The importance of Genevieve Welosky

BY MUNA LEE, '12

Genevieve Welosky promises to live as long in legal history as Dred Scott, if the National Woman's Party carries out its attempt to appeal to the United States Supreme Court from the Massachusetts Supreme Court in the case of Genevieve Welosky, which on September tenth denied the eligibility of women as jurors in Massachusetts, where on September tenth denied the eligibility of women as jurors in that state. Mrs Welosky's was a test case, financed by the Massachusetts branch of the Woman's Party to prove a woman's right to serve on a jury. Mrs Welosky, convicted by a jury composed entirely of men of keeping and selling liquor, had challenged the jury on the ground that she had been denied a trial by a jury of her peers, since none of her own sex were called.

The adverse decision of the Massachusetts Supreme Court has been hailed in National Woman's Party headquarters in Washington as offering the most favorable possible opportunity of carrying the demand for jury service for women to the highest tribunal of the nation. Woman's Party leaders point to the case of Strauder vs. West Virginia as embodying the same principle of law as is at stake in the case of Genevieve Welosky; namely, the right of every citizen to equal protection of the law, guaranteed by the Fourteenth Amendment to the United States Constitution.

In 1879, Strauder, a West Virginia negro, was tried for murder and convicted by a jury from which members of his own race were by law excluded. The state supreme court affirmed the sentence. He based an appeal on the Fourteenth Amendment, and the United States supreme court upheld him, reversing the lower court's decision.

Now, in 1931, fifty years later a woman is about to make an appeal on exactly parallel grounds. The Welosky case will bring before the United States Supreme Court the question whether the equal protection of the laws section of the Constitution, which has been held by the Supreme Court to guarantee to every citizen a right to trial by a jury selected without discrimination on the ground of race, does not also guarantee to every citizen a similar right to trial by a jury selected without discrimination on the ground of sex.

Section 1 of the Fourteenth Amendment to the Constitution reads: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

It is pointed out at Alva Belmont House, Woman's party headquarters in Washington, that it would be the height of unwise for the women of this country to accept defeat on this jury-service test case. Acceptance is acquiescence; and that is unthinkable. A favorable supreme court decision would settle the jury question once and for all for every state in the Union; that phase of the struggle for equal rights would be won at a blow. An adverse decision seems hardly possible, since the case of Genevieve Welosky is basically the same as that of Strauder. If the improbable occurred, and an adverse decision were handed down, nothing would be lost, however; rather, the necessity for the immediate passage of the Equal Rights Amendment would be thrown into startling relief.

Certainly, American women must not permit a section of the Constitution to be so interpreted as to guarantee negroes as a race a right denied to women as a sex.

For the information of our readers we transcribe several paragraphs of the decision by Justice Strong of the United States Supreme Court in the case of Strauder vs. West Virginia. It will be noted that the decision as quoted contains an obiter dictum which would seem to permit the exclusion of women from juries; but that has no legal bearing on the decision nor its applicability. The position of women in 1931 is, fortunately, very different from the position of women in 1879—in spite of decisions of the Massachusetts supreme court.

The case of Strauder vs. West Virginia came before the Supreme Court of the United States in 1879, by writ of error to the Supreme Court of West Virginia. Strauder was indicted for murder in West Virginia, was tried, convicted, and sentenced; the judgment being affirmed by the state supreme court. At the time, the laws of the state confined the right to serve on grand and petit juries to white male citizens of the state over twenty-one years old. Strauder was a negro, and appropriate exceptions to his trial by such juries were made on his behalf and overruled.

Mr Justice Strong's decision was in part as follows:

"In this court, several errors have been assigned, and the controlling questions underlying them all are, first, whether, by the Constitution and laws of the United States, every citizen of the United States has a right to trial by a jury selected and impaneled without discrimination against his race or color, because of race or color. . . . It is to be observed that the first of these questions is not whether a colored man, when an indictment has been preferred against him, has a right to a grand or a petit jury composed in whole or in part of his own race or color, but it is whether, in the composition or selection of jurors by whom he is to be indicted or tried, all persons of his race or color may be excluded by law, solely because of their race or color, so that by no possibility can any colored man sit upon the jury. . . . It (the Fourteenth Amendment) ordains that no state shall deprive any person of life, liberty, or property, without due process of law, or deny to any person within its jurisdiction the equal protection of the laws. What is this but declaring that the law in the states shall be the same for the black as for the white; that all persons, whether colored or white, shall stand equal before the laws of the states, and, in regard to the colored race, for whose protection the amendment was primarily designated, that no discrimination shall be made against them by law because of their color? The words of the amendment, it is true, are prohibitory, but they contain a necessary implication of a positive immunity, or
right, most valuable to the colored race,—the right to exemption from unfriendly legislation against them distinctively as colored,—exemption from legal discriminations, implying inferiority in civil society, lessening the security of their enjoyment of the rights which others enjoy, and discriminations which are steps towards reducing them to the condition of a subject race.

"That the West Virginia statute respecting juries—the statute that controlled the selection of the grand and petit jury in the case of the plaintiff in error—is such a discrimination ought not to be doubted. Nor would it be if the persons excluded by it were white men. If in those states where the colored people constitute a majority of the entire population a law should be passed excluding all white men from jury service, thus denying to them the privilege of participating equally with the blacks in the administration of justice, we apprehend no one would be heard to claim that it would not be a denial to white men of the equal protection of the laws. Nor if a law should be passed excluding all naturalized Celtic Irishmen, would there be any doubt of its inconsistency with the spirit of the amendment. The very fact that colored people are singled out and expressly denied by statute all right to participate in the administration of the law, as jurors, because of their color, though they are citizens, and may be in other respects fully qualified, is practically a brand upon them, affixed by the law, an assertion of their inferiority, and a stimulant to that race to strike down all possible legal discriminations against those who belong to it. To quote further from 16 Wall., supra: 'In giving construction to any of these articles (amendments), it is necessary to keep the main purpose steadily in view. It is so clearly a provision for that race and that emergency, that a strong case would be necessary for its application to any other.' We are not now called upon to affirm or deny that it had other purposes.

"The right to a trial by jury is guaranteed to every citizen of West Virginia by the constitution of that state, and the constitution of juries is a very essential part of the protection such a mode of trial is intended to secure. The very idea of a jury is a body of men composed of the peers or equals of the person whose rights it is selected or summoned to determine; that is, of his neighbors, fellow associates, persons having the same legal status in society as that which he holds. Blackstone, in his Commentaries, says, 'The right of trial by jury, or the country, is a trial by the peers of every Englishman, and is the grand bulwark of his liberties, and is secured to him by the Great Charter.' It is also guarded by statutory enactments intended to make impossible what Mr. Bentham called 'packing juries.' It is well known that prejudices often exist against particular classes in the community, which sway the judgment of jurors, and which, therefore, operate in some cases to deny to persons of those classes the full enjoyment of that protection which others enjoy. Prejudice in a local community is held to be a reason for a change of venue. The framers of the constitutional amendment must have known full well the existence of such prejudice and its likelihood to continue against the manumitted slaves and their race, and that knowledge was doubtless a motive that led to the amendment. By their manumission and citizenship the colored race became entitled to the equal protection of the laws of the states in which they resided; and the apprehension that through prejudice they might be denied that equal protection, that is, that there might be discrimination against them, was the inducement to bestow upon the national government the power to enforce the provision that no state shall deny to them the equal protection of the laws. Without the apprehended existence or prejudice that portion of the amendment would have been unnecessary and it might have been left to the states to extend equality of protection. . . .

"We do not say that within the limits from which it is not excluded by the amendment, a state may not prescribe the qualifications of its jurors, and in the manner in which the qualifications of its jurors are fixed; that it may not fix the selection to males, to freeholders, to citizens, to persons within certain ages, or to persons having educational qualifications. We do not believe the fourteenth amendment was ever intended to prohibit this. Looking at its history, it is clear it had no such purpose. Its aim was against discrimination because of race or color. As we have said more than once, its design was to protect an emancipated race, and to strike down all possible legal discriminations against those who belong to it. To quote further from 16 Wall., supra: 'In giving construction to any of these articles (amendments), it is necessary to keep the main purpose steadily in view. It is so clearly a provision for that race and that emergency, that a strong case would be necessary for its application to any other.' We are not now called upon to affirm or deny that it had other purposes.

"The fifteenth amendment makes no attempt to enumerate the rights it designed to protect. It speaks in general terms, and those are as comprehensive as possible. Its language is prohibitory; but every prohibition implies the existence of rights and immunities, prominent among which is an immunity from inequality or legal protection, either for life, liberty, or property. Any state action that denies this immunity to a colored man is in conflict with the constitution. . . .'

SPORTS OF ALL SortS

(continued from page 74)

play, and was inside the Cyclone's 10 yard line twice during the second period. Oklahoma led at the close of the first half with the score of 6-0.

In the second half the picture had changed. In the third period Grefe of Ames received a difficult pass and raced 56 yards for a goal. The placement kick was wild and the score was even 6-6. Early in the last period Ames launched a drive to Oklahoma's 10 yard line. The ball was carried over, the placement was true and Ames led with a 13-6 score. "Iron Mike" Massad pulled down an Ames pass and raced 56 yards for Oklahoma's second goal. The placement was wild and the score was 13-12 in favor of Ames, at which count it remained.

The game should have gone to the Sooners, for at various times Ames allowed herself to get into trouble. But Oklahoma fumbled at the opportunities, as well as the ball, and the Dad's day fans had to content themselves with the thought that it was close at least.

Oklahoma City and Tulsa

Football games which some sport writers in the state have advocated for a number of years will be realities this year. The university will play Oklahoma City university at Norman probably December 5 and the University of Tulsa at Tulsa probably December 12, the proceeds of both games to go to charity. As neither of these two state schools observes Big Six conference standards as to eligibility, the Sooners requested and secured permission of the Big Six officials to waive the four-year rule and the freshman playing rule. As a result, the Sooners will play some of the old stars like Mills and Fields and will give some of the freshmen material a chance at the scrap.

Some difficulty was encountered in the manner in which the funds would be distributed to charity. It was the happy suggestion of Fred Tarman, '10 arts-sc., member of the athletic council and editor and publisher of the Norman Transcript, that paved the way out of the dilemma. Mr. Tarman suggested that any charity organization in the state that wanted to could sell tickets for the games, keeping the proceeds for use in its local activities. The university, being a state school, could not lend itself to playing for charity of any one city.

Once having achieved the game, the "rumor" writers got busy with all sorts of wild rumors of what the Sooners would do in the matter of playing men.