

*****Background to the Barnette decision.

In 1940 the Supreme Court, decided the **Gobitis** case. It involved a compulsory flag salute in a public school; some students would not comply with this regulation due to their religious faith (Jehovah's Witnesses). Their case, based in religious freedom, went to the Supreme Court. In the lower courts the judges had ruled in their favor – the school board appealed every time. At the Supreme Court, the students lost and the board won. It was an 8-1 decision.

The court opinion was written by Justice Frankfurter --

Holding in favor of Government power to compel the flag salute, the court reasoned that a balance had to be struck between individual rights vs national unity. Emphasis placed by Justice Frankfurter on this question: does religious faith get to be an excuse from a law obliging all without prejudice?

The Gobitis decision came in June 1940. The state of West Virginia passed a law in 1941 directing the Bd of Ed to act in this area, and the Board of Education issued its regulations on January 9, 1942 -- this was about one month after the bombing of Pearl Harbour and the official US entry into WWII. Those regulations contain explicit references to the Gobitis opinion, and they ultimately led to the issue in Barnette.

***** Gobitis reaction.

The Gobitis decision had a strange polarizing effect, it did not go down well. There were 300 confirmed cases in 44 states of mob attacks on Jehovah's Witnesses; they had little or no police protection, their property and persons were attacked. The ACLU took up their cause. Prominent Catholics deplored the Gobitis decision, as did the New Republic, as did Eleanor Roosevelt (First Lady) and J Edgar Hoover (FBI director), so did the Attorney General of the US.

"Attorney General Francis Biddle went on national radio to appeal for restraint: "A religious sect known as Jehovah's Witnesses have been repeatedly set upon and beaten. They had committed no crime; but the mob adjudged they had, and meted out mob punishment." Biddle announced that he had ordered an immediate investigation of 'these outrages.' Every American, Biddle declared, was entitled to the equal protection of the law. "The people," he added, 'must be alert and watchful, and above all cool and sane. Since mob violence will make the government's task infinitely more difficult, it will not be tolerated. We shall not defeat the Nazi evil by emulating its methods.'"

In the two years following the Gobitis decision Department of Justice files were filled with an “uninterrupted record of violence and persecution of the Witnesses. Almost without exception, the flag and the flag salute can be found as the percussion cap that sets off these acts.”

So the Gobitis decsn in favor of mandatory pledge/flag salute was a signal to mobs that they could go on a rampage. Here is an account of life in the late 1930s from one Witness, Lillian Gobitis (then a child)

-- source: Peter Irons, *The Courage of their Convictions*.

“There was one girl named Eleanor in the Kingdom School who became a firm friend. We met earlier in 1935 in jail, when we were mobbed in the town of New Philadelphia and put into cells in the fire house. The churches there let out early on Sunday for the convenience of the mob. There were about forty of us that went into New Philadelphia to do witnessing from house to house. I remember being at a door, all alone, when this police car came up and the householder was kind of aghast at this little girl being taken away. I was eleven at that time. The police called me into the car and took me past the mob into the fire house. I remember one girl punched me and the mob was trying to break down the door of the fire house. There must have been close to a thousand people. We *did* expect trouble, we anticipated that. It was scary. But at the same time, you feel a certain calm when you’re finally in the thick of it. Finally, at the end of the day the mob dispersed. The police kept the men, and the women and children could go home. They finally got out on bail and went back for a trial. I guess they had a few days in jail after that.”