he studied law.

Following his admittance to the Texas Bar in 1909, Mr. Culp began his law practice in Gainesville, and he continued practicing there until the day before his death.

Mr. Culp was a member of the Selective Service Board during the last war. His hobbies were hunting and fishing and he found a great deal of pleasure in birds and wild flowers. He was a member of the State Bar of Texas.

Mr. Culp married Elizabeth Kennerly in 1912 and she died eight years later. Survivors include his widow, the former Bengta Akeson, whom he married in 1928, a son, John Douglas Culp of Tulsa, Okla.; a daughter, Mrs. John H. Dodson of Gainesville; three brothers, three sisters and three grandchildren.

ALEX COLLINS



Alex Collins, 70, attorney and president of the Central National Bank in San Angelo, died April 21, after suffering a heart attack. Mr. Collins was a prominent citizen of his community and had held several public offices, including that of district attorney for the 57th Judicial District.

The son of Mr. and Mrs. G. W. Collins, he was born on a farm in Kaufman County April 14, 1879. As a youth he went to the country school there, was graduated from Myrtle Springs High School and Griggs Academy at the same place. He taught school while he studied law in the office of T. R. Yantis in Canton. He took the Bar examinations while still teaching and was licensed to practice in 1899.

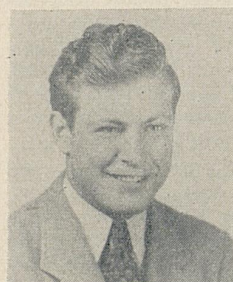
Mr. Collins was elected county attorney of Van Zandt County in 1900 and served two terms. In 1904, he formed a partnership with Buck Wynne of Wills Point, and he practiced there five years before moving to San Angelo in 1909. He joined Judge Blanks in opening a law office in San Angelo, and was soon elected district attorney for the 57th District. Mr. Collins resigned from the office about the middle of his third term of office, and he practiced with the firm of Blanks, Collins & Jackson.

Mr. Collins was general attorney for the Kansas City, Mexico & Orient Railroad of Texas from 1921 to 1928, when his firm became general attorneys in San Angelo for the Santa Fe Railroad.

Mr. Collins was the first president and a charter member of the San Angelo Lions Club. He had been president of the San Angelo Country Club, Chamber of Commerce and Board of City Development. He served in the first World War with the Third Texas Cavalry as a major. At the time of his death, he was trustee of the Shannon Memorial Hospital, president and director of the Central National Bank and trustee of Fairmount Cemetery.

Mr. Collins married Flora Burge of Canton in 1904, and she survives him.

THOMAS E. DAVENPORT



Thomas Earl Davenport, 30-year-old county attorney of Tom Green County and veteran of World War II, died July 19 at the Veterans Hospital in McKinney following an illness of nearly a year. He was elected county attorney in July 1948, but soon became critically ill of a heart ailment.

The son of William E. Davenport, a San Angelo attorney, and the late Sarah Wilsie Davenport, he was born Sept. 15, 1918, at Weatherford. He moved to San Angelo with his parents in 1928 and had lived there since.

In high school he was on the debating team two years and lettered in football, and in 1938 he graduated from San Angelo College with the highest average of any boy in his class. He entered the University of Texas, where he received his Bachelor of Arts degree in 1941.

Mr. Davenport interrupted his law studies at the University of Texas to enter the Air Corps in November 1941. For two years he was on anti-submarine patrol duty off Long Island before going to Europe in 1944 as pilot of a twin-engined bomber. He flew 34 combat missions in the battles of the Ardennes, the Rhineland and Central Germany. His plane was twice shot down, but he escaped both injury and capture. He was awarded the Air Medal with five clusters and attained the rank of first lieutenant.

After going on terminal leave in September 1945, he resumed his law studies at the University of Texas, received his LL.B. degree and was licensed to practice in 1946. He began his law practice in San Angelo and continued to practice there until elected county attorney.

Mr. Davenport was an officer in the Tom Green Junior Bar Association, and he helped organize the Stamp Club in San Angelo, serving as president in 1947-48. He had collected stamps since his childhood and had a varied collection. He was a member of the State Bar of Texas and had taught a Sunday school class in his church.

Mr. Davenport married Margaret Barnett Mears in 1944, and she survives him. Also surviving are his 3-year-old son, Thomas Earl Davenport.

port; his father, who practices law in San Angelo; two brothers, John M. Davenport, an Austin attorney, and William E. Davenport Jr. of Los Angeles, Calif.; his stepmother, and a sister, Mary Ellen Davenport of San Angelo.

H. L. WOODWARD



Hubert Lowell Woodward, 45, Garland attorney, died of a heart attack at the S.M.U.-Missouri football game in Dallas October 1. Mr. Woodward was the only field attorney in the United States for the Western Union Telegraph Company.

Born Oct. 9, 1904, at Rogers, Bell County, he was the son of Ada and Charles Minot Woodward. As a youth, he became a message runner in the Western Union office in Dallas, a job he held through elementary and high school days. Mr. Woodward studied at night school to complete his prelaw requirements, then entered Southern Methodist University, where he received his law degree. He was admitted to the Texas Bar in 1947.

He studied music and at one time was soloist for the First Methodist Church and Temple Emanu-El. For several years he was a member of the Plainsman's Quartet in Dallas. Mr. Woodward was active in civic affairs in his home community and he was a member of the State Bar of Texas.

Mr. Woodward was also a member of the Western Association of Tax Commissioners, the Missouri-Arkansas Tax Association, the Oklahoma Railway Tax Association, the Louisiana Railway Tax Association and the Texas Tax Commissioners Association.

Survivors include his wife, the former Ina Todd, a son, William Buckner Woodward, a stepson, Max W. Simnitt, his mother, Mrs. Ada Woodward and a sister, Marion Woodward, all of Dallas.

C. T. FREEMAN



Calvin Tate Freeman, 78, former director of the Texas Bar Association and district judge, died October 6 in Sherman, where he had practiced law since his admission to the Bar in 1897.

Judge Freeman was born July 26, 1871, at Somerset, Ky., the son of Charlotte and Benjamin Craig Freeman. After receiving a Bachelor of Arts degree from Grayson College at Whitewright, he taught school, studying law in his spare time with the late Judge Silas Hare of Sherman.

Judge Freeman was engaged in private prac-

tice until 1900, when he was assistant county attorney of Grayson County, an office he held until 1904. From 1908 to 1912 he was county attorney. He was city attorney of Sherman in 1915-16 and judge of the Fifteenth Judicial District in 1917-18, but resigned from the bench to resume private practice.

For 25 years Judge Freeman was general attorney for the State Medical Association of Texas. He was the first chairman of the Grayson County draft board when it was organized at the beginning of World War II, and during World War I he was a member of the county draft board.

A member of the Grayson County Bar Association, State Bar of Texas and American Bar Association, Judge Freeman was senior member of the Freeman, Wolfe, Milam & Bryant law firm at the time of his death.

In 1901 he married Carrie Luella Wentzel, and she survives. Also surviving are a son, Calvin Rush Freeman, a retired brigadier general of the Marine Corps, who lives at Southmayd; two brothers, Dr. William Freeman of Denison and J. B. Freeman of Dallas; and four sisters, Mrs. Mary Vincent of Dallas, Mrs. Cora Odle of Tom Bean, Mrs. Jess Rowland of Vickery and Mrs. O. Wilder of Haileyville, Okla.

A. E. WILSON



Abner Edwin Wilson, 80, Brownwood attorney, died at his home August 19 following a lengthy illness.

Mr. Wilson had taught in Brown County schools, served as county surveyor, district clerk, county attorney, county judge and as referee in bankruptcy and conciliation commissioner for the Federal Government in the western district of Texas.

Born Feb. 11, 1869, in Fannin County, he was the son of the Rev. and Mrs. A. T. Wilson. He received his early education from Denton and Bells schools and later attended Howard Payne College and Baylor University. Mr. Wilson began teaching school at the age of 18, and he was district clerk from 1896 to 1900. During that time, in 1899, he was admitted to the Texas Bar.

Mr. Wilson began his duties as a referee in bankruptcy in 1901, remaining in this work until 1913. From 1914 to 1924 he was county attorney. Mr. Wilson was elected county judge in 1944 and he served until Jan. 1, 1949.

The son of a Baptist minister, Mr. Wilson was active in church work for 70 years. He had been superintendent of the Coggin Avenue Baptist Church's Sunday school for several years. He was a member of the Brown County Bar Association and State Bar of Texas.

Mr. Wilson married Lucy E. Whitehead in 1897 and she survives him. Also surviving are two sons, Frank T. Wilson of Brownwood and the Rev. A. Edwin Wilson of Amarillo; three daughters, Mrs. Lucy Evelyn Lawrence and Mrs.

Martha May of San Antonio and Mrs. Mary Russell of Amarillo; nine grandchildren and three great-grandchildren; two sisters, Mrs. Mattie Wilson of Brownwood and Mrs. Jessie Perrish of Honey Grove; and two brothers, Carroll J. Wilson of Albuquerque, N. Mex., and John Wilson of Dallas.

—○—
J. M. BROWNLEE

James Milton Brownlee, 83, who had practiced law in Madisonville for 60 years, died in a Houston hospital Sept. 8, 1948. He served two terms in the Texas Legislature, beginning in 1909.

A native of Siloam, Miss., he was born Feb. 13, 1865. He moved to Madisonville in his youth, and he was admitted to the Texas Bar in 1892.

Mr. Brownlee had practiced in association with the late W. L. Dean and the late E. A. Berry in Madisonville. At the time of his death, he was the senior member of the firm of Brownlee & Brownlee and he was also a director of the First National Bank of Madisonville.

An active member of the First Baptist Church, he was a deacon for more than 40 years, and was also the church's secretary-treasurer. He was a member of the Madison County Bar Association, State Bar of Texas and American Bar Association.

Survivors include his wife; three sons, Milton Brownlee of Madisonville, George W. Brownlee of Houston, and Charles Brownlee of Dallas; two daughters, Mrs. E. Ray Lacy and Mrs. George D. Neal of Houston; three brothers, five sisters, and several grandchildren.

—○—
ERNEST A. LANDMAN



Ernest A. Landman, 67, Athens attorney who was serving his fourth term as mayor of the city, died October 18, after suffering a heart attack.

A native of Murphreesboro, Tenn., he was born Jan. 15, 1882. He moved with his parents to Alabama when he was a small boy and he attend-

ed schools in that state. He came to Texas in 1898 with his family, and in 1900 he began teaching school.

Mr. Landman was elected district clerk of Henderson County in 1908, and re-elected two years later. He was admitted to the Texas Bar in 1910 and engaged in the practice of law in Athens from then until his death.

After being named city attorney of Athens in 1914, Mr. Landman was elected mayor for the first time in 1916. He was re-elected in 1918 and again in 1920, and was the first to serve the city as mayor under the commission form of government. However, he resigned during his third administration to devote his time to the private practice of law.

For 25 years he was division attorney for the Southern Pacific Railroad, and he was local attorney for the Cotton Belt line in Athens and

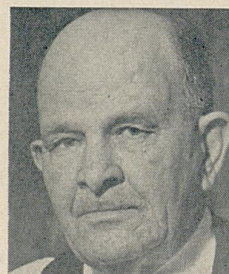
for the Athens district of the Texas Power & Light Company. He served on several occasions as a special district judge.

When his son, Bonner R. Landman, was admitted to the Texas Bar in 1933, he formed a partnership with him, which lasted until his son moved to Mississippi in 1943.

Mr. Landman was elected mayor again in 1948 and was holding that office when he died. He was a member of the Henderson County Bar Association, State Bar of Texas and the American Bar Association. He was a 32nd degree Mason of both the Scottish Rite and York Rite, and was a steward in the First Methodist Church.

Surviving are his wife, the former Addie B. Miller, whom he married in 1903; his son, Bonner R. Landman, who practices law in Jackson, Miss.; a brother, A. E. Landman of Athens; a sister, Minnie Landman of Athens; and a half-sister, Mrs. Vivian Thompson of Chandler.

—○—
E. A. MCDANIEL



Ernest Ashley McDaniel—"Earnest Mack" to his friends—died September 26. The 67-year-old McAllen attorney was stricken with coronary occlusion as he walked in his orange grove and died half an hour later.

Mr. McDaniel was born March 15, 1882, in Nevada, Collin County, Texas. He attended Royse

City high school and West Institute, and he was admitted to the Texas Bar in 1902.

Mr. McDaniel began his law practice in Coleman and was soon elected to the Texas Legislature. While the Legislature was in session, he moved to the Rio Grande Valley in 1913 and he practiced law in Hidalgo County the rest of his life.

McAllen city attorney at various times for more than 20 years, Mr. McDaniel had held almost every legal position in the city government, and he was president of the Hidalgo County Bar Association two different times. He served as attorney for the McAllen Water Board since its beginning and several times as attorney for the gas board. When the two were merged last year, he remained as the utilities board lawyer.

Shortly after coming to the Valley, Mr. McDaniel was attorney and director for the former First State Bank & Trust Company, and he continued in both capacities when the bank became known as the City State Bank & Trust Company. Mr. McDaniel was named city attorney in February 1942 and resigned in April 1943. He acted as city representative in tax suits after 1943. He had represented the Southern Pacific Railroad as attorney since it came into McAllen in 1927.

A charter member of the McAllen Masonic Lodge, Mr. McDaniel was a Shriner, past president of the Rotary Club, and a member of the First Methodist Church, McAllen Citrus Association, Hidalgo County Bar Association and State Bar of Texas. His hobbies included golf, deep sea fishing and books.

Fellow Valley attorneys described Mr. McDaniel as one of their most competent attorneys, outstanding in both civil and criminal law. In the courtroom he acted with deliberate calmness, spoke in low, confidential tones. Even when the odds seemed against him in a case, his friends point out that he could find some point, however small, upon which to base a logical argument.

Survivors include his wife, the former Maybel McCall Wooldridge, whom he married in 1936 and who is a Democratic committeewoman from the 27th senatorial district; his mother, Mrs. M. B. Bounds of Munday; a daughter, Mrs. Mary Ellen Stevens of Dallas; a brother, C. C. McDaniel Sr. of Pharr; a half brother, R. M. Bounds, McAllen

attorney; three half sisters, Mrs. Clara Sansom of Dallas, Mrs. Emma Billingsley of Munday, and Mrs. Bertha Wiggins of Odessa; and a grandson.

In Memoriam

S. MOSS ADAMS, Nacogdoches, Oct. 31
 EVAN W. BURRIS, Houston, Oct. 8
 ROBERT PORTER INGRUM, San Antonio, Oct. 4
 VICTOR KELLER, San Antonio, Oct. 31
 TOM C. KING, Dallas, Nov. 11
 WILLIAM LANE, Marshall, Nov. 10
 FRANK P. MARSHALL, Nacogdoches, Nov. 1
 BEN H. STONE, Amarillo, Sept. 23

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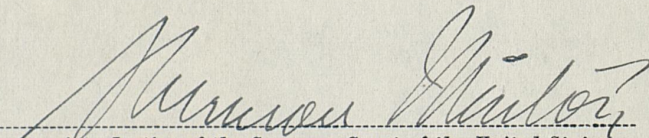
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Washington, D. C.

April 16, 1953

JAMES R. WINNER is hereby designated and
appointed to serve as my Law Clerk
from the fourteenth day of September, 1953
at a salary of \$ 5,175.50, per annum.


Associate Justice of the Supreme Court of the United States.

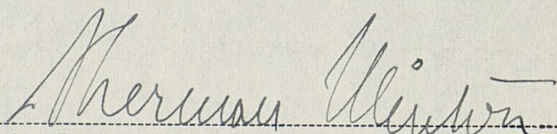
Approved:

(Signed) Fred M. Vinson
Chief Justice of the United States.

Supreme Court of the United States
Washington, D. C.

April 16, 1953

RICHARD T. CONWAY is hereby designated and
appointed to serve as my Law Clerk
from the third day of August, 1953
at a salary of \$6,116.00, per annum.


Associate Justice of the Supreme Court of the United States.

Approved:

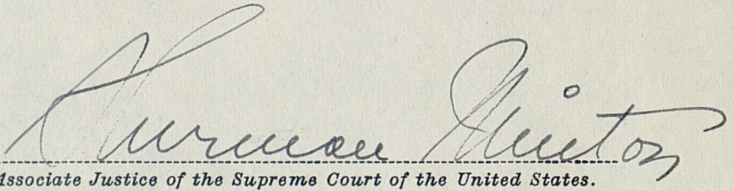
(Signed) Fred M. Vinson

Chief Justice of the United States.

Supreme Court of the United States
Washington, D. C.

May 27, 1952

HARRY L. WALLACE is hereby designated and
appointed to serve as my law clerk
from the _____ day of _____, 19____
at a salary of \$5,175.50, per annum.


Associate Justice of the Supreme Court of the United States.

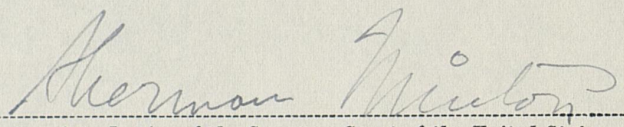
Approved:

(Signed) Fred M. Vinson
Chief Justice of the United States.

Supreme Court of the United States
Washington, D. C.

September 1, 1950

Lawrence R. Taylor, Jr. is hereby designated and
appointed to serve as my Law Clerk
from the 3rd day of September, 1950
at a salary of \$5610.00, per annum.


Associate Justice of the Supreme Court of the United States.

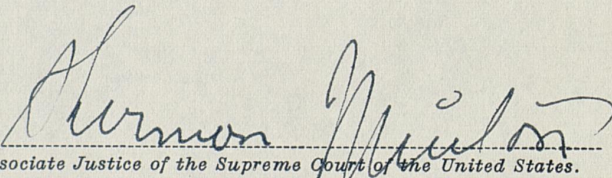
Approved:


Chief Justice of the United States.

Supreme Court of the United States
Washington, D. C.

June 3, 1950

Charles D. Kelso is hereby designated and
appointed to serve as my Law Clerk
from the day of , 19
at a salary of \$4757.50, per annum.


Associate Justice of the Supreme Court of the United States.

Approved:

(Signed) Fred M. Vinson
Chief Justice of the United States.

Supreme Court of the United States
Washington 13. D. C.

Neerlberg
July 11/52
file

CHAMBERS OF
JUSTICE SHERMAN MINTON

My dear Fred - I think the Republican
nominated their best ticket. After
watching the proceedings on TV
the thing that stood out to me
was that all they were talking
about was throwing the Democrats
out - a proper job for politicians
but hardly inspiration for a
Crusade. They seemed to think
there were no labor farm
or minority group problems - Surely
our Convention will not ignore
these groups but will arrange for
a speech from each & some
recognition of the same in the
other speeches.

I don't think Hiss & Munk Coots
are going to win this election -
we will not let them forget
the program enacted by the
Democrats.

I may go to Chicago for the
Democratic Convention just to
be around altho I have not
been well since I got home. The
heat got me. I was sick in bed
three days with a bilious attack.

I was glad to hear on the radio
that you & Mrs Vinson were with
the President & Mrs Truman at the
ball game - that indicates Mrs
Vinson has fully recovered for which
I am very pleased -

I haven't seen much of
the people. I talked to a former
Republican Judge of Indiana,
Sup Ct who thought our

Supreme Court of the United States
Washington 13. D. C.

CHAMBERS OF
JUSTICE SHERMAN MINTON

Dissent in the Steel Case was right.
I also had a letter from a dean of
Georgetown University Law School
saying they would have a article
on the Case soon & he thought
the dissent was right.

If I had a Secretary to dictate
to I would bore you with a
long letter but I am too lazy
to write much —

I hope you are having an
enjoyable summer with
warmest personal regards.

Sincerely
Minton

I see Bill has had some more horse trouble - That isn't
news any more - So he news any more he will have to
hurt the horse!

Supreme Court of the United States
Washington 13, D. C.

New Albany, Ind
July 24/50

CHAMBERS OF
JUSTICE SHERMAN MINTON

My dear Chief - I was glad to get your
letter and I am especially grateful
for your generous comments upon
my work for the first term. You made
me feel most welcome & by your confidence
for me more assurance. I shall preserve
your letter to offset the Drew Pearson
comments that my family could not quite
understand & I could not explain.

I do hope Congress does something
about the widows pension bill but I fear
not with so much required for war.
War is all our hearts around here. of
course I only knew what I read in
the Courier Journal & that is not good.

I suppose that invitation of Happy
to attend the World's Series is out

Supreme Court of the United States
Washington 13, D. C.

CHAMBERS OF
JUSTICE SHERMAN MINTON

as we will be sitting there altho the first week is not so strenuous -

I have not given up on the all star football game. I am hoping to see it.

I suppose Harry feels more comfortable with you in town. We have been trying to get him to Indianapolis Aug 20th to dedicate the American Legion Home. That would be a good spot.

If you call the Court for the accomodation of the American Box I will be there but I do hope you make it as late as possible - They will wait until the last day I am sure.

Please remember me to Mrs Minton & Mrs Minton joins me in all good wishes to you both -

Hon Fred Minton
Washington DC.

Sincerely
M. J.

Supreme Court of the United States
Washington 13. D. C.

CHAMBERS OF
JUSTICE SHERMAN MINTON

Douglas of Ill. It wasn't necessary. I
suppose Harry Cant forget Douglas was
for drafting Eisenhower in 1948 which
is understandable. The best reason
the president had for turning down
Douglas & Murphy was their age - both
will past 60. I hope they fit together
soon - Those judges are needed in
Chicago. Speaking of Chicago I expect to
go to the All Star - Pro Football Game
Aug 17th. Wish you could make it -
I hope you & Mrs Vinson haven't been
too uncomfortable in Washington. You
know how hot it can get here so
I stay on my place closely. I just
received another batch of Certs so I
am not idle.

With affectionate-fare wishes
Sincerely
Shor