

¶The type of men in the U. S. Supreme Court—

A LAW PROFESSOR BECOMES A JUSTICE

FELIX FRANKFURTER — that comic name has been a trial to the learned professor of the Harvard Law School, now a justice of the Supreme Court of the United States. At times it may have been an advantage, because it is a name you can never forget. Of late years it has been an irresistible handle of ridicule for his enemies.

Felix, in Latin, means fruitful, happy, auspicious, lucky, successful. Combine this with the humble sausage, the "hot dog," and you have humorous possibilities which the wisecracker cannot miss, and does not.

In 1933 scores of Professor Frankfurter's former students streamed into Washington to fill important legal posts under the New Deal. Honor students, a bit clanish, hard fighters, they worked twelve hours a day and then sat up half the night debating every government problem under the moon. As early as April, 1934, Representative Fred A. Britten of Illinois attacked them on the floor of Congress as "these young men of Communistic minds—Frankfurter's little hot dogs."

In the 1936 campaign the Hearst newspapers led the as-

sault on Frankfurter with special articles, cartoons, editorials: "This Frankfurter—this silent man . . . is the doctrinaire ear-whisperer, the *Iago*, of the administration." Since then the chorus has died down considerably. Whether you like or deplore Felix Frankfurter, whether you consider his ideas beneficial or harmful, any suggestions that he is disloyal to America, or bent on overturning our government by stealth are false.

For nearly three centuries the Frankfurter family lived in Vienna, Austria. When you see a Jew of great intellectual brilliance, you will usually find some rabbis in the branches of his family tree. So with Frankfurter. For generations, in his family, the eldest son was schooled for the rabbinate. His father, Leopold, was so destined, but could not conscientiously feel the religious call. He tried to make his way in business, for which he was not well fitted. He was a restless, generous, imaginative man, quite impractical in money matters. In 1893 he made a visit to America, and went on to the World's Fair at Chicago. There, he vowed, that America, was

the country for him. By straining every family resource he scraped together passage money to bring over his wife and six children. In 1894 they arrived aboard an old tub called the *Marsala*, a ship more fit for cattle than for human beings. One of the boys was Felix, aged twelve, and unable to speak a word of English. The family saw some hard times in those early New York years.

Sometimes the children knew what it was to go to bed at dusk because there was no food in the house for supper. But not often. The father was a poor businessman; but Mother Frankfurter was a good manager, and a woman of unlimited courage and spirit. And soon the boys were helping out by working as cash boys or errand boys in the neighborhood, after school hours. They got along.

In the meantime, young Felix was practically burning up the public-school system of New York. The teachers quickly recognized that this little Austrian boy with the big brow and burning eyes was bright to the point of genius. They cleared tracks for him, and as soon as he had mastered his English he began going through the grades like a greyhound over the hurdles. In effect, he covered fourteen years of schooling in eight. He graduated from the College of the

City of New York at nineteen, with highest honors and a number of medals. In addition, he had worked outside school hours and incidentally had helped coach a dozen of his classmates. Now he wanted to study law.

But here the family doctor called a halt. The nervous, high-strung youngster had worked himself close to a serious physical breakdown. He must stay away from books for a while, for a year at least. Felix got a job as clerk in the New York Tenement House Department.

Then on to the Harvard Law School, the most famous and perhaps the best law school in the world. This was a turning point in his life. The law school was apparently made to his order. The hard mental discipline, the competition of lively minds, the endless thrashing out of fine points among students and faculty—these were meat and drink to young Frankfurter. He lived plainly, studied prodigally, and made his way by tutoring other students. Again he graduated with top honors. He got a job in one of New York's leading law offices.

That was in 1906. Theodore Roosevelt was President, and swinging the Big Stick at the trusts and at "malefactors of great wealth." Striving to

put more life into law enforcement, he appointed Henry L. Stimson as United States Attorney in New York City. He later became Governor General of the Philippines and then Secretary of State.

The interest Stimson was prosecuting had the highest-priced legal talent in the country to defend them. His salary budget for hiring his assistants was meager. For such money he could hire only old legal hacks—or, bright young men just out of law school who were willing to work for a song. He went to Dean Ames of the Harvard Law School.

"One of the best we have seen around here in years," said Dean Ames, "is a youngster named Frankfurter."

So, after only a few weeks of private practice, Felix Frankfurter entered the service of the United States. He not only became a right-hand man to Stimson, but helped him in finding other bright young men for assistants, thus beginning the work as brain-fancier which he has followed as a side line ever since.

Frankfurter helped Stimson in prosecuting the "Sugar Trust," which had defrauded the government of millions in customs duties. Stimson became Taft's Secretary of War, and in 1911 he brought Frankfurter to Washington as a legal ad-

viser in the War Department. Here Frankfurter came in contact with Philippine affairs. Again, on request, Frankfurter found himself recommending able young lawyers for the government service.

Frankfurter carried a letter of introduction from one of his law professor to Justice Oliver Wendell Holmes of the Supreme Court. This began a friendship which lasted until Holmes's death in 1935. Holmes made Frankfurter one of his literary executors. Frankfurter worshipped the gallant old warrior and judge as the finest American he had ever met; Holmes delighted in Frankfurter's lively mind and buoyant personality. Washington often used to see them together on their walks, the tall, lean, snowy-haired judge striding along, with little Frankfurter trotting along beside him, looking up, gesticulating, talking fifty-to-the-minute.

Frankfurter's other great friend in Washington in later years was (and is) Mr. Justice Brandeis. After he became a professor at the Harvard Law School, Frankfurter began the custom of selecting each year, from the prize graduates of the law school, a legal secretary for Holmes and one for Brandeis. He showed his ability to pick, not only brains, but personalities congenial to the older men.

Later he performed the same service for Mr. Justice Cardozo and a number of federal judges.

Though he had worked under Taft and favored Theodore Roosevelt, Frankfurter was nevertheless kept on in the War Department under Wilson. Until the New Deal days, indeed, his services were pretty evenly balanced between Republican and Democratic administrations. He is not a party man. In 1924 he supported the older La Follette in the forlorn Progressive cause; in 1928 he supported Al Smith.

In 1914 Frankfurter was appointed to the faculty of the Harvard Law School. From the beginning, articles spoke of Frankfurter as a teacher of "live" law, rather than of the kind that "travels in stagecoaches," thus anticipating F. D. R.'s jibe at "horse and buggy" judges. He believed then that ever-increasing expertness was needed to administer modern laws; that young men trained in the law schools could help in this; and that we need in America a highly skilled Civil Service, somewhat on the British model.

Frankfurter has a gift for friendship. He does not just take friendship as it comes. He works at it. He believes in Dr. Johnson's old saying that friendships must be kept constantly in repair. He keeps up a prodigious correspondence. Of-

ten he writes just a line or two, or sends a news clipping which he knows will interest a friend, but he writes. He uses the telephone to the point of intemperance; it is the great extravagance of his financially modest life.

Great teaching is as high and mysterious an art as poetry or music. Of that art Felix Frankfurter is one of the masters. When his small, energetic figure comes bouncing into the classroom, he seems to charge it with electricity. Many students at first are frightened by his sharp tongue, affronted by his brusque manner. Like some football coaches, he believes in treating the boys rough.

He jolts and jabs them with questions, he trips up the careless reasoners and ridicules the loose talkers. He has a passion for precise phrasing. From this comes his habit of qualifying or rephrasing your remarks.

"Well, relatively, perhaps." . . . "Isn't that purely a matter of definition?" . . . "Shouldn't we put it this way?" If you remark that it is a nice day, he may point out that that depends entirely on your use of terms.

While other professors may take up several cases a day, he lingers over one case until he has squeezed the last drop of meaning from it. Sometimes his course is called "the Case of the

Month" class. In a Supreme Court case he will show just how the case arose, the human factors involved, the political and economic background. He will explore back into the lives of the judges, to show just how their tastes and prejudices may have influenced their decision. And he will show how the decision has shaped the history of the United States, and touches our lives to this day.

He shows the human element in law, he shows how it affects our daily lives, he ties it up with the history of the past and with what happened in New York or Washington last week. He does not do this by "telling" his students. Rather he evokes it by lively discussion and debate, in which no holds are barred. Like all great teachers, his best service is that he makes the boys think for themselves.

His personality and methods sometimes divide a large class into pro- and anti-Frankfurter factions. The antis say that he is conceited; that he plays favorites; that his course is "all carving and no meat"; that he is an intellectual snob. It is true that he has an intolerance of hazy thinking, which he can never quite overcome.

In class (as elsewhere) Frankfurter constantly trots about restlessly. Sometimes he is in the back of the room, sometimes at the front, some-

times he perches briefly on a table, tailor-fashion. He has a brimming and overflowing nervous energy which keeps him on the move. He can hardly finish a meal without jumping up to telephone or pace around the table.

His charming wife is a great help to him. She is the former Marion Denman, of an old New England family, the daughter of a Congregational minister in Springfield, Mass. They were married in 1919, Justice Cardozo performing the ceremony. She shares his love of music and his intellectual interests, and sometimes edits his writings for style. They have no children.

Frankfurter seems to care nothing about money. He has turned down offers of five and ten times his professor's salary from private law firms; when he enters a case to protect civil liberties he works without fee. But his salary is comfortable, and he likes good living. He enjoys wine in moderation and is something of an epicure. He has an arrangement with a waiter at a certain restaurant in Boston to telephone him whenever they get in a ray fish, of which he is especially fond. He prides himself on his ability to order a meal.

His only exercise is walking, his only hobby is people. He is a tireless worker, and seems to be able to get along on four or

five hours' sleep a night. He has the ability to relax at any moment and take a nap of fifteen or twenty minutes.

Whether he feels it is not in keeping with his position as a professor, or whether because he was once bitten or misquoted by a reporter, he has an inflexible rule against granting interviews. In this he is like Greta Garbo, and the result has been the same; more publicity, not always favorable. It has given the excuse for the editorials about "this silent, sinister man."

Actually, he is one of the most talkative men in the world. He likes the center of the floor. Friends suggest that the United States Monopoly Inquiry should look into his conversational monopoly. Gutzon Borglum, the sculptor, after a recent evening with Frank-

furter, commented to a friend, "Felix is so much nicer than he used to be. He even lets other people talk occasionally."

But his talk is good. It is crisp, lively, well informed. He can put old things in a new way; "The largest club to which we all belong—namely, the government."

He is admittedly the country's greatest expert on the history, business, and mechanics of the Supreme Court. And yet, strangely, throughout the torrid controversy over Roosevelt's Supreme Court bill, Frankfurter remained as mum as a Cape Cod clam. He was in a tight spot. Many things made it hard for him to speak, among them the fact that two of his old friends, Roosevelt and Brandeis, were ranged on opposite sides of the issue.—*Beverly Smith, condensed from The American Magazine.*

* * *

Conscientious Objector

OUR world would remain stationary if everyone is to think and behave alike. In reality, it is the man who honestly differs—not systematically hostile—who is our most useful collaborator. He enlarges our views and gives us a larger perspective of the problems which we are called upon to solve. It is freedom, as I conceive of it, which breeds the contradiction of union and separation among men, that makes democracy an effective instrument of human progress and happiness.—*Justice Jose Laurel of the Philippine Supreme Court.*