An Engineer Before the United States Supreme Court

By W. D. SELLERS

IN Washington, D. C., in a massive monumental temple dedicated to Justice, sits the United States Supreme Court. The cornerstone of one of the three branches of our Federal Government, its part in our daily lives is little appreciated or understood. The executive and legislative divisions receive the popular acclamation and denunciation, and slight attention is given to the fact that the words and acts of these two go for naught if they fail to stand the tests to which they may be subjected by the court.

There are times when the importance of this tribunal is firmly brought to the attention of the public. An instance was the *Schechter Chicken Case, 295 U. S. 495*, which resulted in the disintegration of the N.R.A. Generally, however, the effect of the court's decisions is not so immediately visible and accordingly not so generally appreciated.

That our government and nation are what they are today is to be credited in large part to the early decisions of the Supreme Court during the formative years. The struggle in the court between those favoring a strong central Federal Government and those opposing it was crucial in our history. No name stands out more clearly in this connection than that of John Marshall.

The constituency of the court changes as death comes to its members, or as they retire, and with the coming of even one new member the direction of the evolution of the law can veer sharply. The court frequently, and in recent years very frequently, is divided upon its decision, five in the majority and four in the minority. Obviously, if the philosophy of a new member is in agreement with that view which was previously in the minority, the scales will be tipped and the minority philosophy will become the majority philosophy.

Today the Supreme Court protects itself against the necessity of considering countless unimportant cases by requiring the filing of a petition for "Writ of Certiorari." The would-be appellant is required to petition the court to be heard, the petition being supported by a brief and by the record for the consideration of the court. Unless the court views the case as entitled to its review, the petition is denied and the decision of the tribunal below becomes final.

THE ENGINEER FACES THE COURT

There is about the court and its inspiring setting an impressiveness which cannot be ignored. The members become in some way more than mere men when they solemnly enter the courtroom through an opening in the velvet drapes, the Chief Justice entering first, and stand by their places, the clerk pronouncing in a polished, resonant voice the opening of court.

With the court seated, the members of the bar and the audience resume their seats and the Chief Justice in a low, conversational tone gives the number of the case to be heard. The parties and their counsel are ready, have probably been ready for days, and counsel for the appellant moves to a stand directly in front of the Chief Justice. He places his material upon the stand, which is inclined; he straightens his coat; he swallows hard; and he hopes.

Let us assume that you, an engineer, stand before the court. Those first few seconds are difficult. The eyes of the court are upon you. Chief Justice Stone, Justices Roberts, Black, Jackson, Douglas, Rutledge, Frankfurter, Reed, and Murphy await your first words. You know your subject. This is the moment you have foreseen, in your mind's eye, a hundred times. You are charged with a duty to turn back an encroaching philosophy which threatens to overturn a statutory remedy sanctioned by a hundred years of sound decisions. You begin.

Yours is the hour. The audience and fellow members of the bar await your words. The court listens attentively. The facts. They must be presented with the history of the case. Your notes, carefully prepared, are there to refresh your memory and to give you confidence. The argument progresses and your assurance gains. You have already forgotten the audience and only the court receives your attention.

You hear a voice and you stop. It is Justice Roberts asking about the application of a particular statute. That question you have considered twenty times and you answer. Justice Roberts nods: his fine, mobile and flexible face, relaxes its usual severe lines, and he smiles. You are certain he agrees with you. But what are Justices Black and Douglas doing with their heads together, talking, while you are answering Justice Roberts?

The argument is taken up where you left off to answer Justice Roberts and you are back on the track again. This point is good and you prepare mentally to give it everything. You start to say—but Justice Black's voice is heard and you look at him and courteously listen to the question which you now judge was bothering him and Justice Douglas. Justice Black asks whether a patent should be granted under certain hypothetical conditions. How in the world did that question get in here? What is in the back of the Justice's mind? You answer, pointing out the irrelevancy of the question with all possible tact, laying emphasis upon those facts or factors in your own case which serve to distinguish.

That question answered, you center yourself at the stand, grasp it firmly with both hands, and glance at your notes to see where you were and where you are going. Unfortunate is he in the Supreme Court who cannot lose his place entirely and later pick up his argument at the first opportunity. The court is no respecter of counsel's plans, and the wise barrister answers the interrupting questions fully and completely as they are asked, depending upon sound preparation and knowledge of the case to help him to return to his own presentation at the first opportunity.

A LAMENTABLE FAILURE

An advocate presenting a case to the Supreme Court is under a terrific burden. The background and prestige of the court are more real to him than to the layman. Good lawyers have failed miserably. Such a tragedy took place while the writer was waiting for his own case to be called and it did anything but increase his confidence.

Two patent cases were on the call of the court, and the questions involved were of interest to business and to the patent profession. The courtroom contained many patent lawyers from Chicago, New York and Washington. The first case was called and counsel, after arranging his papers and books, began his presentation. As always, he was interrupted after progressing fairly well into his subject and stopped his arranged argument to

answer the question propounded. His answer, while not too well formulated, was accepted and he turned again to his notes. Unfortunately, he had not prepared an outline of his argument, but was instead working from a typed brief covering many pages. The interruption had driven from his mind the prepared argument. The notes were better suited to reading than to oral presentation, and under the crushing force of the occasion he could not find his place. Pages were fumbled. A drink of water. Papers on one side of the stand were turned. Back to the notes, but without effect. Another drink. More fumbling. For six long minutes that unfortunate man stood mute before the Supreme Court of the United States. Every lawyer in that room could have shrunk through a very small knothole, so real was the feeling of common embarrassment with a fellow lawyer. Finally, and years too late, a junior stood up and asked if he might say a few words. Consent was given by a nod, and the junior took over and did very well. Our friend, after standing a few moments, sat down and did not rise again during the entire case.

This lawyer was experienced in many courts. The weight of the prestige of the Supreme Court, coupled with his failure to prepare adequately to meet such a foreseeable contingency, proved to be his undoing.

THE CLOCK DOES NOT STOP

But back to your case. The notes to which you refer, if you are wise, are such that a hurried glance will tell you what points have been covered and what remain. You do not read your notes, for there is little to read. Each point, however, suggests an entire line of thought; though you are interrupted frequently, you are never lost.

The argument progresses and, noting Justice Roberts' nods, you feel certain that at least this strong man is with you. Justice Frankfurter has been giving some trouble and there are several of the court of whom you have some doubts. All sense of time has long since vanished. Suddenly you become aware of the fact that Chief Justice Stone is leaning forward in his seat. Can your forty-five minutes be up? You lift the long black book which contains your notes and peer over the top of it at the little red and yellow lights which it has hidden on the stand. You suspect that your time is more than gone without your having noticed the warning light. You ask Chief Justice Stone if your time is up and he nods. The clock overhead indicates that you took five minutes not yours. You suggest the advantages of a long book to the Chief Justice, who smiles. You thank the court and return to your place at the lawyers' table, wondering if, under the circumstances, you have not acquired some rights in the quill pen provided there for the lawyers' benefit.

The majesty of the law, the sovereignty of the people and the rights of man are impressed upon the conscience by the Supreme Court in a unique way. Man, the individual, takes on increased stature and the problems of life a new dignity through the knowledge that this court is concerned therewith.

THE ENGINEER'S STAKE

The engineer's interest and stake in the Supreme Court are great. Within the framework of our Federal Constitution this court stands as the arbiter to determine that thus far and no farther may the way of our economic life be changed. Legislators who would nationalize research or abolish the patent system must act with the knowledge that their actions are subject to review by this tribunal. A supreme court composed of so-called liberals will uphold the constitutionality of enactments which would be thrown out by a court composed of so-called conservatives. There is always much to be said in support of a dissent, and a personal bias or philosophy is all that is needed to shift a justice from a majority viewpoint to that of the minority.

The future of engineering and technological research in this country is likely to be the subject matter of much Congressional consideration during the next few years. The patent system which provides the rewards for new developments to those willing to undertake them has been under attack for some time. Bills are now pending before Congress relating to these fields and, if enacted, will in all likelihood be tested before the Supreme Court. Our Congressmen will vary and change with the political winds, but so long as our Supreme Court remains constituted of men outside the normal forces of politics and economics, we can hope that the balance-wheel effect which it provides will serve to protect us.

The Harvard Report

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". . . there are truths which none can be free to ignore, if one is to have that wisdom through which life can become useful. These are the truths concerning the structure of the good life and concerning the factual conditions by which it may be achieved, truths comprising the goals of the free society."

These truths are conceived to lie in three traditional areas of human thinking: the humanities (literature, the fine arts and philosophy), the social sciences (social, political and economic interests and history), and the natural sciences (mathematics, physical and biological science). For the purpose of this review it is not necessary to quarrel with the nomenclature, nor to disturb the schematism by remarking the absence of religion, formerly the strongest of unifying forces.

APPLICATION TO HARVARD

In particular application to Harvard, the proposal is therefore that of the sixteen full courses required for the degree, six shall be general—one from each of the areas of knowledge—and three more which shall not be in the student's "field of concentration."

It is interesting to note that there should be required one course in "Great Texts of Literature," one in "Western Thought and Institutions" and one in either physical or biological science. After "Western Thought and Institutions" a second course in the field of the social sciences should be, "American Democracy." The recommendation of this course furnishes the ground for an objection that has been raised against the philosophy underlying the concept of general education: does the desired unity, the common ground, call for inculcation of a set of social and political principles? If so, it violates the liberal theory long prevalent that, at any rate, higher education should be the exercise of free enquiry, not indoctrination of any view, however excellent. This liberal theory has been maintained with great difficulty against many attempts to invade it. Is the Harvard report such an attempt? Your reviewer does not think so, but the question should be looked at.

The book is highly recommended. It ranks among the best of the many, too many, volumes about education that are dropping weekly from the press. Harvard is not alone in urging a revaluation of the ends of education, and of the means for attaining those ends, but the Harvard report has a breadth of scope, a rationality in analysis, and a conservatism of conclusion, that comport well with Harvard's position as a leader in education.