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Review of “Felix Frankfurter Reminisces”

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BOOK REVIEWS

FELIX FRANKFURTER REMINISCES; Recorded in talks with Harlan B. Phillips. By Felix Frankfurter. New York: Reynal & Co., 1960. Pp. ix, 310. \$5.00.

The death of Justice Cardozo in the summer of 1938 created a vacancy on the Supreme Court of the United States. In October, Professor and Mrs. Frankfurter were invited to spend the weekend at Hyde Park. There, President Franklin D. Roosevelt explained to his guest that he could not appoint him because he had "given very definite promises to Senators and party people that the next appointment to the Court would be someone west of the Mississippi." He asked Professor Frankfurter, then and later, for his opinion of those under consideration, including Wiley Rutledge, Dean of the Law School of the University of Iowa, and formerly of Washington University, St. Louis.

On Tuesday evening, January 4, 1939, the phone rang in the study of the Frankfurter home in Cambridge, Massachusetts. "There was the ebullient, the exuberant, resilient warmth-enveloping voice of the President of the United States." Mrs. Frankfurter had just gone down, at the sound of the doorbell, to receive their dinner guest, admonishing her husband who was still dressing: "Please hurry! You're always late."

After the usual pleasantries, the President said: "You know, I told you I don't want to appoint you to the Supreme Court of the United States."

"Yes, you told me that."

"I mean this. I mean this. I don't want to appoint you to the Supreme Court."

"Here I was in my B.V.D.'s, and I knew Marion would be as sore as she could be. She had said I'm always late which is indeed substantially true . . . You know, he was given to teasing. Some people said that it was an innocently sadistic streak in him. He just had to have an outlet for fun."

"I was getting bored, really, when he whipped around on the telephone and said, 'But unless you give me an unsurmountable objection, I'm going to send your name in for the Court tomorrow at twelve o'clock'—just like that, and I remember saying, and it is natural to remember this very vividly—'All I can say is that I wish my mother were alive.'"

In this manner, Felix Frankfurter recounts how he was notified of his appointment to the Supreme Court. Similarly, he details significant events in his life from the time he arrived from Vienna as an

immigrant, not yet twelve, unable to speak a word of English, until he went on the bench. The reader follows him through the New York public schools and City College to the Harvard Law School, where he finished first in his class. He wanted to practice law but not to have clients. He solved the dilemma by joining the staff of Henry L. Stimson, U. S. Attorney in New York City and later served as assistant to Secretary of War Stimson and his successor in the Taft and Wilson administrations. In 1914, eight years after graduating, he accepted an invitation to teach in the Harvard Law School, against the advice of Justice Holmes and Mr. Stimson. With the outbreak of war in 1917, he returned to Washington, serving on the President's Mediation Commission, War Labor Policies Board, and on special missions. He recounts his experiences in connection with the investigations and critical reports on the Mooney case and the Bisbee deportations, as well as the ill conceived Morgenthau mission; his attendance at the Paris Peace Conference and participation in the Zionist movement; the post-war years at Harvard, the Sacco-Vanzetti case, his role as a critic of injustice and government abuse of power, and his relationship with Franklin Roosevelt and the New Deal.

The book is a transcript of a series of tape recorded interviews with Dr. Harlan B. Phillips of Columbia University's Project in Oral History. Justice Frankfurter was one of many subjects whose personal reminiscences were recorded for the use of future scholars and historians. At the time the recordings were made, there was no thought of their immediate release. Later, the author was urged to consent to the present publication, which he did, either (as he states) "through weakness or good nature."

Ordinarily a book prepared on the basis of spoken questions and answers would have obvious limitations. But Justice Frankfurter is an uncommon conversationalist. In his hands, the method points up the searching quality of his mind, his spontaneous expression and sparkling wit. What emerges is an intimate self-portrait by one of the most provocative and intriguing figures of our time, prepared by an artist who paints with broad strokes and deep colors.

His views in the main are not pallid, neutral beliefs, but convictions fervently held and stoutly maintained. He is a "romantic believer in reason." He "cared passionately" about the law and its Anglo-American antecedents, because

fragile as reason is and limited as law is as the expression of the institutionalized medium of reason, that's all we have standing between us and and the tyranny of mere will and the cruelty of unbridled, undisciplined feeling.

He has "a quasi-religious feeling about the Harvard Law School" and its democratic spirit where all that "mattered was excellence in your

profession People work like hell because the atmosphere in the school is exciting." He leaves no doubt it was fate that intervened to save him from tragedy on the day he set out to enroll at another law school but was persuaded by a friend, just in time, to go to Coney Island instead, where he "blew in" the ten dollar matriculation fee. By the time he was ready to make a second try, he had decided to enter Harvard.

Prominent among his heroes are his teachers; James Barr Ames, Jeremiah Smith, Samuel Williston, John Chipman Gray and others, whose courses were designed to produce, not disciples but colleagues dedicated to the search for truth. Lawyers should not be "collaborators in their client's short-sightedness . . . a lawyer is a counselor, an advisor. He isn't just a hired man to do the bidding of his clients, but he must exert the independence of his mind and understanding upon the conduct of his client's business."

He describes his relationship with the students he recommended for positions with private firms and to the legal staffs of government agencies. Referring to the suggestion that there was "some cunning, conspiratorial, sinister" explanation "of how Felix Frankfurter filled the government with his cohorts, his disciples, whatnot," he states:

they have no understanding of my relations with these young men. They have no understanding of the kind of independence—that we're just all in the same boat in being—as it were, part of the ministry of justice, part of the great company of lawyers who serve law, and that the bond was just the bond of fellowship of ideas and purposes and nothing more complicated than that.

Candor is stimulated when one is requested to express his opinion as an aid to scholars and future historians. The appraisals are frank and terse. Taft was a poor President because he was not interested in the job; he wanted to be on the Supreme Court. Wilson was very dogmatic—he could not participate in discursive argument. Hoover had "no touch at all for politics in the best sense of the term." "Harry Hopkins had a feeling of a mistress toward President Roosevelt." Justice McReynolds was a "rude, primitive creature" whom he despised but respected. Roscoe Pound "a near genius," was "a timid creature. His weakness was weakness." Harlan Stone was "a man of great vanity, a very considerable self-deceiver."

The author's comments about himself are also revealing. As a student, he was timid, "a shy sensitive kid." As an assistant U. S. Attorney trying his first jury case, he was "scared stiff." He relates the "awful torture" involved in making the argument to the jury. He believed that he was "a little fellow not very impressive looking." When asked to teach at Harvard, he told Justice Brandeis he felt inadequate for the job. At that time, he thought his mind was

“probably more incisive, illuminative, tough enough insofar as it goes, than profoundly creative, capable of powerful generalizations”; and he questioned its scope. Unlike the “gentle, saintlike Cardozo,” he thought he could handle McReynolds: “a tough-skinned fellow like me could deal with him because I could be just as rude as he could be.”

Justice Frankfurter has provided illuminating flashes of a significant period of history, perceptive glimpses of many important personalities, and an absorbing account—in the best tradition of the American dream—of how an immigrant boy became a Justice of the Supreme Court. More important to the Bar is the sense of dedication to the law and its institutions which the book reflects, the high standards prescribed for the lawyer as a professional man, as a citizen, and as a public servant. At a time when there is increasing concern about the undue emphasis placed upon material values and the trend toward conformity, “Felix Frankfurter Reminisces” might well be required reading for law school students, their teachers, and other members of the profession.

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THE PRICE DISCRIMINATION LAW; A REVIEW OF EXPERIENCE. By Corwin D. Edwards. Washington, D.C.: Brookings Institute, 1959. Pp. xxii, 698. \$10.00.

The Robinson-Patman Amendment to the Clayton Act has been carefully scrutinized in Corwin D. Edwards' recent book. Professor Edwards, an economist, thoroughly analyzes cases involving the amendment which have been tried before the courts, the Federal Trade Commission and its hearing examiners as of December 1957. This collection of cases will be of use to any lawyer interested in the interpretation of this statute.

Though the sentence structure is at times cumbersome, the material is presented clearly and in an orderly fashion. Specialists in the field of price discrimination, as well as those attorneys who enjoy a general practice, will find this book an invaluable source of relevant material.

Professor Edwards, by analyzing the official handling of various fact situations, attempts to find a pattern which one may expect the courts to follow in subsequent cases.

The author's most interesting suggestion involves a dual interpretation of the word “competition.” He believes it may have one meaning at the primary level and perhaps another at the secondary level.

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