AALL Centennial Feature[*]

Politics Most Foul? Winston Overton's Ghost and the Louisiana Judicial Election of 1934[**]

Warren M. Billings[***]

Professor Billings describes the battles between forces for and against Senator Huey P. Long during the Louisiana judicial election of 1934 which, he judges, demeaned the Louisiana Supreme Court and nearly destroyed the state's bar association.

¶1 Winston Overton was dead.

¶2 Felled by a cerebral hemorrhage on September 9, 1934, he passed away around 7:00 P.M. that evening. The next afternoon family, friends, and dignitaries from across Louisiana crowded into the Episcopal Church of the Good Shepherd in Lake Charles for funeral services. After the Reverend George F. Wharton intoned the closing prayers of the burial rite, pallbearers, including the lieutenant governor and the local sheriff, smartly bore the casket down the long center aisle and to its grave in Graceland Cemetery, where the body of the late associate justice of the Supreme Court of Louisiana moldered to the dust from whence it had come.[1]

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* *Editor's Note*: The American Association of Law Libraries was founded on July 2, 1906, by a handful of law librarians who met during the Annual Conference of the American Library Association at Narragansett Pier, Rhode Island. To commemorate the AALL Centennial that will be celebrated with a yearlong series of events and activities in 2005–06, culminating at the 2006 Annual Meeting in St. Louis, *Law Library Journal* is including an "AALL Centennial Feature" article in each issue published through 2006. While the focus common to each article is the history of law libraries, law librarianship, and AALL, the specific topics vary according to the interests of authors and readers. Individuals interested in contributing a "Centennial Feature" article should contact Frank G. Houdek, Editor, *Law Library Journal*, Southern Illinois University School of Law, Lesar Law Bldg., Mail Code 6803, Carbondale, IL 62901-6803; (618) 453-8788; houdek@siu.edu.

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*** Distinguished Professor of History and Chairman of the Department, University of New Orleans, New Orleans, Louisiana, and Historian of the Supreme Court of Louisiana. The author acknowledges the assistance of Eddie Gonzalez, Leigh Anne Plasse Baltazar, and Susan K. Jones. He is especially grateful to Carol D. Billings, Law Librarian of Louisiana, Linda K. Gill of the Calcasieu Public Library, Ramona Meyers of the Louisiana State Bar Association, Beth Vandersteen and Wes Saunders of the Rapides Parish Library, and Kenneth Rudolf of the University of La Verne College of Law Library for their help.

1. Petition of E.A. Conway (Sept. 26, 1934), Porter v. Conway, 159 So. 725 (La. 1934) (No. 33147), *in* case file available at Clerk's Office, Supreme Court of Louisiana, New Orleans [hereinafter *Porter* (No. 33147) case file].

¶3 In ordinary times, Overton's death would have drawn little public notice beyond the newspaper stories of its occurrence, and it would have been forgotten within a day or two because the judge was not a man many Louisianians thought much about, if at all. Statewide, some who read accounts of his demise recognized him as the younger brother of their junior United States senator. Hometown voters recalled him as their former city attorney, a one-time trial judge, or as their delegate to the state constitutional convention of 1921; but for all of that, he had lived mostly a stranger to those outside Lake Charles and the Third Supreme Court District.[2]

¶4 September 1934 was no ordinary time. It was primary season across Louisiana, and at the hour of his passing, Winston Overton was locked in a strenuous bid to hold his seat and to keep Senator Huey P. Long master of the Louisiana Supreme Court. His sudden death, which occurred less than two days before the primary election, threatened to snatch victory from Long and exalt his enemies. Not to be denied, the Kingfish and his minions executed a swift, fiendishly clever rearguard action that turned apparent defeat into a stunning success that catapulted Lieutenant Governor John B. Fournet into Overton's empty chair as it demeaned the supreme court and nearly destroyed the state bar association.

¶5 The manner of that achievement is an engaging, though little appreciated, episode in Long-era politics. It is as well a lesson in the fallibility of legal institutions and the sometimes malign consequences of an elective judiciary.

Background

¶6 Seven men—Charles A. O'Niell, Fred M. Odom, Wynne G . Rogers, Harney F. Brunot, John Land, John St. Paul, and Winston Overton—comprised a supreme court that reflected political divisions throughout Louisiana during the Long years. Chief Justice O'Niell and Long disdained one another deeply. Their antagonism traced to Long's impeachment while governor in 1929 and to O'Niell's role as presiding judge at the trial itself. The animosity intensified afterward because O'Niell's jurisprudence stressed an independent judiciary and separation of powers as stout bulwarks against overweening executive authority, wherefore that doctrine stood poles distant from Long's way of government. Odom and Rogers typified Louisianians who detested Long for no other reason than his being Huey P. Long. St. Paul wasted no love on the senator either, though he invariably sustained Long's legislative programs on the theory that his court could restrain the legislature only if it clearly transgressed constitutional boundaries, and he rarely found that it did. Consequently, he aligned with Brunot, Land, and Overton, thereby guaranteeing Long control of the court, but only just.[3]

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2. New Orleans Times-Picayune, Sept. 11, 1934; James D. Wilson, Jr., *Winston Overton*, *in* A Dictionary of Louisiana Biography: Ten-Year Supplement, 1988–1998, at 175 (Carl A. Brasseaux & James D. Wilson, Jr. eds., 1999).
3. *See* Warren M. Billings, *The Supreme Court of Louisiana and Its Chief Justices*, 89 Law Libr. J. 449, 458–60 (1997); T. Harry Williams, Huey Long 734 (1977).

¶7 In the spring of 1934, Long was bent on keeping the court in his pocket. The likelihood of his doing so seemed secure as the primary season neared. Of the seven justices, only Overton was up for re-election. Overton was sure to draw an opponent, but Long appeared confident of his prospects. The judge was greatly esteemed as a man of honor and a first-class jurist, and his identification with Longism seemed a trifle to Lake Charles voters and others around his district, whom he had served for fourteen years. Besides, he was an incumbent, and that was no small advantage in this or any other election. So probability favored his taking the primary hands down, which was tantamount to retaining the seat and Long's majority.[4]

¶8 Justice St. Paul threw an unforeseen crimp into those calculations. Claiming poor health, he announced in April that he would leave the court when it adjourned for the summer recess. Much as Long might have wished it, he could not induce Governor O.K. Allen to appoint a friendly successor. St. Paul's term of office still had twelve years to go, meaning that under provisions in the Louisiana Constitution of 1921,[5] St. Paul's replacement must stand for election. Long thus faced a race in which the outcome would be very much in doubt. Campaigns for open seats were always uncertain, but this one would be more uncertain still because of where it would occur. St. Paul lived in the First Supreme Court District—a constituency that incorporated Orleans, Jefferson, St. Bernard, St. Charles, St. John, and Plaquemines parishes (counties)—and it was there that Long's blood rival, Crescent City mayor T. Semmes Walmsley, kept his political stronghold. Walmsley was sure to field a candidate. If his man finished first, then Long would not only forfeit control of the court, he would suffer the high indignity of a loss to Walmsley.[6]

¶9 Looking for a way to shorten the odds in his favor, Long tapped Algiers native Archibald T. Higgins to face off against Walmsley's candidate, Walter Gleason. Higgins, an attractive, well-regarded appellate court judge, came from a fairly typical background for supreme court candidates of the time. Educated at Tulane University, he initially associated with the law firm of one-time governor Luther E. Hall before branching out on his own. Politics beckoned, and he was by turns city attorney for Gretna, Louisiana, an assistant district attorney in Jefferson Parish, a state representative, and a district court judge before he was appointed

4. Editorial, Lake Charles Am. Press, Sept. 10, 1934; Chief Justice Charles A. O'Neill, Jr., Remarks at Memorial proceedings for Winston Overton (Oct. 1, 1934), *in* 44 Supreme Court of Louisiana Minute Book, June 8, 1934–Jan. 12, 1937, at 44–49 (available in Supreme Court Clerk's Office, New Orleans). A daily paper, the *Lake Charles American Press* appeared in two editions. The Home Edition customarily contained fuller, more current, reportage of front page events than its earlier companion. Unless noted otherwise, the Home Edition is the source of the citations that appear throughout this essay.

5. La. Const. art. 7, § 7 (1921) ("[I]f two years or more of an unexpired term remain, the . . . vacancy shall be filled by special election called by the Governor, which shall be held within four months after the vacancy shall have occurred.").

6. Williams, *supra* note 3, at 669–75. Voters in the first district chose two justices because the bulk of court business originated in New Orleans and because the court had sat in the Crescent City since its inception in 1813.

and later re-elected to a vacancy on the Fourth Circuit Court of Appeal. He cast his eye on bigger things after St. Paul's resignation, and he willingly accepted the bid of the Kingfish.[7]

¶10 Long flung himself unabashedly into the Higgins-Gleason match. That commitment left Winston Overton to fend for himself. Even though Overton enjoyed the advantage of incumbency and Long's verbal support, he found himself locked into a stiff fight with an energetic adversary, Thomas F. Porter, Jr.

The Overton-Porter Primary

¶11 Porter's credentials and reputation throughout the district easily rivaled Overton's. A native of Natchitoches Parish, Porter trained at Yale Law School before settling in Lake Charles. There he partnered with E.F. Gayle, married Gayle's sister, and fell into the life of a small town lawyer. He answered the call to arms after Congress declared war on Germany in 1917 and saw action as a gunnery officer in France. Back in Lake Charles, he resumed his partnership with Gayle before an itch for judicial office goaded him to run; and in 1920, he took a seat on the Fourteenth Judicial District Court. An avid campaigner, he earned renown for his oratory on the stump and gained ever greater visibility in subsequent elections, which he always won handily. When the opportunity to challenge Overton came, he jumped at the chance. By his reckoning, his own voter appeal, plus the strength he drew from local attorneys, politicians, and anyone else who despised Long, would carry him to victory, and he aggressively took the fight to Overton.[8]

¶12 Constitutional revision in 1913 made tenure on the Louisiana Supreme Court subject to popular vote for the first time since before the Civil War.[9] The architects of the constitution of 1921 retained the practice too, and as a result, judicial elections quickly became an ingrained part of the political culture of twentieth-century Louisiana. Enabling statutes[10] set forth the electoral process in the exquisite detail so beloved of those who believed in the virtues of an expansive administrative state run by great bevies of elected officials. Concern for process, however, did not translate in statutory restraints on the conduct of the elections

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7. James D. Wilson, *Archibald Thomas Higgins*, *in* Dictionary of Louisiana Biography, Ten-Year Supplement, 1988–1998, *supra* note 2, at 111; Louis H. Yarrut, *Justice Archibald T. Higgins*, 5 La. B.J. 2, 11–12 (1946).
8. 3 Henry E. Chambers, A History of Louisiana, Wilderness, Colony, Province, State, People 293 (1925); Lake Charles Am. Press, Mar. 1, 1963; Vance Plauché, *Short Sketch of the Fourteenth Judicial District over Fifty Years Ago, 1920–1925*, 18 La. Hist. 239, 240–41 (1977); E-mails from Kenneth Rudolf, Head of Reference, Yale Law School Library, to Warren M. Billings (Nov. 14–15, 2001).
9. La. Const. arts. 86–87 (1913).
10. *See, e.g.*, Act of July 13, 1922, No. 97, 1922 La. Acts 178 (providing for the "calling, holding, conducting and regulating [of] primary elections"); Act of July 15, 1924, No. 215, 1924 La. Acts 394 (amending 1922 act).

themselves. Candidates begged money from any open purse, individual lawyers publicly backed their favorites, the state bar association freely touted its choices, and reasoned debate of legal philosophies gave place to less weighty discussion. Indeed, to the chagrin of many, judicial elections became heated, raucous, and ever more costly affairs which by 1934 were scarcely distinguishable from those for the more overtly political offices.[11] So it was with the Overton-Porter encounter.

¶13 The campaign formally began after the executive committee for the Democratic Party in the Third Supreme Court District met on July 3 in Crowley. Committee chairman T. Arthur Edwards gavelled the meeting to order and recognized J. Cleveland Frugé. Frugé offered a resolution fixing September 11 as the date of the primary as it invited candidates to file for the seat and stipulated that none but "electors of the white race" could vote.[12] His motion passed without dissent. The committee recessed to await the results. Once the tallies were known, it would reconvene and certify the outcome to Secretary of State E.A. Conway, who by law proclaimed the winner as the party nominee.[13]

¶14 Overton and Porter were more opponents than enemies. Both called Lake Charles home. They had long known one another as professional colleagues, they were Episcopalians, and there was no evident animus between them. True to form, however, their match immediately turned personal, though the person in question was neither Winston Overton nor Thomas Porter. It was Huey P. Long. Porter thoroughly loathed the Kingfish. Long abominated Porter in equal measure, once saying of him that "if I owned a whorehouse, I wouldn't let him pimp for me."[14] Given those feelings, Porter adopted a strategy of attacking Long head on while implicating Overton by association. He took the rather unusual step of advertising his candidacy in the newspapers. Typical was an ad that ran in the *Lake Charles American Press* the day before Overton died. It furiously lambasted Long as a power-crazed despot who would stop at nothing to undo the rule of law, and it luridly characterized him as being on the verge of using the national guard to impose dictatorship upon the good people of Louisiana. As for Overton, it said that because he "ha[d] openly announced that he approve[d] and sanction[ed] all of Long's acts, since he fail[ed] to condemn them, and since Judge Overton [was] a part of Long's political machine, it must be concluded that the Judge favor[ed] the loss of life . . . if [that were] necessary to maintain Long in power." Porter, by contrast, was "unalterably opposed to Long's dictatorship and his control of the Supreme Court. The sword," the ad blared, "is now in the hands of a madman. A

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11. Wayne M. Everard, *Louisiana's "Whig" Constitution Revisited: The Constitution of 1852*, *in* In Search of Fundamental Law: Louisiana's Constitutions, 1812–1974, at 47–48 (Warren M. Billings & Edward F. Haas eds., 1993); Warren M. Billings, *A Bar for Louisiana: Origins of the Louisiana State Bar Association*, 41 La. Hist. 389, 396 (2000); Ben Robertson Miller, The Louisiana Judiciary 120–23 (2d ed. 1981).
12. Resolution of the Executive Committee (July 3, 1934), *in Porter* (No. 33147) case file, *supra* note 1.
13. Affidavit of Thomas A. Edwards (Sept. 19, 1934), *in Porter* (No. 33147) case file, *supra* note 1.
14. Quotation attributed to Long by William Cleveland in Williams, *supra* note 3, at 733.

vote for Overton is a vote for Long and military dictatorship. A vote for Porter is a vote for a square deal and a return to constitutional government."[15]

¶15 Words in newspapers helped, but the spoken word helped more, and Porter spoke to as many of the voters as he could. Time was of the essence, there being only forty-five days between qualification and election, and the hunt for willing ears throughout the district was a grueling exercise. The Third Supreme Court District sprawled over eleven civil parishes in the mostly rural southwestern section of the state.[16] Traveling by car over rough, often barely passable highways and byways, Porter and Overton crisscrossed the district, talking themselves hoarse at as many as four rallies a day, catching rest, meals, and fresh changes of clothes as best they could. The hectic pace taxed both men, but it put the sixty-four-year-old Overton at the greater disadvantage, because he compounded the wear and tear by refusing to scale back his judicial duties. His forays into the district began and ended with a long, jolting round trip from New Orleans, and as primary day neared, he sickened, though neither he nor anyone else thought the strain might kill him.

¶16 Certainly not T. Arthur Edwards. On September 8, Edwards voted absentee before he motored over to Texas for a visit with his brother. Word of Overton's death reached him around noon on the 10th. He immediately left Beeville for home, knowing that it was too late to cancel the primary and under law he must declare Porter the party nominee. Heavy rains made the roads impassible, and he did not arrive in Lake Charles till midday on September 12.

¶17 By then, the votes were in, and Porter had won by a margin of two to one,[17] but because Overton died within thirty-six hours of the balloting, and because the turnout was low, there were mutterings in the Overton camp that Porter was unqualified for the nomination. Edwards harbored no such doubts. When the local press interviewed him just hours after his return from Beeville, he remarked that he had "served . . . as district attorney for four years when [Overton] was district judge, and [Overton had] been [his] close friend for many years," and he noted that "the state ha[d] lost an eminent jurist and a good citizen." As to the Porter situation, Edwards said most emphatically that "Judge Porter will be declared the nominee, being the only legal candidate before the people, whether he

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15. Lake Charles Am. Press, Sept. 8, 1934. I am indebted to Linda K. Gill, who photocopied the ad for me. Subsequently, she remarked to me that she had not come across "any ads for Overton while researching [for you]. I sent the one(s) for Porter because I was surprised at finding them (I never noticed political ads like that before!)." E-Mail from Linda K. Gill, Calcasieu Public Library, to Warren M. Billings (Jan. 2, 2002).

16. The district embraced the parishes of Acadia, Allen, Avoyelles, Beauregard, Calcasieu, Cameron, Evangeline, Grant, Jefferson Davis, Lafayette, and Rapides.

17. Lake Charles Am. Press, Sept. 11, 1934; Affidavit of Thomas A. Edwards, *supra* note 13, at 2. An accompanying exhibit, labeled "B" in the case file, set forth the official count. It showed that Porter carried all eleven parishes, some by huge margins. The tally, however, revealed no votes were cast in two Evangeline precincts and about a hundred blank ballots were dropped in the boxes in two Lafayette precincts. What to conclude about the Overton vote is problematic because there is no way of ascertaining which voters knew of his death and marked their ballots for him anyway and which learned of his passing only after they voted for him.

got a majority of votes or not since the lamented death of Justice Overton is the same as if he had withdrawn or been disqualified, leaving the field to Judge Porter." And Edwards announced that the executive committee would gather at Crowley on the fifteenth to certify Porter to Secretary of State Conway.[18]

¶18 The law allowed Edwards to set a date of his choosing, but why he put the committee meeting off to the fifteenth is a bit of a mystery. It might be supposed that his friendship with Long and his vote for Overton played into his decision. That supposition would carry weight were it not for his public statement that he deemed Porter the party's nominee. Perhaps he hoped that a little breathing space would allow everyone time to calm down and to accept that his understanding of the controlling statutes was correct. Whatever his reasons, his decision cost Porter dearly.[19]

Challenging the Porter Primary Victory

¶19 Long heard of Overton's death almost as soon as it happened. The next day he put out statements to the press that Porter was unacceptable to him, but for the moment he did no more than bluster about "the people always being entitled to an election" and hinting darkly at some sort of legislative intervention.[20] Getting Judge Higgins elected and smashing Mayor Walmsley were uppermost in his mind, and once victory was his, he immediately fixed on keeping Porter off the supreme court. He drove to Baton Rouge on the twelfth, and with his principal lieutenants he hatched out a two-pronged battle plan that capitalized on the opening Edwards had unwittingly given him. He instructed his henchmen on the Third District Executive Committee to solicit a legal opinion from Attorney General Gaston L. Porterie as to the validity of Porter's election.[21]

The Attorney General Opinion

¶20 Porterie prepared his opinion within a matter of hours. He rested his ruling on his reading of the primary act of 1922. Overton's death, coming when it did, automatically voided the votes cast on September 11. Therefore it was imperative to hold another primary ahead of the general election because the applicable statute plainly forbade picking a nominee by any means other than a popular vote. "Now," Porterie continued, "we look to the law to see if there is anything which says that one may be nominated, except by an election," which brought him squarely to the precise point of the committeemen's query. Had Overton expired seven days or more before the canvass, then Porter would properly be the nominee; but, in the

18. Lake Charles Am. Press, Sept. 12, 1934.
19. Lake Charles Am. Press, Sept. 15, 17, 1934. The 1922 primary law merely required that the secretary of state promulgate the results within eight days of an election. Act of July 13, 1922, No. 97, § 27, 1922 La. Acts 178, 196.
20. Lake Charles Am. Press, Sept. 10, 1934.
21. Lake Charles Am. Press, Sept. 13, 1934.

attorney general's words, "the law specifies that such provision shall not apply" because Overton passed away a mere two days before the voters went to the polls on the eleventh. "Therefore," Porterie asserted, "that provision of the law is read entirely out insofar as this case is concerned, and you are left to the other provisions of the law." He concluded:

> [W]here there is ample time as there is in this case the spirit and purpose of our law is always best served by giving the people the right to an election. I rule that you should do so in this case. No candidate can complain over allowing the voters to settle the issue—I doubt that one could be heard to complain if the question is simply submitted to the voters to settle. I would say as a general matter of Committee activity that it would be presumptive to substitute yourself for the people in the selection of the nominee of the Democratic Party which is tantamount to election.[22]

¶21 In rendering his opinion, Porterie overlooked a later statute that governed primaries. The pertinent section[23] declared that if one of two rivals died, new candidates would have five days to file. However, if the death occurred less than seven days before the primary, the remaining candidate would gain the nomination. Porterie's oversight was deliberate. His opinion armed the Longites for the second, more insidious part of their scheme, seizing control of the executive committee and calling another primary in which they would assure the election of a Kingfish man.

Seeking a New Primary

¶22 That part of the design was scarcely a secret. As if anyone needed a reminder, a headline in the *Lake Charles American Press* trumpeted "Plan Seen to Depose Edwards, Oust Porter as High Court Nominee." The accompanying story cited rumors of the intention to overthrow Edwards and to prevent Porter's certification. It also noted that Edwards took the reports "calmly" and quoted him as having "anticipated something like that." But, he said, "I am convinced it would not stand up in court. Reorganization of the committee wouldn't be legal; if reorganization had been intended, it should have been done when the committee met to call the primary election." Then he reiterated his earlier conviction that the law entitled Judge Porter to the nomination.[24]

¶23 Edwards came in for quite a surprise on the fifteenth. Long collared him, and the two men huddled tête-à-tête outside the Crowley courtroom, with Long trying to persuade him to accept another primary. Edwards would have none of

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22. Opinion from Attorney General Gaston L. Porterie to George A. Foster et al. (Sept. 12, 1934), *in Porter* (No. 33147) case file, *supra* note 1 (citing § 1, para. 2, 1922 La. Acts at 178; § 30, para. 3, 1922 La. Acts at 201).

23. Act of July 15, 1924, No. 215, § 2, para. 3, 1924 La. Acts 394, 397 ("That in the event that after the date has passed on which candidates are allowed to enter and file their notification in any primary, . . . one or more of the rival candidates . . . shall die, new candidates . . . shall be permitted to enter and file their notification for a period of five days after such death; provided, that this provision shall not be effective when the death occurs within seven days of the date fixed for the primary election.").

24. Lake Charles Am. Press, Sept. 14, 1934.

that, and as the two of them parted he was overheard to remark that he would follow "'der furore' [sic] of Louisiana politics" no more.[25]

¶24 The committee assembled at noon. Porter attended, so did Long, Lieutenant Governor John B. Fournet, and Porterie, who claimed a place at the committee table by virtue of his being a member of the Democratic Party's state central committee. Calling the members to order, Edwards recognized C.F. Hardin, who proposed Porter's certification. Before there was a second, J.W. Bolton, a Longite, demanded that the committee elect a permanent chairman and secretary. Edwards declared the motion inappropriate and refused to put it to a vote, but Bolton appealed to the committee, which overrode Edwards on a division of 11 to 4. Bolton then nominated Cleveland Frugé and L.B. De Bellevue as permanent chairman and secretary respectively, and the nominations carried, again by a margin of 11 to 4. Frugé took the chair and called upon Porterie, who explained that the law compelled the committee to hold another primary. His opinion brought forth the requisite call for an election on October 9. At that, Porter could keep silent no longer. He vaulted onto a chair, howling heatedly that he was the lawful nominee and bawling that he would make his case in court. Long, who had held his tongue, jumped into the fray. "All we want," he shouted, "is an election. The people are very jealous of an election. I'd hate to think I was claiming a nomination over the graveyard. I'd hate to think we had a graveyard candidate." Then pointing his finger in Porter's face, he bellowed, "You're afraid to face the people." Porter's retort that Long was "a personal coward" ended the verbal sparring. Frugé regained order, whereupon the committee adjourned until "the 12th day of October, 1934, at 12:00 o'clock Meridian for the purpose of canvassing the returns of [the] . . . primary and certifying the results, etc."[26]

¶25 Now Porter faced two options, look to the law or refile and run again. He grasped enough about odds to appreciate the result of a head-to-head confrontation with the Kingfish and his handpicked candidate, who was supposed to be Lieutenant Governor Fournet. Better, thought Porter, to cast his fate in the courts where, he believed, no reasonable jurist could possibly rule against him. Right and law were manifestly on his side. To make his case, he hurriedly recruited Edward Rightor, P.G. Borron, Charles Vernon Porter, Arséne Pujo, U.A. Bell, C.F. Hardin, Luther E. Hall, Joseph W. Carroll, and T. Arthur Edwards, who were among the sagest attorneys in Louisiana. All of them belonged to the Louisiana State Bar Association as well. Indeed, Bell was its president whereas the others served on various of its important standing committees. They set to work at once, and by September 20, they were ready to go to court.[27]

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25. LAKE CHARLES AM. PRESS, Sept. 15, 1934.

26. Resolution Certifying Porter, *in Porter* (No. 33147) case file, *supra* note 1; Resolution Calling for a Primary Election, *in id.*; Minute of the Executive Committee Meeting (Sept. 15,1934), *in id.*; LAKE CHARLES AM. PRESS, Sept. 15, 1934; TOWN TALK (Alexandria, La.), Sept. 17, 1934; WILLIAMS, *supra* note 3, at 735. Porterie was among those voting to sustain Bolton and to elect Frugé.

27. LAKE CHARLES AM. PRESS, Sept. 17, 19–20 1934; NEW ORLEANS TIMES-PICAYUNE, Sept. 19, 1934; REPORTS OF THE LOUISIANA STATE BAR ORGANIZATION FOR 1935–1941, at 2–5 (1942).

¶26 As Porter's team readied their briefs, the Louisiana Supreme Court named Archibald Higgins to fill out the remaining three-and-a-half months of Overton's term,[28] and John Fournet entered the October primary.[29] Higgins's appointment responded to a mandate in the constitution of 1921, which compelled the justices to fill short-term vacancies with a judge from somewhere outside the third district.[30] Higgins obviously fit that requirement, and he was duly sworn on September 18, 1934.[31]

¶27 Nothing in the record hints at why the short mantle fell upon Higgins. The press, seeing nothing sinister in the appointment, reported it as a straightforward news story.[32] Had O'Niell chosen, he might have blocked the nomination because for the moment he and the antis outvoted the Longite justices three to two. That he went along argues his tendering of an olive branch to the Kingfish, which is plausible, although a likelier explanation lies elsewhere. O'Niell and the others saw the interim appointment as a way of giving Higgins high court experience in advance of his taking his own seat. They could certainly use his help in clearing their notoriously clogged docket. Besides, with only months remaining on the Overton term, none of them anticipated the possibility of the court's confronting anything controversial in the near future.

¶28 Fournet's candidacy confirmed what had been rumored for days. Apart from his being a fiercely devoted Long partisan, he seemed an improbable candidate for the supreme court, given his relative youth (he had turned thirty-nine on July 7, 1934) and utter lack of judicial experience. Reared in St. Martinville in humble circumstances, Fournet took a law degree from Louisiana State University and fought in World War I before settling in Jennings, where he both practiced and taught school. A fiery, highly ambitious populist, he saw politics as his main chance, which drew him into Long's camp when he ran for the legislature in 1928. Thereafter, Long tapped him for speaker of the house and put him in the number two slot on the O. K. Allen gubernatorial ticket in 1932. It was loyalty to his patron and his own abiding belief in the social benefits of Longism that easily persuaded Fournet to go after Overton's empty chair.[33]

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28. Order Appointing Archibald Higgins to Office (Sept. 17, 1934), *in* 44 SUPREME COURT OF LOUISIANA MINUTE BOOK, JUNE 8 1934–JAN. 12, 1937, at 29 (available in Supreme Court Clerk's Office, New Orleans).
29. Letter from John Fournet to J. Cleveland Frugé (Sept. 21, 1934), *in Porter* (No. 33147) case file, *supra* note 1; Fournet's Notice of Intent to Run (Sept. 21, 1934), *in id.*
30. LA. CONST. art. 7, § 7 (1921) ("In case of a vacancy from any cause in the office of any justice, such vacancy shall be filled by selection by the court of a judge of one of the Courts of Appeal from a Supreme Court District other than that in which the vacancy shall occur. . . .").
31. Minute of Higgins's Swearing in (Sept. 18, 1934), *in* 44 SUPREME COURT OF LOUISIANA MINUTE BOOK, JUNE 8 1934–JAN. 12, 1937, at 30 (available in Supreme Court Clerk's Office, New Orleans).
32. *E.g.*, LAKE CHARLES AM. PRESS, Sept. 18, 1934.
33. Mrs. Robert Schoenfeld, *Jean (John) Baptiste Fournet*, *in* 1 DICTIONARY OF LOUISIANA BIOGRAPHY 316–17 (Glenn R. Conrad et al. eds, 1988); WILLIAMS, *supra* note 3, at 288–89; Interviews with John Fournet and Raphael Cassimere, Jr. (1977).

¶29 On September 20, Porter's attorneys sued in the district courts at Ville Platte and Baton Rouge. At Ville Platte they entreated Judge Benjamin H. Pavy to stop the October 9 primary because Porter's nomination "was a matter of fact." By virtue of their client's nomination, he "had a vested right in [the] office" and to deprive him violated his constitutional privileges as a citizen of Louisiana and the United States. No doubt Pavy, who was among the bitterest of Long's adversaries, relished the chance to stick a finger in his antagonist's eye, and he wasted no time in setting the case for hearing on the 27th. The Baton Rouge suit made a similar argument, praying for orders to enjoin Secretary of State Conway from "printing or publishing on the official ballots to be used in the general election . . . the name or names of any person or persons other than" that of Porter. The trial judge, W. Carruth Jones, immediately granted the request and gave the state five days to answer why after further trial his temporary restraining order should not become permanent.[34]

¶30 Attorney General Porterie appeared for Conway on September 25. Before addressing the Porter allegations on their merits, he argued three procedural points. The executive committee, not the secretary of state, should have been sued. Judge Jones lacked power to intervene in a purely political matter because "regulation of elections belongs to the political department of the Government." Furthermore, "it is settled in this State that the courts [sic] do not have jurisdiction in election matters unless the statutes particularly confer it [, and] it is a general rule of law that the injunctive process of the Court will not issue against election officials to control them in the discharge of their duties in the conducting . . . an election even though the election or the manner of holding [it] might be null and void." And if the "Courts [were] not clothed with authority to substitute their action for that of the people," then Porter had no grounds for suing Conway.[35]

¶31 As to the merits, Porterie insisted at length that the petition lacked foundation in law or public policy. He rejected the claim that the situation of Overton's death automatically conferred the nomination on Porter. If that were the intent of the primary act of 1922, then the legislature would have said so "in plain and explicit terms," but he found no such expression in the statute. Scornfully, he turned aside Porter's claim of having won the vast majority of votes on primary day, saying that by any rational definition of an election, none had happened on September 11, and most voters never wanted Judge Porter anyway. Next, Porterie dismissed the argument that the district executive committee lacked power to call a second primary, asserting that Judge Jones was duty bound "to apply the dominating principle of the law—let the people participate and select their candidate." As an issue of public policy, any finding for Porter threatened "the social and political system

34. Petition of Thomas F. Porter, Jr. (Sept. 29,1934), *in Porter* (No. 33147) case file, *supra* note 1; Order for the Appearance of J. Cleveland Frugé et al. (Sept. 20, 1934), *in id.*; Order for the Appearance of Gaston L. Porterie (Sept. 20, 1934), *in id.*; Petition of Thomas F. Porter, Jr. (Sept. 20, 1934), *in id.*; Order for the Appearance of E.A. Conway (Sept. 20, 1934), *in id.*

35. Brief of Thomas F. Porter, Jr., *in Porter* (No. 33147) case file, *supra* note 1.

of Louisiana" because it would inevitably provoke dissatisfaction among the state's Democratic voters. "The primary election law," Porterie cautioned Jones, "permits the dominance of the white race in the political affairs of our State." Anything short of an election would lead the voters to "rebel and go to the general election and not only not support the supposed nominee, but fight him openly." Thus, for "strong social, political and philosophical reasons," Jones had no option but to deny the plaintiff's petition.[36]

¶32 Judge Jones thought otherwise. Ruling from the bench at once, he turned aside all of the state's arguments and found in Porter's favor. Summing up, he explained his judgment this way:

> It is argued that the people have a right to elect their candidates. Is it fair to make the man who made a campaign make it all over again with different candidates and different issues?
>
> I believe that the law contemplates that there shall be an end and when death intervenes it is the end of it. The law is clear to me. The election is over and Judge Porter is entitled to the nomination.[37]

The attorney general immediately announced he would appeal to the supreme court for a writ of certiorari.[38]

¶33 Huey Long was not amused. Speaking at a Fournet rally in Oakdale that evening, he hoarsely croaked his refusal to accept Judge Jones's decision. He still believed that there would be a canvass on October 9, but if by hook or by crook "they" stopped it, he urged voters to turn out for the general election, when he promised them "something" to deny Porter. Once again, he reminded his listeners that people like them did not want Porter, and neither did he, because "Porter is against the laws I have had passed and they want to put him on the supreme court bench so he can declare those laws unconstitutional."[39]

Supreme Court Appeal

¶34 The lawyers drove down from Baton Rouge to New Orleans in the early morning of the twenty-sixth. They arrived at the courthouse on Royal Street in the French Quarter and handed their hurriedly cobbled briefs to the clerk of the supreme court, who in turn marked them as filed and distributed copies to the justices. Within a matter of hours, Porterie obtained his writ of certiorari. The writ required Judge Jones to render up a trial transcript, and it stayed his injunction until the high court decided what to do next. Everyone connected with the case expected those results. After all, it was the business of the supreme court to resolve such disputes definitively and speedily. But to the utter shock of the Porter forces, "speedily" signified something vastly different to three justices than to them. The

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36. *Id*.
37. Judgment of Judge Jones, *in Porter* (No. 33147) case file, *supra* note 1.
38. Notice of Appeal of Gaston L. Porterie, *in Porter* (No. 33147) case file, *supra* note 1; New Orleans Times-Picayune, Sept. 26, 1934; Lake Charles Am. Press, Sept. 25, 1934.
39. New Orleans Times-Picayune, Sept. 25, 1934.

return date on the writ was November 26, and that prevented Porter from making his case to the supreme court until three weeks after the general election![40]

¶35 Under the prevailing rules of court, any member could grant petitioners hearing, which Justice Brunot did, and that gave Porterie the opening he desired. Land and Higgins then sided with Brunot, which made a number sufficient for the court to grant the writ.

¶36 O'Neill, Rogers, and Odom could only fume because the court rules stipulated that four justices were needed to vacate a writ or to change a hearing date. Of the three, Rogers and Odom joined in a terse, muted dissent that decried their court's substantial damage to Porter's rights.[41] O'Neill, with equal brevity, but with greater fire, heatedly objected, because "on account of the law's delays, which sometimes amount to a denial of justice, the granting of the order staying further proceedings in this case will result in depriving Judge Porter of his nomination, and of the office to which he aspires, no matter how the court may eventually decide the case on its merits."[42]

¶37 On the other side, Higgins crafted the reasons why he, Brunot, and Land favored the attorney general. That explanation, which runs to more than thirty pages of double-column print in the *Louisiana Reports*, accepted every one of Porterie's contentions, which Higgins supplemented with copious additional supporting citations from case law. On the critical question of postponing a hearing until November 26, Higgins justified the delay as being in the interests of "broad public policy" and time constraints. All things considered, he concluded, "we have . . . accomplished our purpose of doing substantial justice to all parties concerned. Such is the purpose of equity."[43]

¶38 Long's investment in Higgins paid a handsome, speedy dividend. The Kingfish no longer needed to pull a rabbit out of his fedora to have his way. What Brunot, Land, and Higgins did was quite legal. The court enjoyed sole discretion in deciding whether to grant writs of certiorari, and it was well within its prerogative to set a hearing on the motion for whatever date it chose. What was legal was not necessarily fair, but fairness was not the issue, no matter Higgins's words to the contrary. There would be a primary on October 9, Fournet would win, and the supreme court would still belong to Long.

The Second Primary

¶39 Despite the setback, Tom Porter showed no inclination to go away. Just as soon as he got the bad news out of New Orleans, he immediately entered the

40. Petition of Gaston L. Porterie for a Writ of Certiorari, Prohibition, and Mandamus (Sept. 26, 1934), *in Porter* (No. 33147) case file, *supra* note 1; Memorandum of Joseph W. Carroll and Luther E. Hall Opposing Granting of Writs (Sept. 26, 1934); Sept. 26, 1934, *in id.*; Writ of Certiorari to W. Carruth Jones (Sept. 26, 1934), *in id.*

41. Porter v. Conway, 159 So. 725, 726 (La. 1934) (Odom, J., and Rogers, J., dissenting).

42. *Porter*, 159 So. at 726 (O'Niell, C.J., dissenting).

43. *Porter*, 159 So. at 740.

primary, and a day later he withdrew his suit against the executive committee from Judge Pavy's court.[44]

¶40 The ensuing contest was really no contest at all. Long trotted out four sound trucks that accompanied him as he travelled the district speaking on Fournet's behalf. Fournet rarely said much, apart from promising to do right by the people. Porter soldiered on. Lawyers and local bar associations all across Louisiana endorsed him. Julius Long came out for him, but that was no surprise, seeing as how he was estranged from his brother. Some judges openly backed Porter too. Benjamin Pavy, the most vocal of them, caught the attention of the media statewide when he accused the supreme court of "trickery and corrupt devices," which enabled "those three Long-controlled justices" to steal Porter's nomination. Conversely, Pavy praised the chief justice as a "great and honorable man." The stridency of attacks like Pavy's, plus Porter's own acerbic speeches, did little to impede Fournet, who carried the district by over four thousand votes.[45]

¶41 Greatly angered, the Long camp was in no mood for charity. Victory in hand, they inflicted another measure of humiliation upon Porter. Attorney General Porterie petitioned the supreme court to dismiss the suit on the grounds that Fournet's election mooted all of Porter's claims.[46] The Porter team offered no rejoinder, and in December the justices halted all further proceedings.[47] Presumably, the ghost of Winston Overton could rest easy now. That was not to be, however, owing to the intrusion of the Louisiana State Bar Association (LSBA).

Involvement of Louisiana State Bar Association

¶42 The oldest lawyer organization in the state, the LSBA was a private self-selecting, self-regulating society that had close ties with the supreme court. Justices were members ex officio, and they nominated members who acted as bar examiners and disciplinarians for Louisiana's entire legal profession. Not only that, the association had taken a leading role in cajoling the state to build the massive Beaux Arts court building at 400 Royal Street, and it was there that it kept offices and maintained the largest law library in Louisiana. (The latter was open only to members.) Although LSBA attracted members statewide, it was very much a creature of New Orleans attorneys, which made it an object of scorn, especially among nonmembers, less prosperous small town practitioners, or poorly educated country barristers. Beyond that, the leaders frequently showed hostility to Long, whom

44. Notice of Intent to Run of Thomas F. Porter (Sept. 26, 1934), *in Porter* (No. 33147) case file, *supra* note 1; Motion of L.L. Perrault (Sept. 28, 1934), *in id*.

45. New Orleans Times-Picayune, Oct. 4,1934. Between Sept. 26 and Oct. 9, 1934, both the *Times-Picayune* and the *Lake Charles American Press* gave the race extensive coverage, which provided the basis of this summary of the campaign.

46. Petitions of Gaston L. Porterie (Nov. 7 & 26, 1934), *in Porter* (No. 33147) case file, *supra* note 1.

47. *Porter*, 159 So. at 741.

they regarded not only as a loud-mouthed parvenu but a vicious tyrant who threatened the rule of law and good government. And as recently as 1932, they struck Gaston Porterie from membership because he stopped an investigation of voting irregularities in Orleans Parish. Small wonder then that the organization weighed in on the Porter controversy.[48]

¶43 It did so in an extraordinary way. In mid-October, eight of its most prominent members demanded the ouster of three supreme court justices from association membership. Their written complaint, which they directed to LSBA's executive board, charged that by denying Porter a timely hearing, Brunot, Higgins, and Land purposely deprived him of his nomination and left him no recourse at law. That denial so breached their solemn oath of office that it heaped dishonor on themselves, their court, and the LSBA. It was therefore highly appropriate for the executive board to dismiss them. At least one board member objected to receiving the complaint, but only because the court had yet to determine Porter's suit on its merits. The objection was turned aside, and the charge was accepted. Under the association's charter, the president assigned allegations such as these to a select committee for investigation and recommendation. President Bell immediately recused himself because he was one of Porter's attorneys, so the appointment of the select committee fell to the senior vice president, who named the association secretary and himself, in addition to two others. Their deliberations stretched into the following June before they reached a determination. The operative part of their report minced no words:

> Regardless of the extent to which the individual members of this Committee deplore the result of the . . . acts of these Justices in the Porter case and the resulting suspicion of, and loss of great prestige, by the Supreme Court, we are of the opinion that the record before us does not require the accentuation of these unfortunate conditions by a formal condemnation of the individual Justices by this Committee . . .
>
> This Committee will therefore proceed with caution in any matter involving the motives for judicial action and will find that a judge has been actuated in performing the functions of his office by base motives or influences only when the charge is supported by convincing proof, and not when resting solely on inferences, however strong.

Accordingly, the committee recommended dismissing the charges without prejudice, though it lauded the complaining attorneys for their "high sense of duty" and "commendable courage."[49]

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48. Billings, *supra* note 11, at 389–98; Warren M. Billings, *The Supreme Court of Louisiana and the Administration of Justice, 1813–1995*, 37 La. Hist. 389, 396 (1996) [hereinafter Billings, *Administration of Justice*].

49. Complaint of Burt W. Henry, Esmond Phelps, J. Zach Spearing, Charles F. Dunbar, Jr., Charles F. Fletchinger, Edwin T. Merrick, J. Blanc Monroe, and Monte M. Lemann (Oct. 19, 1934), Executive Committee Minute Book, June 2, 1934–June 1937, at 377–79, 380–434, 431–32 (available from Louisiana State Bar Association, New Orleans). Spearing and Fletchinger were past presidents of the association. Merrick was a son and namesake of a former chief justice. Phelps and Dunbar were partners, as were Monroe and Lemann. Lemann also became president of LSBA.

¶44 That recommendation was too little too late. The original complaint provoked the Long forces to strike the LSBA where it would be hurt the most. Governor Allen called the legislature into special session in December and, among other things, he urged passage of a bill to establish a new bar association. The resulting State Bar Act of 1934[50] contemplated a public corporation of lawyers known as the State Bar of Louisiana (SBL). It also compelled every licensed attorney to become a dues-paying member or forfeit the right to practice. A board of governors, one chosen from each of the state's congressional districts, held executive authority. Its initial members were gubernatorial appointees, but their successors were elected by the voters. Among its powers, the board enjoyed the exclusive prerogative of fixing rules of professional conduct and punishing miscreant barristers. Moreover, it determined standards for legal education, it regulated admissions to the bar, and it quizzed candidates who presented themselves for examination. Those warrants diminished the supreme court, whose control of such matters had been ingrained in every state constitution since 1813. Additionally, the Act severed the tie between the court and the LSBA, to which the court had delegated effective use of those powers for upwards of a century.[51]

¶45 Having no majority, Chief Justice O'Niell trimmed to what he could not overbear, and the court amended its rules to accord with a statute of questionable legitimacy. The SBL was soon organized, with Porterie as its first president, but it never quite fulfilled its purpose. Even so, bench and bar adjusted to the reality the law imposed on both.[52]

¶46 As sparks flew upward and passions cooled, the primary of 1934 receded into memory as the protagonists went their separate ways. Overton's ghost found respite in the shadows of the graveyard. Among the living, the LSBA refused to disappear, and for the remainder of the decade it co-existed uneasily with its rival. Behind the scenes, younger members of both societies worked quietly to effect a merger between them. That goal materialized in 1940, when the legislature bid the supreme court to bring the union about, and a year later the present bar organization came into existence.[53]

¶47 The 1940 legislature also enacted a new primary law. Included in its numerous sections was one that explicitly clarified who would become a supreme court nominee if one of the contestants died at any time before a primary election.[54] That revision eliminated the possibility of future suits akin to Porter's.

50. State Bar Act, No. 10, 1934 La. Acts 2d Ext. Sess. 162.
51. Billings, *Administration of Justice*, *supra* note 48, at 390–95.
52. Billings, *supra* note 11, at 399.
53. *Id.* at 389, 400.
54. Act of July 8, 1940, No. 46, § 84, 1940 La. Acts 171, 210 ("All vacancies caused by death or resignation or otherwise among the nominees selected by any political party . . . shall be filled by the committee, which has jurisdiction over the calling and ordering of the said primary election. . . .").

Aftermath

¶48 An assassin stilled Long in 1935. Porterie left the presidency of SBL and spent the rest of his apportioned days as a federal district court judge. Edwards passed away in 1962, all but forgotten. O'Niell carried on as chief justice until old age forced him into retirement in 1949. By then, Brunot, Land, and Higgins were years dead. Fournet succeeded O'Niell. Though he came to the bench lacking in judicial experience, and though his pugnaciousness never mellowed, Fournet grew into his black robes. He staunchly championed court modernization and efficiency until he stood down in 1970. Frugé was elected a state judge and abided into his ninety-first year before he died a decade ago. Porter lost his judgeship to the same gerrymandering that put Benjamin Pavy out of office in 1935. He lived till 1963. Fittingly, his funeral was at the Church of the Good Shepherd, and he lies buried in Graceland Cemetery not far from Overton's grave.[55]

¶49 With a bit of fancy, one can almost imagine the ghosts of Thomas Porter and Winston Overton sometimes lurking among the tombstones, deep in debate over the ramifications of a controversial, heatedly politicized judicial election. The crux of their argument would be this. Had Huey Long broken the law and stolen a seat on the supreme court that Porter believed rightfully belonged to him? Or had the Kingfish, with lots of help from his subalterns, manipulated the law, the courts, and the voters to outwit his enemies?

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55. E-mail from Linda K. Gill, Calcasieu Public Library, to Warren M. Billings (Jan. 15, 2002); Lake Charles Am. Press, Mar. 1, 1963; Town Talk (Alexandria, La.), Nov. 21, 1991. Porterie died in 1939. Brunot and Land were gone by 1944 and 1941, respectively, and Higgins passed away in 1945. O'Niell lived until 1951, whereas Fournet survived until 1984.