

GEORGE DE ZAYAS

If The Court Please

It was discovered recently that the Justices of the Supreme Court are human. Astonishment was general. Mr. Creel shows you how they work and what they think of Mr. Roosevelt's proposal to do over the Court

By George Creel

COLLIER'S WASHINGTON STAFF WRITER

PRESIDENTS and members of the Congress live lives so exposed to the public gaze that their very birthmarks are matters of common knowledge, but when it comes to the Supreme Court, popular curiosity runs up against a well-nigh impenetrable veil of secrecy. Starting out upon the approved assumption that judicial decisions are not proper subjects for general gossip in advance of delivery, the justices have intensified detachment until even the mechanics of the court are shrouded in mystery.

From the moment that they leave the bench and disappear behind a thick red velvet curtain, the nine black-robed figures are lost to human sight and sound, for no precaution is spared to guard their deliberations against prying eyes and distended ears. The court has its own police force—thirty-three armed huskies—and a chief duty is to warn away all who come within thirty feet of the bronze doors of the conference chamber. Vigilance is carried to a point where even newspaper photographers are not permitted to lurk in the shrubbery for snapshots of the justices as they arrive and depart.

On meeting a member of the Supreme Court socially, the safest course is to ignore the fact of his position, and act as though he were a plumber, a salesman or the practitioner of some vague profession. To come out boldly, recognizing him for what he is, produces instantly a sort of "thin ice" feeling, and while the justice himself may evidence no other sign of displeasure than a tightening of muscles and a sudden wariness of eye, the guests as a whole ooze apprehension much as though they were waiting for the heavens to fall.

A change indeed from other days. Up to 1845, the Chief Justice and his associates ate in the public room of a Washington boardinghouse, exchanging news, banter and views with those who came and went. Many were the taverns where John Marshall and others who "rode circuit" sat and gossiped over a friendly glass with the honest yeomanry of the

countryside. So far from feeling isolated and detached, members of the Supreme Court were often "the life of the party." John Jay ran for governor of New York without troubling to resign as Chief Justice, and Associate Justice John Rutledge, between decisions, indulged in partisan attacks to a point where Timothy Pickens, Secretary of the Treasury, denounced him openly as a "driveler and a fool." Just before Justice McLean rendered a dissenting opinion in the Dred Scott case, he campaigned vigorously for the Republican nomination, losing to John C. Fremont.

The matter of housing also marks a change in the public attitude toward the Supreme Court. In the great public building program of 1800, no provision whatsoever was made for the "august tribunal," and John Marshall was forced to scurry around to gain the use of a small, unused Senate committee room. Today the marble palace across from the Capitol is one of Washington's show buildings, each justice having his own sumptuous suite, although as yet only Justices Roberts and Sutherland have been induced to occupy them. The others still prefer home work.

Our Judicial Mechanics

The increase in austerity and reserve, however, does not date from the new building. Chief Justice White was a firm believer in the Supreme Court as something above and apart, and Chief Justice Taft, for all his bonhomie, made no attempt to conceal his conviction that the body should be held in reverence. Speaking in Idaho in 1911, he made this frank admission: "I love judges and I love courts. They are my ideals on earth of what we shall meet afterward in heaven under a just God."

Although not on record with any similar outburst, Chief Justice Hughes entertains much the same feeling. He has striven mightily to invest the court with all due dignity, accenting ceremonial and detachment. Under his rule, remoteness has been developed to a degree that the

Washington correspondent who succeeds in discovering something that goes on behind the sacred portals, even though it be trivial, is hailed as one worthy of the Pulitzer prize.

Only twice has a member of the high tribunal thrown light on its inner workings. Between his resignation in 1916 to accept the Republican presidential nomination, and his reappointment to the bench in 1930, Mr. Hughes himself gave a series of lectures at Columbia in the course of which he outlined court procedure. Again in 1923, John H. Clarke, who resigned to make a fight for the League of Nations, discussed the procedural activities of the court in a Cleveland talk.

According to these authorities, when the nine justices file out of the chambers and take their seats on the bench, all are in possession of printed records of the case before them. During the course of the argument, limited to one hour for each side, they can refer to the record as a check on counsel or for purposes of questioning. The Chief Justice's interrogations are crisp and pointed, designed to clarify rather than heckle, as are the queries of Stone and Butler. Lawyers agree, however, that Brandeis goes more directly to the heart of a matter than any other. The gentle Cardozo often comes to the rescue of a befuddled attorney, while McReynolds snaps his questions if he disagrees with the argument.

The court is in session from October until mid-June or thereabouts, and two weeks of hearings are followed by a recess of two weeks during which the court passes on cases heard. The daily sessions open promptly at 12 o'clock and stop precisely at 2 for luncheon. Resuming at 2:30, they are brought to a close at 4:30, even though it cuts a sentence short. Mondays are opinion days, and it is on Saturday at high noon that the court meets for discussion.

Taking the cases up one by one, the Chief Justice sets forth his views, and then the associate justices are called on for their opinions, starting off with the

junior member. If the case is without striking features, there is only perfunctory debate, but a controversial issue precipitates animated discussion. When all have been heard, a ballot is taken and the Chief Justice votes last, sometimes a privilege but most often an embarrassment, especially when the count stands four and four and it is up to him to break the deadlock.

If the Chief Justice is with the majority, either he writes the opinion himself or assigns it to another. In the event that he is with the minority, the senior associate justice in the majority makes the assignment. Where the minority is in agreement, they choose one of their number to write the opinion, or else each dissenter sets forth his own views.

Sharing the Work

To quote ex-Justice Clarke, "When the opinion is written, it is sent to the printer, and after the writer is satisfied with the form, he hands a printed copy to each of the other justices, and it is a tradition of the court that criticism shall be entirely free and unrestrained except, of course, it is implied that it shall be constructive. It extends from punctuation to a discussion of the principles that may be involved in the case. These copies of the opinions with the suggestions of the various judges are returned to the writer and he uses such of them as he may think will improve the original. It may be necessary for him to recast his whole opinion. At the next meeting of the conference, the first business is a call for opinions, which means that the judges who have written opinions shall answer whether or not they have a majority for them as written, and if there is a majority for them, they are announced at the next session as the opinions of the court."

In his Columbia lectures, Mr. Hughes stated that "it would naturally be the effort of the Chief Justice to distribute the work so that each judge would have about the same amount of work as the others, and about the same proportion of important cases." A study of the last three volumes of United States Reports, however, covering a nine-month term, shows that he himself has not followed this rule. Brandeis, Butler and Van Devanter, for example, had a total output of thirty majority opinions and one dissent, while the pooled production of Roberts, Stone and Cardozo was sixty-nine majority opinions and fifteen dissents.

Up to the very time of retirement in his ninety-first year, Justice Holmes was

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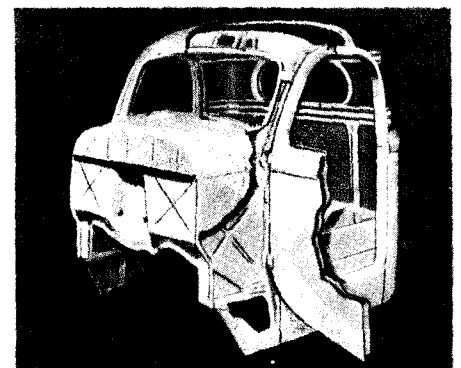
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I Dress as I Like

Continued from page 21

of Washington her reputation was established and she joined a group of sister outcasts as a matter of course. What rescued her was the Studio Theater. Frances had enrolled in the school of journalism but she found that the young bloods in that department were still going around trying to be Mencken and Nathan. Since even the undergraduates at West Seattle High knew that Mencken's day was over, this made Miss Farmer ill and she gave up newspaper work for the stage.

"Anyhow," she says, "they were always giving me the worst beats to cover. I was supposed to go down to the infirmary every day and check up on the measles but I never made it and they fired me."

But she didn't care because she was acting at the Studio Theater, where they ran their shows Friday, Saturday and Sunday nights during the winter and had single productions lasting as long as sixteen weeks. She had a room at a boardinghouse just off the campus (rent \$7 a month) and picked up spare change ushering in a movie house and working during the holidays at the Bon Marche department store, where she got bounced because she couldn't keep her sales book straight.

Steering to Russia

About this time a paper called the Voice of Action, which had been launched by a group of young men with radical ideas, offered a trip to Russia as a circulation prize. Frances had no idea of getting into it, but somebody registered her name and she got thinking that she'd like a look at the Soviet theater. It was a great battle but she won—and again the city of Seattle was up in arms.

What she was getting was a third-class trip, which meant she would be in steerage for the journey, but when they made so much fuss about it nothing on earth could have kept her away. Among other protesting visitors was a young man of religious beliefs who interrupted her packing at the boardinghouse to have words with her. He first presented her with a Bible, which she accepted and forthwith packed with the rest of her belongings, and then he sat down on the bed and began to sing hymns. His parting gifts were two in number, (a) a potted plant and (b) a searchlight.

"To find my way through Darkest Russia, were his words," reported Miss Farmer.

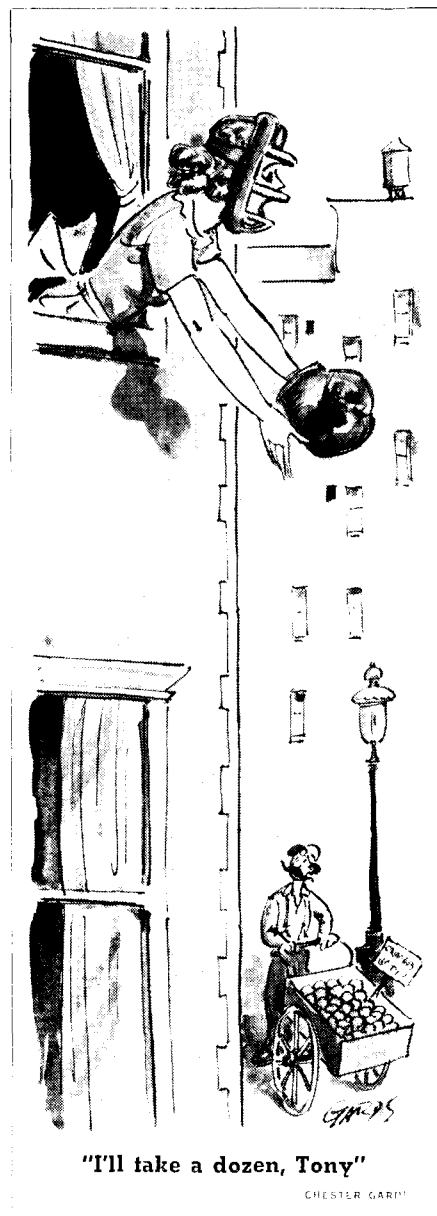
She had a letter to J. Edward Bromberg, the actor, and went to a party given in honor of the Group Theater and left two days later on the Washington, nicely cared for in third class down by the engines. What she remembers best about the trip was (a) a steward who nightly sneaked her up to the first class (which she didn't like and finally settled on tourist third), (b) a Frenchman who invited her to a dance and sent down in the afternoon for her gown so he could have it pressed (a very good idea, she still thinks), (c) a lawyer who confided that what he had always wanted to be was a fireman, and (d) the swell time she had on the Soviet boat out of London, where there was only one class and the crew took part in the fun.

She spent most of her time in Russia seeing the shows and got her Hollywood break on the boat coming back when she met Dr. George Gladstone, who was returning from his medical course at Cambridge. Dr. Gladstone knew Shepard Traube and Traube knew Oscar Serlin, who was then talent scout for Para-

mount. She had started from Seattle with \$100 in cash and was dead broke when she got to New York. In between times of taking tests for Mr. Serlin, she got jobs as a model, two of them, and was let out each time.

"You're too much the Greenwich Village type," they told her.

The screen tests continued over a period of two months and she worked up to the point where she did scenes from *The Lake*, which had been Katharine Hepburn's *Waterloo* on the stage several years before. She had great admiration for Miss Hepburn and proved it last winter when she appeared in a broadcast by Jimmie Fidler in which she was being lauded as the most promising



female screen star of the year. The script called for various cracks at Hepburn. When Miss Farmer couldn't get them changed in the script before the broadcast, she inserted a boost for Miss Hepburn while it was going on, hailing up the timing considerably but getting her point across.

After fiddling around with tests for months, some giant mind in the Paramount plant at Hollywood decided that Miss Farmer was worth gambling on and she came out from New York. She worked with Miss Laughton for several months and was then given her first part in *Too Many Parents*, which had Henry Travers as star. Next was something entitled *Border Flight* with John Howard.

"Oh, by long odds, the worst picture ever made," says Miss Farmer enthusi-

astically. "I was in four scenes and always sitting in a roadster. They'd wheel the thing in, I'd spout a few lines over the windshield and out we'd go again. It could have been played just as well by a cripple."

After that she took tests for weeks for a part in *Rhythm on the Range*, without knowing what it was about.

"I never did find out," she says. "I was just the tall skinny dignified dame while Crosby and Martha Raye and Bob Burns were having the time of their lives. It was a long sweet nightmare for me."

While Paramount was making *Rhythm*, Howard Hawks was making tests for Edna Ferber's *Come and Get It*. Virginia Bruce had been selected for the part but there was a row of some sort and the deal fell through. Hawks saw some tests of her and arranged to borrow her from Paramount.

"Thank heaven he saw the tests instead of those pictures," she says, fervently. The only serious casualty in the matter was Sam Goldwyn, who was trying to die in a New York hospital and almost made it when he heard the news about Farmer. He began frothing at the gills, yowling at nurses and jiggling the phone trying to get the Hollywood operator. But the contract was signed and it was too late.

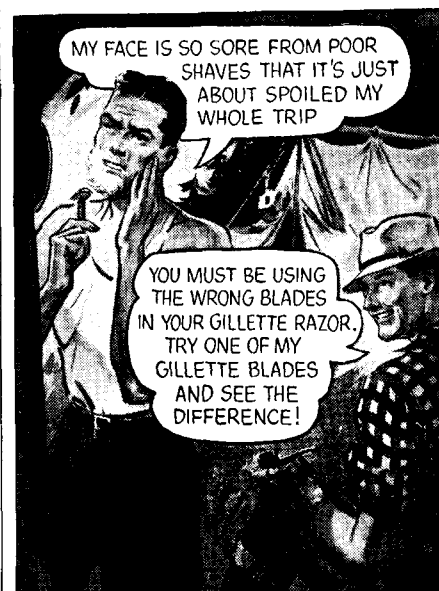
Because he felt so bad about it, she was more willing than customary when the Goldwyn office asked her to make personal appearances when the film opened in Seattle. She regretted it the minute she hit town.

"What they had me doing first was autographing copies of *Come and Get It* at the Bon Marche, where I had been fired a couple of years back. That was bad enough but think of me autographing a book written by somebody else. That took crust but it didn't turn out so badly because when I got to the store, about twenty people finally strolled in and looked at me from a distance and kept their buying firmly in control. What the Goldwyn people had forgotten was that up that way I'm still remembered as the freak from West Seattle High."

It's a Nuthouse

When last seen Miss Farmer was getting ready to appear in *The Robber Barons*, a screen treatment of Matthew Josephson's book about old Wall Street brigands. She is the Josie Mansfield of the story and was a little bitter about the sweetening which had been plastered over Josie's character by the adapter. The first version had been done by Dudley Nichols but in the usual quaint Hollywood fashion that had been thrown out and a new one written which belonged with the works of the late Louisa M. Alcott. One week of shooting the new script and fast couriers were despatched in search of Mr. Nichols, asking him please to forgive all and return. This mollified Miss Farmer but did not decrease her amazement over Hollywood.

"It's a nuthouse," she says firmly. "The other day a man phoned and wanted me to endorse a certain brand of cigarettes. I had nothing against them and in fact will smoke them or anything else that comes along, but I didn't know why he was bothering me. I thought maybe if I was nice they'd give me a carton as a thank offering, so I rather tentatively broached the matter of remuneration. What was the endorsement worth, I asked, and he said three thousand dollars. What are you going to do in an atmosphere like that?"



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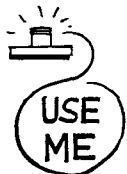
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MUM TAKES THE ODOR OUT OF PERSPIRATION



If The Court Please

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keenly watchful of the number and character of the cases assigned to him, fearful that the Chief Justice might be showing him special consideration because of his age. Various of his secretaries report that the old jurist frequently took up the matter with both Mr. Taft and Mr. Hughes, making it plain that he insisted on carrying his fair share of the burden.

Hearing oral arguments, however, and rendering decisions on those arguments, constitute only a part of the work of the Supreme Court. Each and every day of the year there pours in a flock of requests for review of rulings of the inferior courts, and huge bundles of documents follow the justices even on their vacations. While it is true that in this last year only 273 writs of certiorari were approved out of 990 presented, no writ went without its careful and collective study, for, contrary to general opinion, these writs are not parceled out among the judges for a decision that is accepted by the court as a whole. According to ex-Justice Clarke, "Each judge receives a copy of the record, the petition for the writ and the briefs in support of it, and each is supposed to and actually does work out to his own conclusion with respect to it. In conference the petitions are called and discussed, a vote is taken, and each is decided precisely as if it were an argued case."

Most justices minimize the drudgery by having their law clerks make a digest of the briefs and records, but even so, as Justice Holmes once remarked, "Certioration is the thief of time." He himself waxed profane if one of his "boys" failed to set down the gist of the matter on a single page.

The Dissenting Three

Where public curiosity is most likely, however, is with respect to the personal relations of the justices. Huddled together intimately for nine months of the year, how do they get along with each other? When the court splits five to four on some important decision, and red-hot dissenting opinions are filed, is it all amiably argumentative, so that the nine go off arm in arm, or do they have high words that end in open enmity? Back in earlier days these questions were not left to speculation, for judges frequently aired their differences in public. During the Legal Tender cases, Chief Justice Salmon Chase, supported by Justice Nelson, became involved in a dispute with Justices Miller and Davis, and each side virtually gave the other the lie.

Justice Holmes used to talk freely of the bitterness that marked a division of the court during the time of Chief Justice White, the majority and minority often reaching a point where the two sides quit speaking. His own relations with Justice Harlan were cordial, yet once when he refused concurrence in an opinion the high-tempered Harlan turned down a request for a copy of his opinion. "Certainly not," he snorted. "Why should I help you pick holes in my argument?"

Chief Justice Taft, a sunny soul with a gift for maintaining pleasant group relations, succeeded in bringing about a happier condition, but even he could not cope with the disposition of Justice McReynolds, who had certain inveterate prejudices that he took no pains to conceal. Jews and Liberals happened to be two of his pet detestations, and as a consequence, his reception of Louis D. Brandeis was rude to the point of insult. Justice Cardozo, for precisely the same

reasons, was greeted with discourtesy and dislike.

Prior to March 4, 1933, however, these bitternesses were kept under cover more or less, but since the advent of the New Deal, they have been carried into open court. Even the most obtuse spectator can see the gulf that divides McReynolds, Van Devanter, Sutherland, Roberts and Butler into one camp, and Stone, Brandeis and Cardozo into the other. For a time the Chief Justice oscillated between the two, hopeful of promoting a surface appearance of harmony, if nothing else, but now his association is almost entirely with the conservatives. Along with Justices Van Devanter and Sutherland, however, his courtesy is unflinching, although a trifle chill. On the other hand, the faces of Butler and Roberts show irritation when any of the Dissenting Three delivers an opinion, while McReynolds either reads a newspaper or gets up and leaves the courtroom.

Brandeis and Cardozo are known to feel keenly the division and its resultant ill feeling, but anger and snubs have no effect whatsoever on burly, imperturbable Harlan Fiske Stone, now the spearhead of the minority. His two fellow dissenters talk into the desk when they read their opinions, but Stone lets go both barrels with head held high, giving every evidence of enjoyment.

When he first took his seat on the bench, Stone's closest association was with Hughes, but more and more he came under the influence of Oliver Wendell Holmes, even absorbing many of the venerable jurist's prejudices. Like the late justice, who used to groan audibly and profanely when his colleagues waxed prolix, Stone developed an equally frank dislike of the tedious and longwinded.

Any hope of reconciliation vanished when he looked Mr. Hughes squarely in the eye on the occasion of recent dissents during which he spoke of "tortured constructions," and declared that the majority were reading into the Constitution their own "personal economic predilections." Those dissents, by the way, not only ended all pretense of friendship between him and the Chief Justice, but also put a painfully abrupt stop to talk of Harlan Stone as a possible Republican nominee for the presidency.

Today Washington talks of nothing but the President's proposed reorganization of the federal judiciary, and keenest interest of all is in the attitude of the indi-

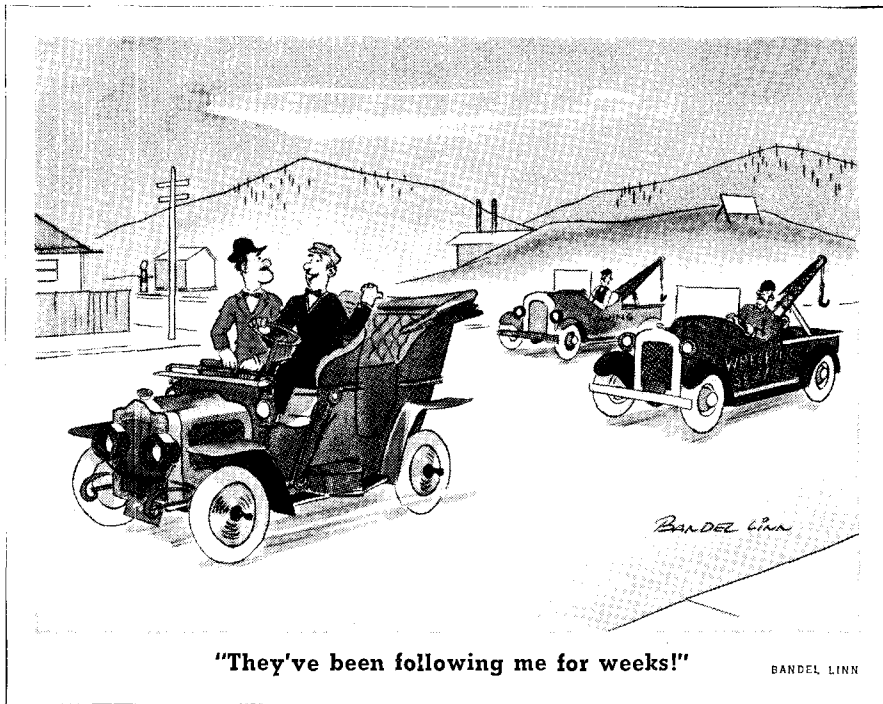
vidual members of the court. What do they think of it? Dragged out into the full light of day, as it were, and with everybody in the United States trying to look at their teeth in order to ascertain age, four of the justices have broken silence in a manner that leaves no doubt as to their feelings. Speaking extemporaneously at a Phi Delta Theta banquet, Mr. McReynolds lauded the Supreme Court as a "balance wheel," affirmed his own effort always to protect "the poorest ducky in the Georgia backwoods as well as the man in the mansion on Fifth Avenue," finishing with the suggestion that "good sportsmanship" commands losers in a judicial dispute to accept the verdict without question, saying "This is my country."

"Just What It Asked For"

The letter of the Chief Justice, indorsed by Mr. Van Devanter and Mr. Brandeis, not only met the President's charge of a congested docket, but argued that an increase in members "would not promote the efficiency of the court." The agreement of Justice Brandeis came as no surprise to his intimates, for it was known from the first that his sensibilities were cut to the quick. Now in his eightieth year, he feels that the President's emphasis on age was a direct thrust at him, and this despite assurances to the contrary that have been sent through friends.

The others have sealed their lips so far, but a dropped word here and there enables one to gain a pretty good idea of their reactions. Of those not affected by the proposal, being still under seventy, Roberts regards it as a confessed attempt to pack the Supreme Court, Cardozo shares the hurt of Brandeis, his dear friend, while Stone makes no secret of the fact that he thinks the court is getting "just what it asked for." Of those over seventy, Sutherland and Butler stand squarely behind the Chief Justice's letter.

As to what will happen in event that the President wins Congress to his way of thinking, there is much excited speculation but no exact knowledge. Some alleged authorities hold that wounded pride will result in several resignations, while others contend that not one of the justices would put himself in the position of quitting under fire. Take your choice of these views.



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Legion Feud

By Georges Surdez

Episode in the lives of two Legionnaires. It is not only a stirring story—it is a reminder that you do not know the stubbornest man on earth, after all

ILLUSTRATED BY ALEX RAYMOND



WHENEVER Lieutenant Colonna spoke to Legionnaire Maritz, his sullen, lasting hatred flashed to the surface, to be met by a calm, almost amused tolerance. Oddly, the second-class private appeared to dominate the situation despite the odds against him, perhaps because he had control of his temper.

The whole Second Company, including Captain Dargelos, and probably the entire battalion of the Foreign Legion stationed at Dar-Gueliz, Morocco, knew that a tense game was being played, that Colonna was stalking Maritz. The captain, a kindly, middle-aged man who did not like trouble, once hinted to Maritz that he could have him transferred to another unit, where he might have an opportunity for promotion. The Legionnaire shook his head.

"*Mon Capitaine,*" he replied, smiling with his habitual irony, "I am perfectly contented here. I am not very ambitious, you know."

There was speculation as to Colonna's exact motive, for the lieutenant had the reputation of being fair. Why had he selected Maritz out of two hundred possible victims for his spite? The lieutenant alone knew what had fired the first spark. The Legionnaire had forgotten the incident.

Colonna was a Corsican, a matter-of-fact, square-shouldered, stocky officer, "without frills and without nonsense," as he said, a self-made man. Extraordinary physical courage had lifted him from the mass. He was a real Legionnaire, of the ancient type, quarrelsome, generous, hard-drinking. His swarthy face, the fierce half-crouch as he berated an unlucky trooper, were famous in the regiment.

But although those about him believed him satisfied with his lot, egotistical and vain, he was restless. He felt that he was a very capable officer, intelligent enough for promotion. And he felt he was unlucky: where another man gleaned an additional bit of braid, a high decoration, he was rewarded with a casual compliment. Why?

"Because I'm no actor, no mountebank," he thought. "I don't know how to foam up the least thing into a thick lather." He had tried, in a fumbling, rather pathetic fashion, to attract attention to himself. He had bought his uniforms at the best tailors. But once pulled over his thick torso, on his solid, short legs, tunic or riding breeches lost their style. He looked either overdressed or shabby.

Moreover, he could not write sensational reports. A queer sensation of exquisite shame gripped him when he sought to write in epic style, as successful officers wrote. Such words as abnegation, heroism, held something indecent

Maritz said softly, "They're close to us. I think they've located us"