



**THE HONORABLE
GERHARD A. GESELL**

U.S. District Court for the District of Columbia

**Oral History Project
The Historical Society of the District of Columbia Circuit**

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**United States Courts
District of Columbia Circuit**



The Honorable Gerhard A. Gesell

U.S. District Court for the District of Columbia

**Interviews conducted by:
John G. Kester, Esquire**

December 27, 1991

TABLE OF CONTENTS

Preface	i
Oral History Agreements	
Honorable Gerhard A. Gesell	ii
John G. Kester, Esq.	iii
Biographical Sketches	
Honorable Gerhard A. Gesell	v
John G. Kester, Esq.	vi
Oral History Transcript of Interview on December 27, 1990	1
Index	A1

Appendices:

1. The Individual Calendar
 Some Comments Re: Chronology of District Court
 Individual Calendar Reform
2. Student Riots
3. Lorton Youth Center II
4. House Committee on Internal Security
5. Pentagon Papers
6. Watergate
7. Sirica - Watergate
8. The Statute of Liberty July 3, 1986 Naturalization Proceeding
9. McCabe
10. Interview by Karen Average and Lisa Douglas of Judge Gesell for Circuit
 Newsletter, February 1991, as edited by Judge Gesell
11. Comment
12. Judge Gesell's Law Clerks
13. My "Jealous Mistress" 1932-1984 by Gerhard A. Gesell
14. Presentation of the Edward J. Devitt Distinguished Service Award

NOTE

The following pages record interviews conducted on the dates indicated. The interviews were electronically recorded, and the transcription was subsequently reviewed and edited by the interviewee.

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PREFACE

The goal of the Oral History Project of the Historical Society of the District of Columbia Circuit is to preserve the recollections of the judges who sat on the U.S. Courts of the District of Columbia Circuit, and judges' spouses, lawyers and court staff who played important roles in the history of the Circuit. The Project began in 1991. Most interviews were conducted by volunteers who are members of the Bar of the District of Columbia.

Copies of the transcripts of these interviews, a copy of the transcript on 3.5" diskette (in WordPerfect format), and additional documents as available – some of which may have been prepared in conjunction with the oral history – are housed in the Judges' Library in the E. Barrett Prettyman United States Courthouse, 333 Constitution Avenue, N.W., Washington, D.C. Inquiries may be made of the Circuit Librarian as to whether the transcript and diskette are available at other locations.

Such original audio tapes of the interviews as exist as well as the original 3.5" diskettes of the transcripts are in the custody of the Circuit Executive of the U. S. Courts for the District of Columbia Circuit.

The oral history interview of Judge Gerhard Gesell, conducted in December 1990, covers his career up to the time of his appointment and confirmation to the United States District Court for the District of Columbia.

Included as appendices to the oral history are several short memoranda written by Judge Gesell as background material for a history of the Courts of the District of Columbia Circuit. Many of these documents have been included in Judge Gesell's collection of papers, which have been donated to the Library of Congress.

Also attached as appendices are a copy of "My Jealous Mistress, 1932-1984," written by Judge Gesell in 1984, a copy of the transcript of the presentation of the Edward J. Devitt Distinguished Service Award to Judge Gesell on May 16, 1990, and several additional documents from Judge Gesell's collection of papers.

Gerhard A. Gesell

Judge Gesell was appointed U.S. District Judge for the District of Columbia in December 1967. He graduated from Yale Law School in 1935. He was employed by the Securities and Exchange Commission from 1935-1941 in various legal capacities, including Special Counsel for the Temporary National Economic Committee of the Congress and Technical Advisor to the Chairman. In 1941 he left the Commission to become a partner at Covington & Burling, where he remained until his appointment to the Court. While at the law firm, he also served as Chief Assistant Counsel for the Joint Congressional Committee on the Investigation of the Pearl Harbor Attack (1945-1947), and Chairman of the President's Commission on Equal Opportunity in the Armed Forces (1962-1964). Judge Gesell died on February 19, 1993.

Forward

Commencing in 1991 the Historical Society of the District of Columbia Circuit has interviewed various judges and lawyers on tape in what is known as an Oral History Project. In December 1991, John G. Kester, a partner of Williams & Connolly, spent a full day with me covering events up until my nomination to the Court. An able lawyer, he proved also to be an excellent prompter and got me going.

This narrative was then prepared, aided by a transcript of the tape. Anyone who reads a taped transcript of any length is surprised and often shocked to learn the awkward way what originally appeared to be coherent and well stated turns out to be. The spoken word loses many inflections and pauses and the continuous stream of words, as transcribed, somehow becomes unusually clumsy as the transcriber attempts to figure out where sentences begin and end. Moreover, I found the transcript necessarily contained some inaccurate recollections, exaggerations and could be made more useful if repetitions were eliminated and some further recall added.

What follows is the result.

G.A.G.

August 1992

Yale College

My mother and father were each Phi Beta Kappa college graduates, and my indifference to grades and often poor marks must have been puzzling. After Phillips Andover, Yale seemed dull. Few courses were interesting and none helped me decide what I should do to make a living. I read almost constantly -- anything I could get my hands on -- and wanted to write.

I signed up the first year at Yale with a professor named Benny Nagel. He had what was called a daily theme course. You were to be taught how to write. At the first session of the class, everybody was asked to write a theme. At the next session of the class, as I came in, he said, "Well, Mr. Gesell, please come up here at the end of class." I went up. He said, "Get out of this course. I can't teach you anything." So that was the end of my formal training.

Yale was reaching out to students all over the country from public high schools. I had had wonderful training in English at Andover under Claude Moore Fuess and felt further along than many of my classmates.

Later I competed for the Yale Daily News and led the competition in writing skills but was a total flop because I got the fewest advertisements. Finally, along with a good friend, Johnny Moore, I earned money as a stringer for the New York Times covering sports. Our biggest moment was the Yale-Georgia football game when we sat in the press box at the Yale Bowl and ran a play-by-play account over direct open wire to Atlanta.

My major was, of course, English with emphasis on American literature. In fact, I came to the point where it seemed a good idea perhaps to become an English teacher. Professor Stanley Williams, a specialist in American literature, an excellent teacher who became a friend, guided me in this direction as I concentrated on his field. He made books come alive by relating

them to the political and social conditions of their time. The more research-oriented English courses, picking Shelley, Keats, *et al.* apart, left me cold. They seemed to concern matters that probably had never occurred to these esteemed poets.

In spite of setbacks, I felt I could write fairly well and this plus my experience with Professor Williams kept my interest in English teaching alive. A final event ended this fantasy. I tried out for the Henry Fellowship, which was a very desirable fellowship that would have given me, I think it was two years, in one of the British universities -- Cambridge or Oxford. I wrote a learned piece on the influence of Coleridge upon Poe, and reached the conclusion that Coleridge did not influence Poe, but that Coleridge and Poe both read the same books. I lost out to a classmate named Norman Pierson, who became a very distinguished professor of English at Yale. He has been a hell of a lot better one than I would have been. At the time I thought he had the unfair advantage because someone had given him a stack of unpublished letters of Longfellow. So he had it made. But, in any event, I'm awfully glad in retrospect I didn't win and equally pleased in retrospect that he did. He has been a real figure at Yale and won the fellowship fair and square.

Job prospects in 1932, when I was to graduate, were few, particularly for the son of a college professor like me who had no business contacts. My grandfather, Jefferson Chandler, had been a distinguished Washington lawyer but I never knew him. I knew no one who was a lawyer and actually had only the vaguest idea of what a lawyer did. Many of my friends from Andover and Yale were going to law school for want of anything better to do, and I tagged along. It seemed a profession that offered a variety of opportunities and taught one how to use your mind. Ability to write would help.

I squandered many intellectual opportunities at Yale. There seemed to be no important challenges. It was too easy to get passing marks in routine classes, hang around my fraternity, meet some girls and embrace the endless leisure. I had never been made to stretch my mind. During the summers I tutored one of John Foster Dulles' sons, taught kids to sail and was paid handsomely for sharing the pleasures of Oyster Bay, Long Island, where there was still a debutante party once or twice a week and all the lavish living of pre-Depression days. That many fathers of girls I met were rich lawyers didn't escape my notice. Looking back, I am amazed I was not more concerned about the future, but I wasn't. When I chose law school it put off the evil day. I still didn't know what I really wanted to do. Anyway, the world was coming apart and the University was a good place to hide a little longer.

Yale Law School

Between college and law school I spent another summer walking in Europe, most of the time in Germany, joining up with friends from time to time along the way. We went up the Rhine in the mail boat, constantly stopping at small towns to deliver mail and test the local wine, followed by two weeks or so in Munich to combine the opera and the beer halls. Finally, a walk back through the Black Forest, sleeping in youth hostels.

Hitler was just coming into power and won his first seat in the Reichstag that year. There were perhaps twenty-six political parties in Germany. His was the only party that wasn't collecting money on the street corners. Many businessmen were supporting him. He was contending that the Communists were going to take over the dye factories and destroy the industrial economy of Germany. Everywhere I walked there were kids carrying broomsticks as guns, marching and saying "Sieg Heil" or "Heil Hitler." It seemed ominous.

I saw Hitler several times at the opera or making a speech and once at a beer hall where his gang congregated. He had a strident voice that made my hair curl. Goebbels and Goering were with him at the beer hall when a young man ran in saying the Communists had attacked him. His white shirt was smeared with red. Everyone ran out to throw stones at the intruders. I read the New York Times. They made fun of Hitler, like they later made fun of Dewey, a little man on a wedding cake, who wouldn't amount to anything. And they said he was just a flash in the pan, forget him, he wasn't going to go anywhere. I wrote a letter to the Times saying something to the effect that, "You better send someone over here who knows what they are doing. This guy is a dangerous fellow." And I recounted one or two of the experiences I had where Hitler impressed everyone as he spoke dramatically in his strident voice. Of course the New York Times never published the letter. I always thought they made a reporting mistake. I was so worked up; that is one of the few times I have ever written a letter like that. I came back worried about him and what a demagogue could do to turn people onto their heads. I thought he was bad news, and my concern sharpened my reading.

That summer, of course, I was thinking more seriously about law school and tried to figure out what the profession was all about. I took along two books to carry in my knapsack: The Nature of the Judicial Process and The Growth of the Law, both by Cardozo. I carried these two books with me while walking in Germany, and elsewhere. They are on my library shelves now, full of underlines and marginal notes of things that hit me as important. I still read them from time to time. They are particularly helpful to me in my present job and have influenced my understanding of what the law can do, what the law is, and the ways a social system created by laws can adjust to the times and the needs of people in a changing world. Those two books gave

me a good slant and guided my interests during law school, perhaps more than any faculty member.

The physical transition from college to law school was simple. I was assigned a room in the law school dormitory just two blocks from where I had lived during my senior year. About half the class of 100 were classmates from Yale, many of whom I knew. Some were among my best friends. Many of the group, like myself, were staying in school because there were no jobs and the Depression was apparent everywhere. If there had not been an admission preference given Yale college graduates at that time, I probably would not have been admitted. Because I had some kind of faculty scholarship and earned money in the summers, I was able to live in the dormitory rather than at home.

Law school put me on fire. I had an intellectual experience at law school, which I had never had at Yale College -- probably my own fault. I wasn't stimulated by college the way I was almost immediately at the law school. I grew up mentally at law school.

The law school faculty, at least many of the professors, were developing a more realistic concept of how the law should develop and were pointing out how it had often been misused to benefit special interests in the past. These men were involved in events of current interest and were teaching by examples taken from practical affairs. The case method took the place of treatises, and decisions were analyzed with a skeptical attitude to reveal, it was suggested, results that the judge because of his background or leanings achieved by playing available precedents to reach predetermined results. The outrage that trickled down from conservative legal quarters simply whetted the faculty's appetite for more. There was plenty to argue about and especially exciting to find oneself revising premises you had accepted with complete satisfaction during

college. Contact with faculty was informal and easy. The atmosphere was exhilarating.

This was a time when banks were failing. Wall Street was in as much of a mess as it is now. I had several classes with William O. Douglas, who had a series of seminars under such titles as Public Control of Business. He would recount his investigations of protective committees and reorganizations that benefitted insiders, leaving investors dry. He was spending considerable time in Wall Street investigating and taking testimony concerning corporate reorganizations and methods of refinancing. We learned about what are now called golden parachutes and things of that kind.

Douglas dealt with the nature of corporations, corporate responsibility, and corporate rights of minority shareholders. He knew a great deal about these matters, not only because he was head of a committee appointed to investigate such things as scandals emerged, but because of his early work as a lawyer in Wall Street with the Cravath firm.

Myer McDougall was another stimulating professor. I learned a lot from him, too. I really don't remember what he taught so much as the way he taught. He would stand you up and put you through a very rigorous questioning about why you believed certain things. He made you think. I became one of his prize butts for some reason. He had several in the class. I was one of them. He had me on my feet time and again defending positions. I didn't like it at the time, but I learned a lot from him.

Harry Shulman was teaching torts and labor law. I remember him as another professor, like Douglas, who really got me excited.

And, of course, there was Thurman Arnold, a brilliant teacher and a great character. I remember these professors particularly.

Arnold had courses called Procedure I, II and III -- we called them Thurman Arnold I, II and III. He covered much more than procedure, often very practical matters. He was a fascinating man. At that time he was writing those two famous books of his, The Symbols of Government and The Folklore of Capitalism. Arnold had been a trial lawyer. He had been a mayor of a town. And when he began to talk about procedural matters, he was talking about actual use of procedural rules to defend or to take advantage. And he made you think.

I learned a valuable lesson in his first class the first year. He came in and drew a jackass on the blackboard. It had three legs. He then went down row after row getting different students to say what was wrong with the picture -- only three legs; two dimensional; eyes disproportionately large; ears bad -- you know, all the different things students could think of. Then he ended the class by saying, "Well, that shows how many different ways you can look at a subject."

And I still do that today as I did practicing law. I look at a problem. I say, "Well, what is this jackass?" (Namely, the case I've got.) "Is it really a tort case, or contract case, or what is it?" I used to find it very helpful in dealing with clients when I was practicing law. What is the man's problem? What name do you give it? How do you fit it into something so you can get some relief for him? It seems like a simple thing, and it is, but I still carry it in the back of my head today.

All the courses with these professors touched matters of then current concern, as opposed to, let's say, a course that was given by a fellow named Underhill Moore that dealt with bills and notes. Or a course by an old-fashioned, very fine gentleman named Vance, who taught evidence. You could learn evidence from hornbook, and he didn't have any experience that gave life to the

rules. It was just a drill course. I was watching evidence being applied down at the local courthouse. But he was a Germanic, a kind of courtly gentleman who drilled us in the hearsay rule and things of that kind. Practice and theory were far apart. So those courses seemed pedestrian courses or far-out kinds of courses. Underhill Moore was far-out on new theories of bills and notes. And I didn't think I would ever see a bill or note in my life anyhow.

Or take another course that I took with Fred Rodell on taxation. I think taxes are boring, except when you have to pay them. And I never intended to be a tax lawyer. He was an interesting guy, and full of fire. But he taught taxes. There wasn't anything that I particularly wanted to do less than understand enough to get through with the course.

During the second year I wanted to get out of law school into the real world. I stopped going to some classes, if I could. There was a city agency called the New Haven Legal Aid Bureau. Yale Law School students could participate. However, it was not organized in any way as clinical programs are these days. I went down to help and eventually became by far the most active student until I was spending around at least 30 to 40 hours a week working with the clients of the organization, on top of my law student work. There was no academic credit for this, but there was much that needed doing. The clients were people who had been thrown out of their homes, or weren't getting paid, or had their money attached under an archaic Connecticut statute, etc. The Bureau had about 1800 clients. I gave each client I met a number because I couldn't pronounce their names. Most of them were Italians. I even worked full-time, without pay, helping with the case load for two summers. It was my law office, in effect, while I was at law school. At the end of my second year I said, "I've got to get out of law school and do something useful."

I was very touched by what I saw at the Legal Aid Bureau and what was happening to ordinary people down on their luck. I was able to help a lot of families. One of my first cases, to show you the desperateness of the people then, was when an Italian family came in and said the grandmother had died. They wanted to know what member of the family should get the gold out of her teeth. I had to sit with the whole family and negotiate what would happen to the gold, and how it would be divided when the grandmother was buried.

I remember a lady who was owed money by a bartender who had an illegal bar next to the railroad station where all the conductors drank. He wouldn't pay her until I finally forced a deal out of him where I would go down there every Friday and collect her back pay for her a bit at a time. She would come to meet me at the office and I would give her the money. That went on for, I guess, four months or so, until I got all the money she had coming to her. There were many similar experiences that affected me deeply. I started doing this toward the end of the first year, and into the second and some in the third. Young people today don't realize how desperate things were. In New Haven the poor stormed the mayor's office and broke down the door of the mayor's office because they wanted food. Homeless men needing some kind of protection from the cold would drink Aqua Velva shaving lotion, on the Yale Green, and it would just absolutely make them stiff as a board. The police would lift them up and put them under protective warmth somewhere. It was a bad time. And I found myself touched by it and working with it and relating what I was learning at law school to what I might be able to do to help when I left school.

I wrote an article in the Connecticut Law Journal attacking an atrocious statute that allowed a creditor to attach everything the debtor owned so the debtor couldn't even use

something for food. Then I peddled it around up in Hartford to various people who took it up and somebody thought I was right, and a bill went through changing the law. I have forgotten all the details, but the law was changed and my article was printed in the official proceedings and all that kind of thing, so, of course, I claimed credit for it.

I would go to court often. I never stood up. There was one lawyer who had been designated by the mayor for the Legal Aid Bureau. He was the real head of the Bureau. He took serious rape and other kinds of cases like that to court. I'd go to court with him when I could. And sometimes I would drop into court and just sit and watch what was happening. But I didn't do any court work. There were criminal as well as civil matters. I learned a little about what not to do, which is the real trick of being a good trial lawyer. So it was at the end of my second year, I said to myself, "I've got to get out of here and do something useful."

I came down to Washington and the New Deal, and I went to see James Landis, who at the time was chairman of the SEC. I told him I wanted to drop out of law school, go to night school to get my degree and go immediately to work. I had an introduction to him from an uncle of mine named Matthews. I had never met Landis. But he said, "Don't do that. Don't do that. Come back. I want to take you to lunch." When I went to lunch with him he said, in effect, "It would be the worst mistake. I'll tell you, though, if you'll go back and finish law school, you come back, and you've got a job at the SEC." That's the most I got out of him. He convinced me it was a jackass idea, and I guess it was. So I went back and finished up at Yale.

Law School was a pleasant place for me, partly because of Corby Court. This was the only fraternity in which about 20% of each class became members. If you were fortunate enough to be chosen -- and it was Yale-dominated, so I was chosen, because I knew a lot of people there

-- you really had a wonderful time. We ate all our meals at Corby Court, many of the faculty members came to play bridge there in the evening or to pick up fellows to go to the movies. This made life at Yale Law School very pleasant. I had a lot of friends there, friends I've still kept to today, those who are still alive, that is.

When I left Yale Law School I had very spotty marks. I got what you now would call honors in the subjects that interested me. In the subjects that didn't interest me, I got quite conventional marks. But I got through. And I immediately took the Connecticut bars and passed them. This was a two-day affair. It was a lot of pressure because the law school put no emphasis on passing bar exams.

Yale Law School has remained one of my lasting loves. I went back there to teach seminars -- still do from time to time. I recently was there as the Anderson Fellow and spent a week with the faculty and students. Fascinating week. I was, first of all, on the Executive Committee and then I was chairman of the Executive Committee for several years. After that I became the Law School representative on the Yale University Council that met with President Brewster on the planning of the future of the Law School and other departments. I represented the Law School there for five years.

My portrait hangs in the Law School. The school has become my strongest allegiance of all the different institutions that I've had something to do with, directly or indirectly through my wife or kids. I think it is an extraordinary place. I remained extremely active in the Law School, far beyond simply carrying out formal positions, up until the time I went on the Court.

I've raised money for the Law School and obtained material for the Library. I co-chaired a Special Gift Capital Funds Campaign and served on special committees. When we organized

the Yale Law School Association of Washington, D.C., I think I was the second president of that outfit.

I've learned a lot from the Law School long after I left it. For instance, during the Anderson Fellowship I lived on the campus for a week. I taught in five different class sessions. I met at dinners and lunches with individual faculty members, talking about their plans and their ideas and what could be done or should be done to improve the Law School. I've been a counselor to some of the deans who became close personal friends and talked to me about aspects of the Law School.

I had something to do with making sure that the Law School wasn't bled too much because of its prosperity by diverting funds to units in the University that weren't doing too well financially. I helped to establish clinical programs and participated in them. I've been involved in almost every way you can imagine. Almost all of my law clerks have come from Yale, with just a few exceptions.

It is difficult to put into words my debt to Yale Law School. I grew up while at the school. It taught me to think. My contacts there following graduation have widened my experience, kept me in contact with coming generations and filled me with ideas. It is a jewel in the midst of Yale that has supported public service and high professional standards. My whole life came into focus because of what the school taught and represents. If I've done anything useful since I left, I give the school the credit.

Securities and Exchange Commission

When I started law school I was still wondering whether I really wanted to be a lawyer. As I have enunciated, I had come to realize that a lawyer could help people, and I was more

conscious of how many people needed help. Signs of the Depression were all around us in New Haven, and I was curious about what a beginning lawyer or politician could do about it in real life.

I knew I had a vague promise from Landis that I was sure he had probably forgotten. My first thought was that I wanted eventually to be a senator from Connecticut. I thought I had better practice in Connecticut. Hartford seemed the best place to start, so I went to Hartford. It was not an easy time to get a job. It's difficult to realize that many in my law school class never practiced law. They became policemen. They became investigators for insurance companies. The only law jobs were jobs where your dad was a good client of the firm, or if your dad was a practicing lawyer, you could get yourself a job with him. But there were few jobs advertised.

I went up to a firm, Robinson & Cole or something like that, and I talked to a senior partner and he hired me. I was surprised and excited. I thought I was about to get married, although the same lady actually kept me waiting a year, and with a job I could go ahead. As I got up to leave I said, "By the way, what's the pay?" He was a very nice man but looked at me and said, "We don't pay anything."

Since my father was a college professor, there wasn't a lot of money running around. In my egotistical way I said, "Well, supposing someone does an outstanding job the first year, what could he expect the second year?" Well, he looked out the window a long time and then said, "We have one person that we are paying \$50.00 a month in his second year." And I said, "Well, I think you'd better give this job to a more deserving person." I walked out and went on down to the SEC.

So that's the reason I came down to Washington for what I planned to be only an

experience of a few months. Of course, I had a great interest in the New Deal, a desire to see at first hand how the country would address the social problems caused by the Depression, but I still had in mind going back to Connecticut.

I fell in love with Washington, and there was a lot of work to keep me very, very busy. The thought of going back to Connecticut disappeared from my mind, although I'm still a member of the Connecticut Bar in good standing. I've been a member for more than fifty-five years now. I never appeared in any of the state courts there but have appeared in the Federal District Court.

My first job as a lawyer was with the General Counsel's Office of the SEC. In those days you had to be a member of the Bar to be hired by the government as a lawyer, no matter at what level. Mine was the lowest level. I was paid \$2,000 a year. I started out in the Fall of 1935 and stayed with the Commission until the end of 1940. It was a rich experience, varied and almost always I found myself in roles of ever-increasing responsibility, pushing me to the limit. The Commission was a very congenial place to work. The staff was young and eager. Unlike long-established government agencies, there was not an entrenched bureaucracy suspicious of the New Dealers and against change, which they viewed as standing in the way. Long hours, informality and a minimum of supervision were the order of the day. If you didn't stumble too often, there was no end of opportunity.

When I went to work in the General Counsel's Office of the SEC, I was the only Yale man there, surrounded by Harvard graduates and thus immediately suspect. There were a bunch of brilliant Harvard graduates in charge. Johnny Burns was General Counsel. The SEC was without doubt considered the best legal shop in the government at that time. The office was

writing statutes and dealing with businesses. It was a very active, interesting place. But I was a maverick because I came from Yale.

My first job was to draft opinion letters. In those days lawyers for financial institutions would write asking for interpretation of a rule or statute as it applied to their particular fact situation. We would write the kind of letter that said, "Assuming these facts are true and complete, this is what it means --." For a short time I wrote draft opinion letters that would then be looked at by the more experienced lawyers there, and obviously edited. It was a good start. I remember I finally came to the moment where I thought I should dictate. I had never dictated to a secretary in my life. I wrote out what I was going to dictate and propped it up on a book in front of me and called for a secretary to come up from the "pool." This young lady came up with her note pad, and I started to read slowly to her as though I were dictating it to her. And she said, "OHHHHHHH." Her eyes rolled up and she fainted dead away. It turned out that she had never taken dictation before! That was sort of the way I got started.

Soon I wanted to get out of writing opinions and was assigned to the enforcement area. This involved straight prosecuting work, development of facts for presentation to grand juries, unraveling stock frauds, and filing civil cases in court, in addition to helping in criminal trials and representing the Commission before the agency itself.

When I started out I was teamed up with two experienced enforcers -- Jack Flynn and Big Tim Callahan of Yale football fame. Detroit was considered the center of security swindlers; and we went out to clean it up, aided by Postal Inspectors. There were several "bucket shops" going at full blast, full of men selling securities by telephone, securities they didn't have, on an installment basis and rigging the market to attract buyers and then dropping market support to

wipe the customers out. We conducted raids, got injunctions and initiated criminal prosecutions.

Early on, when this cleanup effort was just starting, I found a note under my door from Flynn relating to a particular case, saying, "My mother is ill. I've gone to New York. File a complaint tomorrow in Federal Court." Callahan was elsewhere. I was on my own, but I had never drafted or filed a complaint in my life. I had met one of the U.S. District Court judges. I wrote out a complaint and saw the judge in chambers, explaining my inexperience. He agreed to look it over. This saved my life for the moment because, with a twinkle in his eyes he simply said, "It looks O.K. to me but don't you think it would be a good idea to say what ruling you want?" Talk about learning by doing!

As Detroit straightened out I was assigned to what proved to be a major criminal case. We indicted 21 men for a scheme that involved selling Stutz stock by telephone over a ten-state area. Customers signed up to buy various securities with 50% down on assurances the stock would go up. After a large number were on the hook, the telephone calls began to tout Stutz, then selling around \$3 a share. By matched sales the price was made gradually to go up. When it reached about \$12 a share, customers were switched to Stutz and then "the plug was pulled" and the stock fell back to \$3, wiping out everyone who had put 50% down. Several times the entire capital of Stutz had been "sold." It was a \$10 million swindle. I put the investigation together, wrote the report and got Justice Department approval. Indictments were returned at Gainesville, Georgia; and Peg and I went down to live for a couple of months in Atlanta, when the case was tried. Neil Andrews, a fine trial lawyer, tried the case. My job was to line up the witnesses, "horse shed" them and turn them over to Andrews each day. The Judge was E. Marvin Underwood, and former Governor Slayton was for the defense. We convicted the main

defendants, after a long trial of what became known as *United States v. Kopold Quinn*. It was a big win for the Commission because this type of fraud could only have been uncovered by federal authorities. The states had been bamboozled by false documentary material indicating the stock sold was being held elsewhere.

Roosevelt was running for reelection in 1936, and the Republicans were claiming that overregulation of security markets by the SEC was stifling business. This angered me. In my spare time after the trial I wrote a small 160-page book entitled Protecting Your Dollars, documenting what the Commission was doing and how people were being swindled and needed protection. Over 50,000 copies were sent out, and it brought me some attention. I was paid nothing, used no government facilities and paid for the typing. It sold for fifty cents and was part of a General Welfare Series printed by the Home Library Foundation.

Then I had a stroke of great luck. I was assigned to lead the entire investigation of Richard Whitney. This turned out to be the major financial scandal of the era and brought about Whitney's downfall, along with a total reorganization of the New York Stock Exchange. It has been written up in several books, and the entire transcript of the hearings I conducted in New York and Washington is printed and accompanies the Commission's final report. My name was in the news every day as what proved to be a front-page story, and I gained recognition, working under great pressure.

Whitney was a real scoundrel. He had been the leading opponent of the SEC, trying to prevent federal legislation from being enacted by saying it wasn't necessary, that the Exchange could monitor its own business. He did all the business of J.P. Morgan & Co. He got overextended by investing in securities in a company known as Florida Humus, which had some

grandiose idea about making a lot of money out of decayed material that would be scraped up in Florida. He couldn't meet his commitments, so he first stole all of his wife's securities from her account, then he stole from other customers. He stole from the Stock Exchange Gratuity Fund, which was the pension fund for the employees of the Stock Exchange. He was treasurer of the New York Yacht Club, so he then stole the funds of the New York Yacht Club. And then he went around and borrowed or tried to borrow from members of the Exchange who were not on the inside, some of whom were quite taken with the fact that Morgan's broker had come to them for a little money. He'd touch them for \$100,000 at a time.

One thing I learned was what a great lawyer can do. I never forgot it during my later practice. One day at the Links Club, which is a small bridge and social club in New York, Whitney was there; and a partner of J.P. Morgan was there, named Bartow. Bartow was playing bridge. He was not a man who had become a Morgan partner because of wealth and family, but out of sheer ability, and was highly respected. I don't mean that others didn't have the ability, but he made it the hard way.

Richard Whitney came up to him at the Links Club and said, "When you're dummy, I'd like to talk to you at the bar for a minute." So when Bartow was dummy, he went over and said, "What's on your mind, Dick?" or words to that effect. And Whitney said, "I need a lot of money." And Bartow said, "What is the trouble? Are you temporarily embarrassed?" But Whitney said, "It's worse than that." Bartow immediately said, "Come with me."

They got into a cab and went down to John W. Davis's office at Davis, Polk. Whitney spilled the beans for the first time to John W. Davis, who was counsel for Morgan. They got in a car and they went out to Great Neck, Long Island, where old man Morgan lived. I had the old

man on the stand later; he was a keen gentleman. After describing what Richard Whitney had said, Davis said, "If you loan a penny to this man, it will be the end of the House of Morgan." Morgan accepted this advice, Whitney went under when they rang the Stock Exchange bell on him the next day, and he was thrown out of the Exchange. That was very wise advice from an experienced corporate lawyer. He earned much more than his fee, as it turned out.

When the investigation started, it developed that Richard Whitney's brother, George, had been helping him to the tune of around \$2 million with his own money. But nobody knew about this. And the business advisory counsel, and all of the other officials of the Exchange who were supposed to check people's accounts, either hadn't caught it or winked at rumors. From the SEC's point of view, this was classic proof of the need of federal regulation of the Exchange; and Douglas, who was Chairman, made the most of it.

I was the chief counsel for the SEC in all the Whitney hearings, both public and private. Some were held in Washington and some in New York. Morgan did not want to come to Washington for health reasons. He was in frail health and I questioned him in New York and I had one or two of the other witnesses in New York. But most of the hearings were down in Washington. Davis, Polk and all kinds of law firms were running around representing these people who were in trouble. It was a fascinating account of skullduggery.

The SEC's New York office gave financial men, who did the auditing and traced the stolen securities. I had a couple of other people who were investigators. The hearings were all before an SEC trial examiner (now called a trial judge) named Sam Clark, brother of Judge Charles E. Clark, former Dean of the Yale Law School.

In the middle of the investigation Whitney pled guilty to a state charge arranged by his

lawyers with Tom Dewey behind our backs, took a five-year plea bargain and went to Sing Sing, where he played first base on their prison baseball team. I had a few days to complete his testimony, until midnight on a particular day. At midnight they were to take him to jail. I was trying to catch up and get everything I needed to know from him out of him, a big session, right up to midnight.

I finally came to the final question, asking, "Now, Mr. Whitney, when was the first time you realized you were insolvent?" He always dressed perfectly with a stiff collar and his Porcellian pin -- a beautifully tailored man. He looked at me with contempt and said: "I am not insolvent." I was flabbergasted. I burst out, "What do you mean?" He said, "I can still borrow money from my friends." I said, "Take him away."

Many prominent persons on Wall Street testified: Whitney's brother, George, J. P. Morgan, Lamont, and many others, including officers of the New York Stock Exchange. Dean Acheson of Covington & Burling represented the Exchange and I came to know him fairly well, riding back and forth to New York in the club car of the Congressional, a crack train in those days.

Finally, it came to an end. The report was out and legislation in the works. Bill Douglas and the SEC were riding high and I was doing odds and ends, expecting a new assignment.

I got a call from Douglas's office. "Come to the Chairman's office immediately. Come in the back way." So I went upstairs and went into the Chairman's office. Douglas said, "You've just agreed to be special counsel to the Temporary National Economic Committee." I said, "What the hell is that, Bill?" He said, "Just shut up and sit down." I sat down. He said, "Show Mr. Corcoran in."

Tom Corcoran, well known for his handling of political chores for FDR, was outside and he had with him a fellow named Bill Youngman, who later became Corcoran's partner, and was an experienced insurance lawyer. He had brought Youngman over to introduce him to Bill and to ask Bill to make him special counsel to the insurance investigation of the Temporary National Economic Committee, which had been delegated to the SEC by Congress. So I'm sitting there, and in comes Corcoran and Youngman. Corcoran said, "Hi, Gerry." And Youngman, who I knew slightly, said "Hello." Then Bill said, "Tom, before we get started on your business, you'll be delighted to know that Gerry here has just agreed to be SEC special counsel to the Temporary National Economic Committee."

That job took about two years of my life. It was a big job. I got a pay raise with it. I had a staff of thirty-five people. It was also my first real administrative job. I learned how to run an office and widened my trial experience.

The Temporary National Economic Committee (TNEC) was a joint congressional committee created to study the growing economic power of business. Its chairman was Senator Joseph Mahoney of Wyoming. Various industries were assigned to different agencies for investigation, and the heads of these agencies were also committee members. The SEC was assigned insurance, and we concentrated on life insurance. Metropolitan Life had some \$5 billion of assets, and its size attracted criticism. There was no federal regulation of insurance. This was the first national inquiry into life insurance affairs since the investigation by Charles Evans Hughes in 1905.

The job had two facets. I was primarily responsible for guiding the investigation, conducting hearings before the committee in the big Senate Caucus Room and helping with the

reports. Ernest Howe was the financial man who developed searching questionnaires and striking bits of useful information from the extensive reports filed by life insurance companies with the state regulatory agencies. We got out two reports, TNEC Volumes #2 and #28. Number 28 developed aspects of economic power of insurance companies through their holdings, interlocking relationships with major concerns whose securities they owned that were represented on their boards of directors, etc. It traced how those relationships were used.

Volume #2 was a study of families and their life insurance, which is, I believe, still an amazing social document. It reflected our analysis of nickel-and-dime burial insurance as sold by Metropolitan Life and Prudential, then the two largest life insurance companies, through door-to-door collections for burial insurance by weekly payments, mainly in the impoverished sections of large cities. Michael Cardozo, one of my friends and classmates at law school, came down to work on this project along with a savvy statistician and sociologist named Davenport. We used it as the prime example of abuse of economic power when we put on our first hearing before the committee.

Metropolitan and Prudential were both mutual companies. They boasted that they were managed by officers chosen by the insured by open election. This was false but effective. We disclosed the truth. The insurance agents were asked each year to get policyholders' signatures on a "Hitler" ballot that listed only the existing management, and the companies took pride in affirmative responses of over 90 percent for each election. The catch was that these agents knew their clientele was suspicious of signing anything, so they regularly forged signatures to please the management and to avoid losing an account. I called agent after agent of Metropolitan Life who told the story. It was a sensation that gave the committee a prime example of what they

suspected. Prudential, knowing we were about to make a similar showing with their agents, stipulated the truth; and we were on our way. Report #2 details the full effect of this wasteful form of burial insurance that deprived many of their savings with often no benefit.

A mass of information was developed but the committee labored over it and in the end the lobbies and growing concern over developments abroad resulted in nothing very concrete.

Back at the SEC it was obviously time for me to move on if I was going to practice law. I was made Technical Advisor to the Chairman and stayed awhile working with Douglas and then with his successor, Jerome Frank. This involved drafting opinions and other miscellaneous duties, along with some administrative hearings. Then I resigned late in 1940 to join the law firm of Covington & Burling.

Looking back on my five SEC years, I cannot help but be impressed with the vigor, dedication and effectiveness of the agency in those early days. The staff was young. It was a privilege to be a public servant, not spokesman for something dubious that had to be explained. There was no shortage of work, and responsibility was everywhere for those who could handle it. The atmosphere reflected quiet, tolerant but highly knowledgeable leadership of two Chairmen who set the goals and high standard by which they were expected to be achieved with cooperation of other hard-working commissioners.

William O. Douglas

My job at the SEC began before Douglas arrived, but I already knew him fairly well because of participation in several of his small seminars at Yale Law School. It was exciting to work for him, as I have already noted, and I got to know him better. It was fortunate I was not a Harvard man fresh out and the only recent Yale Law graduate around.

Bill Douglas carried no Wall Street baggage. He had worked for Cravath and knew much about how it functioned. But it was not for him. He hated New York, having slept in doorways and struggled for food when he first came there on the rails from out West. He knew the investor needed protection. He was salty, direct, uncompromising and a good administrator. If you performed, he left you alone. If you stumbled, watch out! He didn't pontificate or “worry the bone” but carried those in his circle with him in an effort always to reach a defined objective.

In those early days Bill was my idol. There was talk of his running for President. Many of us thought he was perfect for the job. He had an ability to talk with cowhands, botanists or corporate moguls. He was genuine.

I was in his office when the President called him and said he had sent his name up to the Hill for the Supreme Court and was absolutely devastated. He seemed too young to become an old man like the other Justices. A lot of us had been talking about how he ought to run for President. Of course, he knew the nomination was coming, but this was the official call from the White House that his name had gone up. I said, “Oh, for God's sake, Bill, why are you doing that?” He said, “I need the money.” I never learned the true reason.

I think it was partly a pay raise. I don't know how many obligations he had -- I guess he had at least one wife he was already supporting at that time. But I don't know. I don't think that money was the whole reason. He was being talked of a lot for the presidency then and it continued even after he went on the Court, particularly in 1939.

After SEC days his personal affairs got him adrift, he often became taciturn to a fault and certainly the Court soon proved routine and dull. We drifted apart but kept in touch. Sometimes I met up with him walking on the C&O Canal or I went to one of the cocktail parties he liked to

have in his chambers at the Supreme Court. And I read his books, every one of them, which reported his wide travels, his youth and his notions of how the Constitution should be applied for the benefit of the ordinary citizen. He was unique. He seemed to me to be missing a good fight and to believe he was somehow unfulfilled.

The dismal last days' visits to his home were short. He wanted to do things but couldn't. As his health failed, Justices Brennan and Burger and Judge Skelly Wright and some of us from the SEC days were frequent visitors. He lay on a cot on the first floor.

Jerome Frank

When Jerome Frank succeeded Bill, my role at the Commission was different. Under Douglas I was always handling a trial load or special chores. With Frank I was involved more in the day-to-day functioning of the Chairman's office.

Frank was a New Dealer. He had come down from Columbia where he was on the law school faculty and he had served at the Department of Agriculture. He was an intense, bright, inquisitive man who loved to write. He loved gossip and overflowed with ideas. One of my first jobs was to assist him immediately after Christmas. The day after Christmas we went to the office and arranged to return all the presents. "You were kind to send me a bottle of Jameson's Scotch, which I am sending back." "Thank you for the basket of apples. I have sent them to Children's Hospital." The most minor kind of thing -- everything was returned.

We were all very strict about such matters in those days. We would never let anybody buy us lunch. Wall Street lawyers or other people would come down. Sometimes I'd have lunch with them. I would always pay for my own lunch. They would think it was absolutely silly, you know, but the atmosphere was one of avoiding any kind of appearance of influence or conflict.

Here is another example of working with him. One day he brought me a draft opinion. My recollection is that it was about 110 pages long. He said he wanted me to look at it and see what I thought of it. After reading it over I said, "Jerry, this thing is way too long. There are a lot of good points in it, but you have lost some of those points because it is so discursive." I continued, "Here, I have boiled it down, taking your own language, but I've boiled it down, and here is a 30-page thing that you really ought to look at." He said, "I'll look at it." I was hopeful. Soon he called me and said, in effect, "You've done a wonderful job. I'm going to use it just as is and have attached it as a preface." You couldn't win!

Frank gave me my first opportunity to argue before a court of appeals. To show you how diabolical he was, the SEC had a case in the Fourth Circuit -- *Houston Natural Gas*, I can remember the name. I don't remember what the case was about. The problem was that the Circuit had decided a case on all fours against the position the Commission was taking. In addition, SEC Commissioner Haley thought that the Commission's opinion was wrong, and he insisted on writing a brief opposing the SEC brief.

Nobody wanted to go near the Fourth Circuit on that one. It was my first experience with appellate practice. I went down to the Fourth Circuit, which is a wonderful circuit to argue before, wonderful. I went down there, and I had Haley's brief saying I didn't know what I was talking about, and I had their opinion that was dead against me. So I was stumbling around trying to weave my way, as you do, through all the intricacies and distinctions. One of the Judges, I think it was Judge Parker, finally said, "Counsel, as I listen to you, you think we're all wet." I said, "Yes." He said, "Well, say so. Get on with your argument." They all laughed. The court ruled against me. They came down into the well of the court afterwards, the way they

do, and we shook hands. You can understand why I, as a young lawyer, got the chance to argue it. Nobody else wanted to argue that case. But jumping at things like that is the way you get experience. And I still remember that experience. Later, I argued other cases in the Fourth Circuit, a number of cases for the Southern Railway.

By the time I left the SEC the key legislation was well in place as far as the Stock Exchange was concerned. The Commission was in a more defensive posture elsewhere. The Public Utility Holding Company Act had stirred up increasing antagonism. Frank held things steady. He was persuasive in Commission meetings, and his insistence on maintaining the course we were on was quietly effective. The staff knew it would not be sold down the river. But conditions were changing.

New Deal Washington

Until the District of Columbia was affected by the events of World War II, it was a glorious place to live and practice law. It was beautiful, clean and tolerant. Except for some cave dwellers and the social life of the diplomats, both of which were easily avoided, the town was full of interesting people, including many drawn to the city by the New Deal. Best of all, most of Covington's clients lived elsewhere, and there was not the country club social pressures to meet and to please clients typical of the practice in some other cities.

In those early days there was no imperial presidency surrounded by rude Secret Service details, no daily sense of racial tension, no notable crime, no lack of work, no contempt for privacy, and no wallowing in commercial violence over TV. One felt useful, safe and challenged. Nobody was worried about assassinations until Truman's presidency. Many of us never locked our doors. Peg and I had an apartment on California Street for \$60 a month. I

bought a second-hand Ford for \$246, drove to Atlanta in it and back, and we hired a maid for \$9 who worked three times a week. Movies and things like that were cheap, like the five-cent candy bar; fifty cents for the movies. Peg and I lived well on \$2,600 a year. The tempo was slow.

There was a fine street car system that took you out where you could walk and picnic.

Some fail to realize that Roosevelt had no real staff. I imagine now the staff of the White House is close to a thousand. The first big step was when FDR got six anonymous assistants. There was also one person, an usher: if you wanted to see the President, you went and asked to talk to the usher. I remember a man in town then with a great long white beard and shaggy hair who called himself God. And he liked to talk to Roosevelt. He would go to the usher, and the usher might say, well, God, the President is busy now, but he'll see you next Thursday at 2:30. And he'd come back and FDR would talk with him.

When my great friend, Jim Rowe, who was one of the six anonymous assistants, went to work one day, the President was still in bed, as he was most mornings, doing business, but in bed because of his crippled condition. The President had the morning paper. He said, "Jim, I've just seen an article that said that you were at a cocktail party. If I see that again, you're fired."

Anonymous assistants didn't go out and talk to people where there was drinking, or cater to the press. Now what do we have? All those guys are on talk shows every living hour of the day and night, and sometimes twice a day on Sunday. It was a different atmosphere.

Nowadays few realize how simple government affairs were in those days. Speaking of Jim Rowe, one morning while I was at the SEC the telephone rang and Jim said the President is going to make a statement about the 1935 Investment Trust Act. Would I write up something for him? I said, "Sure." So I sat down and wrote him a page about what the Investment Trust Act

was. I knew very little about it myself. But I knew its general idea, and I wrote that up and sent it over to Jim.

The next day the President read it publicly without changing a word. There were no public relations people. I didn't clear it with anybody at the SEC. It comes back from Jim with a note saying: From GAG to JR to FDR to JR to GAG, or something like that!

Of course, the city was segregated. No blacks were allowed in most theaters, hospitals (except Children's Hospital), department stores, libraries, restaurants used by the whites; and schools were racially divided. Old Washington families and the diplomats ruled the social scene. The infusion of New Dealers manning the alphabetical agencies that came about almost overnight were resented. The latter had their own gossipy cocktail parties, consumed with political energy and hopes. The two groups saw little of each other, and neither focused on the blacks. There was a sense of excitement for us newcomers. Government was important. FDR had a reception every year for government lawyers and even low-ranking beginners like me were invited. It was easy to make acquaintances and to share experiences. But we were not concerned with the city. Most of us planned eventually to leave.

In retrospect, it is almost unbelievable that the New Deal and what it stood for could ignore the problems of the black citizens. Not only was the city a totally segregated town but often in early days while walking to work, as I did for years, a black gentleman coming toward you might step off the curb, take his hat off as you walked by, and say "Good morning." Most of us, a thing to be ashamed of, were really not conscious of the degree of isolation that existed for blacks. We were wrapped up in matters that appeared to be of great national concern. Roosevelt did not address black discrimination until very late in his presidency, when he did take some

halting steps in the military.

Black women were servants. They were wonderful people who would work in one's home. They brought up many a white child. We had a lady from Meridian, Mississippi, who helped bring up our kids, and who was just like a member of the family, in the old southern kind of tradition. Blacks tolerated whites but they weren't sharing much in the economy. They were rarely in government, and you didn't run into any blacks socially, except on the rarest occasions. Peg and I were blackballed from a well-known club because we had entertained blacks in our home on occasion.

We lived mostly in Georgetown. There were blacks living all around. I bought the house I am still living in by going to a man who lent money to individuals on their face, and I signed five notes. The bank where Covington & Burling had its account and where I was a partner wouldn't lend me any money.

Where we lived earlier there were blacks in the alley. If we wanted a sitter, we'd open the window and say, "Who wants to sit?" And everybody would race to the house. The first one who got there was the sitter. Our kids played together. They were wonderful people, and I see some of them still. A great chance to avoid what happened later was missed.

To indicate the flavor of those early days, I remember being at a People's Drug Store, sitting at the counter having a Coke or something. A young southern woman driving north, obviously going, I guess, to the Cape or somewhere, had her black nanny with her and some kids. She left them in the car and came in to get sandwiches for them. While she was getting the sandwiches, a black man came in. At that time the blacks couldn't sit at the counter, but they could come to the take-out counter. He came to the take-out and got a sandwich and went out. I

remember her saying, "I declare! You let them come in this way? If I had known that I could have stayed in the car and I could have sent nanny in to get food, couldn't I? Maybe we ought to do that down home." Unbelievable to think of today. But I remember that and many similar incidents. It took World War II to finally shake us out of our magnolia tree lethargy and to energize more blacks to have the courage to speak out.

Covington & Burling

As I mentioned earlier, I had been thinking about leaving the government because I didn't want to become a full-time government worker, and five years was about it.

Peg and I had been wondering what to do. We both wanted to stay in Washington. So when I was approached by Dean Acheson and Eddie Burling asking whether I'd be interested in going to Covington & Burling, I quickly said yes.

The offer from the Covington firm was another lucky break. The firm was losing Acheson to the State Department; and he was the partner handling a series of major antitrust problems involving the DuPont Company, one of the firm's then principal clients. Several younger partners who might have been available were in the Naval Reserve or likely to be called up. I had gotten to know Acheson and Eddie Burling three years earlier during the Whitney matter and had been taken to Mr. Burling's cabin on several occasions later for his famous Sunday rum drink lunches where Peg and I had met other partners and famous guests like Learned Hand. There was work waiting for me, and I liked the members of the firm I had met. It was easy to say yes, although I had little idea what might lie ahead. After all, I had never practiced law.

When I accepted, we never discussed pay. We never discussed status. I just said, sure.

And I set a date and left the SEC and went over to Covington & Burling one morning. They were in the old Union Trust Building at 15th and H Streets, N.W., on the southwest corner. I was asked to help Tom Austern, one of the partners, who was working on a bunch of facts for trial; and then I did some things with Howard Westwood. But I wasn't getting paid any money. I didn't worry too much at first because I was still receiving accumulated earned sick leave from the SEC. In those days when you left the government you really didn't officially leave until you got paid benefits you hadn't used.

The first thing that happened that cheered me up was that Paul Shorb, one of the senior partners of the firm -- a superior fellow, a tax lawyer -- came into my room and said, "I just wanted to come down and meet you," he said. "I always like to meet my new partners." That was the first time I knew I was going to be a partner. We shook hands and had a little visit.

But the firm was still silent about money. Then one day Mr. Burling said he wanted me to come up and see him in his office. So I went up to the office and he hemmed and hawed a little bit, and said, "Now, you know, you're just coming into the partnership, and Charlie Horsky, who has been here a long time, is being made a partner at the same time. We think you both should get the same pay and we've talked it over." I didn't know who he meant by "we." I supposed he and Judge Covington and Shorb had talked it over. There wasn't any firm agreement or anything formal in those days that I ever heard about. "And," he finally said, "we have decided that we'll make it \$12,500 a year."

He looked at me with his cocked eye and for some reason that I can't explain, though I have often thought about it, I said, "I won't take it." "Well," he said, "what's that all about?" I said, "That's too much money." I said, "I don't know anything about practicing law. That's more

money than my father ever made in his life.” And he smiled and said, “What is your idea?” I said, “I know that I am worth \$7,500 because that is what I've been earning at the SEC. I want to come in at \$7,500 with one understanding and that is that you'll pay me what I'm worth.” He got up, and he walked around his desk and put out his hand and said, “It's a deal.” We shook hands.

Well, I did better than \$12,500 that year. And I never regretted that entry into the firm. I really didn't know what a lawyer did. I'd not come fresh from law school to a law firm and had never been an associate. I knew something generally about what happens in court, but I didn't know what people did in law firms. I didn't know anything about dealing with clients. I'd never had a paying client except Uncle Sam. So that's the way I got started.

When I talked with Mr. Burling I also told him I didn't want to do law business with the SEC. I said something like this: “Mr. Burling, I'll tell you what's going to happen. All kinds of people are going to want me to do that because of people I know. Ganson Purcell is one of my best friends in town. He is Chairman. My name is associated with the Commission, I know the key people and how the SEC operates.” Mr. Burling said, “Thank God, we've got enough business. You will be busy on the DuPont work. You don't have to worry about it.” Sure enough, all kinds of people came. I wouldn't have wanted to represent any of them. I never went back, until I had one SEC case many years later for Alex Brown & Sons. I went back and won the case. By then I didn't know a soul who was there. They didn't know who I was because it was at least fifteen years after I had left.

I realized I had to become a member of the D.C. Bar, a member of the U.S. District Court. I was a member of the Connecticut Bar, a member of the Court of Appeals Bar and the Supreme Court Bar. But I wasn't a D.C. lawyer. Judge Covington said, “When I was Chief Judge of the

U.S. District Court, I wrote the regulations.” He said, “Just fill out this application and file it.”

So I filled out an application saying that I had been five years out handling cases in federal court. Five years was one of the requirements to be admitted on motion, subject to character check. Everything was fine. I sent it over. They turned me down. They said that representing the United States for five years was not practicing law, and therefore I'd have to take the written bar exam.

Well, Judge Covington went through the roof. He said, “Those damn fools over there. I drew that rule. I'll go over personally and get them to agree.” So he took my application and went over to the court. But he lost -- by one vote. So I had to take the bar exam. Well, by then everybody in the firm was chuckling, and secretly hoping, I guess, that I'd flunk or something. When I went to take the bar, there sitting next to me, up one, the way the seats were staggered, was James Landis, former Dean of the Harvard Law School and my first SEC boss. He wasn't a member either, and he was taking the bar exam!

I remember one question on the bar exam that I heard later I got 50% on. They asked what the statutory provision was about, or some such thing. And I wrote, “I do not know what the statutory provision is, but even if I thought I did, I'd have enough sense to read it before I gave any advice to a client.” In that fashion I got through, I passed.

Years later I learned that Judge Covington, who didn't know me, had said, “What are we doing taking this young New Dealer in here? I think I had better check him out.” Someone said, “How?” And he said, “Well, George Whitney is on the Board of General Motors, a client of ours, he's on the Board at Kennecott, and he's on the Board of DuPont, and those three are our biggest clients.” He said, “I'll hop up to New York and see what George thinks.” He came back

and reported to the firm, I'm told, the following. He said to George Whitney, "We're thinking of taking young Gesell into the firm and want to know what you think about him." George Whitney was kind enough to say, "He's a damn good lawyer. You are lucky. But you ought to get rid of that fellow Acheson." Dean had represented the Stock Exchange. Judge Covington felt happy, but I doubt that he ever told Dean Acheson.

Now comes the time to talk about my activities at the firm. The reason there are few solid biographies of lawyers discussing the practice of law is obvious. If you respect the lawyer-client relationship in its true sense and you have regard for the privacy of your partners, there is nothing left to talk about, only matters already on the public record. While some lawyers obviously disagree and parade intimate details about clients and their problems, I feel constrained. Covington & Burling gave me every possible opportunity, its standards were the highest, and I had a glorious time working with an exceptional group of talented lawyers for quality clients. Although my narrative of this era will be brief, I treasure my association with the firm and am proud to have played a role in its development to the premier position it maintained in the professional life of Washington, following standards laid down long before I got there by Mr. Burling and Judge Covington. Thus I will give but a brief summary of 27 years practicing law.

There was plenty of work to do. The firm lost several younger partners when they were called up by the Naval Reserve. The firm was short-handed. On the other hand, the Justice Department had launched an attack on international cartels, claiming that several large concerns had divided international markets and fixed prices. DuPont, because of its arrangements with British, French and German chemical concerns, was a prime target. Grand juries subpoenaed

masses of documents; and more than 15 civil and criminal antitrust cases naming DuPont, among others, were soon in progress at various stages of development in different jurisdictions. The firm was defending, and I was given the lead assignment. The legal and factual issues were complex. I traveled frequently to Wilmington, Delaware, and to New York City, where counsel from the larger firms were located and attorneys for other defendants met for strategy sessions and to exchange information about co-defendants. Our instructions from DuPont were to fight hard, and we did. The trials were drawn out and publicized. I won some big cases early on and became fairly well-known among business lawyers and general counsel of sizeable companies, particularly after several victories in the Supreme Court.

Soon I had developed a more or less national practice. I tried cases in New York, Trenton, Wilmington, Indianapolis, Grand Rapids, Chicago, Tampa, Baltimore and Washington, D.C., and was consulted by companies in many other cities, particularly Detroit, Kalamazoo and Cincinnati. None of this would have happened if Covington & Burling was not there and backed me up to the hilt. My activities were for a blue-ribbon list of clients. I was retained, along with the firm, for Scott Paper, Upjohn, IBM, Procter & Gamble, Parke-Davis, W.R. Grace, White Motor, PanAmerican-Grace Airways, General Electric, Bank of America, *The Washington Post*, Transamerica, Southern Railway, and the National Football League. The work took me to London, Montreal, Rome and South America. I also did considerable administrative work before the Federal Trade Commission, the Civil Aeronautics Board and the Federal Reserve Board, argued cases in the U.S. Supreme Court and several Courts of Appeals and the Court of Claims.

Some of these matters involved antitrust laws. These cases were much more varied and challenging than some may realize. Whether criminal or civil, they were always fact-oriented.

Most of the legal principles were carved out, and New Deal judges naturally tended to give the government its way in this area. Sometimes the issues generated interest on the Hill, and on two occasions Senate committees sought to try the cases by holding hearings before trial. I remember having rather explosive confrontations with Senator Kefauver over a General Electric price-fixing case and with a Senator from Washington state over a DuPont dye cartel case. These were both high-profile matters that caused considerable publicity. Both Senators were publicity seekers of the worst kind.

One of our advantages came from mastering the underlying business facts. To get my hands on some Scott Paper Company case I spent several days with salesmen in the field, calling on supermarket customers, observing the competition and learning how to get shelf space. While trying a cellophane monopoly case for DuPont, which involved alleged patent abuses, I took the Judge, along with government counsel, to a cellophane plant to demonstrate the patent coverage; and later we went to a packaging show at Atlantic City to see how cellophane faced competition from other flexible packaging materials. We documented cross-elasticity of demand with these materials at great expense and ultimately won a split decision in the Supreme Court by using physical exhibits imaginatively arranged in booklets devised by my extraordinary, able secretary, Doris Brown.

Finally, to illustrate the factual nature of the cases, consider the antitrust alibi defense which served me well to exonerate a vice president of General Electric, without trial, and to keep him out of prison where several of his colleagues later resided for a while.

We represented General Electric when they were caught by the government in the damndest bunch of price-fixing cases you can imagine. The company pled guilty. I refused to

represent the individual officers. They had separate counsel and several pled guilty. But there was one vice president who said, "I didn't have anything to do with price fixing. And I simply won't plead." The government wouldn't take a guilty plea from the company without a guilty plea from this top vice president, who was the highest ranking official that they thought they had caught. So we were facing a trial we wanted to avoid and were certain to lose on the corporate side.

I decided we had to see what we could do to get this vice president off. The evidence against him came from three men who worked for General Electric in Philadelphia. They said that this vice president had come down from New York and instructed them to go to Westinghouse and fix the price of turbines and that, thereafter, a turbine price deal had gone through and they had been fixing and rigging the price of turbines. The three men fixed the conversation within a three-month period and said it occurred in the company's Dining Room B at Philadelphia when all three were present and the vice president came down from New York. Well, my partner Bob Owen and I set out to prove that this didn't happen.

First of all, we found the days when the dining room was closed due to repainting, or something. Then we found when all three people were not present in Philadelphia by looking at their travel because some of them were on business trips from time to time. So we limited it down to the days during a week when all three men could have been in Philadelphia and lunching in Dining Room B. The three men had passed lie detector tests with the FBI. The FBI said they were all telling the truth, which didn't help. And what made it more difficult was: this vice president loved to fly. One of his duties was that he was in charge of the fleet of GE airplanes and he could order up a plane at any time and fly anywhere and he usually did, short distances,

long distances, anywhere.

We went through all the logs and there was no trip to Philadelphia that matched. We were able to prove he hadn't gone by airplane. Therefore the question was the time it would take to drive or go by train. We decided to see if we could prove where he had lunch on each crucial day. Well, he had signed some chits in the company dining room in New York City. That took care of some dates. He signed some other chits at his New York club. And he had had speaking engagements and other matters out of town on several occasions. So we got down to a handful of dates. And then we really began to sweat because we had to cover these.

Finally, we got clear documentary evidence that kept him in New York and not down there in the crucial time of lunch, except one. And, I thought to myself, "That's the date." He would look at me and say, "I can't explain it. I don't understand." It was right on the money in terms of time and everything else. One day at home he was bemoaning about this date with his wife. And she said, "Dear, could that possibly have been the day that you asked me to come to town and we went to the bank together and went to the safe deposit box and got out those deeds?" Bingo! They had gone to the bank and, sure enough, the bank had stamped the date and time.

Then I went over to the Antitrust Division. There was a fellow named Biggs who was head of it. A fair but highly skeptical man. And I said, "Now you've got to let this guy go. There's nothing else you can do about it." I went there at about 9:00 p.m., as I remember, and talked to Biggs, along with some of his staff, until about midnight. He was interested in it personally. He had his staff there, you know, and they went over it carefully. He said, "We'll investigate it, we'll get back to you."

Well, in about ten days the telephone rang. It was Biggs. He said, "We've got you." I said, "Oh, my God. Have those fellows lied to me?" He said, "They sure have lied to you." I said, "What's the trouble?" He said, "There is another plane he didn't tell you anything about; we've gone to the C.A.B. and there's another General Electric airplane, and, of course, that is the plane he came down on."

I called up the general counsel. Oh, I was steaming. And he said, "Well, let me look into it. We weren't pulling any tricks on you." It turned out the plane was a wooden one-seater airplane used for testing radar equipment in New Jersey. This vice president couldn't pilot an airplane anyhow. So eventually the government dismissed the vice president and General Electric pled guilty. That was an alibi defense!

Of course, like most clients, the vice president turned to me and said, "I knew they had nothing on me anyway!"

Senator Kefauver heard about the result and was so sore that he had a hearing on how it was the vice president had gotten off. This was in a big hearing room on the Hill. So I went up there with the vice president and Kefauver berated us. I gave the Senator a learned memorandum indicating that lie detectors weren't any good and weren't accepted by the courts and that they were unreliable. But then Kefauver turned to this vice president, who was a pretty smart guy, and asked why he wouldn't take a lie detector test to settle the whole thing. My client said, "You know, if those fellows passed it, I don't believe in it." It was a good answer. Kefauver was furious.

Another aspect of antitrust practice was the extent to which lead counsel in major cases necessarily sometimes became involved with top management of major companies. These

officers had to consider the risks, the possible effects of a loss and wished to have a voice in tactics, so counsel could do his best to protect vital business concerns. Thus, more and more I was brought into high-level conferences, sometimes with other partners; and we were alerted to litigation pitfalls and asked to guide acquisitions or other major corporate initiatives to avoid litigation in the future. Often one could have a prophylactic effect. I became intimately involved in such matters, for example, in the affairs of the National Football League after winning, with Hamilton Carothers, a major suit brought by a legal rival, the American Football League; with *The Washington Post's* acquisition of its major competitor; and in work done by the government to eliminate Nazi pilots from South American national airlines, through PanAmerican-Grace Airways as the instrumentality.

When the attack on Pearl Harbor came so abruptly in December 1941, I was loaded with cases, including a trial for DuPont. I did not volunteer. Peg was pregnant and I decided to wait a bit. Then it was too late. My draft number came up much later and the next day after being drafted, FDR said people of my age could not be drafted. I had tried for the Marines, who wanted trial lawyers to interview returning pilots, but was turned down for health reasons; and the Red Cross refused to consider me for a chance in China because I was 1-A in the draft. I was looking for active service, not a desk job, but never served. Working as a civilian to help as an air raid warden and waiter for troops on leave at the USO facility in the old Belasco Theater didn't amount to much, but I felt I was doing something. It was difficult holding the firm together during the war, and those of us who stayed were stretched to the limit. When the war was over everyone who had left came back, and the firm grew rapidly because of the clients I have mentioned and many others who came for tax advice, international matters involving the

United Nations and a growing general business practice.

Covington & Burling, during my time with the firm, was unstructured, informal; and we found the practice fun. When I started there were only about 30 lawyers. Mr. Burling no longer took any share of the earnings. He had become wealthy by shrewd investments. He loved the firm, came in every day, reached out always for talent and encouraged initiative. This was not a place where partners claimed clients as their own. We all knew the firm had much to do with why any of us had business come our way. Business brought in was discounted and the money went to those who did the work. We were all well taken care of financially and allowed to find our own ways. Whether a client would like what one of us got tangled up in made no difference. We fought McCarthy, did considerable civil rights representation and took roles outside without seeking permission of anyone. We pitched in and helped each other, and all in all it was a very happy place. Standards were high and there was great emphasis on quality work. There were no pressures to join country clubs, entertain client's wives or compete with other lawyers socially. One could make his own way, seek out the people he wanted to and live an independent life away from the office. All of this engendered great loyalty and *esprit de corps*. Those who left usually left on request and were helped to relocate. The firm grew by advancement from within rather than by acquiring big names as "rainmakers."

Not much business brought me before the U.S. District Court for D.C. I tried several libel cases for *The Washington Post*, an antitrust civil case for Parke-Davis, which went to the U.S. Supreme Court, and was called down for appointed cases a number of times. Some of these matters were before Judge Tamm, who was then a District Judge, Judge Keech and Judge Holtzoff, primarily, but I had motions or preliminary matters before several other Judges. Since

Covington & Burling's practice was not focused locally and its clients were encountering their principal problems elsewhere, I was in no way a daily practitioner in District of Columbia courts and knew the judges much less than many outstanding local lawyers, like Nubbie Jones of Hogan & Hartson, Dick Galihier, David Bress or Spencer Gordon of Covington, whose work was concentrated in Washington.

The local Bar was very close-knit and resented outsiders. Covington's phenomenal success and growth was resented by many local lawyers, and the firm remained aloof for a long time.

Of course, there have been immense changes in the legal profession, particularly in Washington law practice, since the 1940's. Many new firms have come to town. Covington & Burling no longer has the same dominant role, many other top firms are involved in governmental practice for out-of-town clients, and the volume of law work has grown into a roaring flood of business.

My years with the firm, 1940-1967, were tumultuous years. Changes in the practice reflected changes in the role of the Capital. Pearl Harbor ended the New Deal, and the city became the arsenal of democracy. Then FDR died, the atom bomb ended the war with Japan, Russia threatened from behind the Iron Curtain, followed by the Communist witch hunt, Korean Conflict, and economic Cold War, amidst growing racial tensions at home. Dissension and riots mounted, reflecting the murders of two Kennedys and Martin Luther King, Jr. and frustrations with still another war in the Far East over Vietnam. History was being made almost every day. It was an exciting and often discouraging time.

* * *

While at Covington & Burling I served, among other things, on various school and charity boards. (Beauvoir, St. Alban's, Madeira, Children's Hospital, Community Chest.) But there were only three outside involvements of sufficient interest which perhaps should be described more fully. I continued to practice but, at the same time, acted as Special Counsel to the Joint Congressional Committee Investigating the Pearl Harbor Disaster, later as Chairman of the President's [Kennedy] Committee on Equal Opportunity in the Armed Forces, and, finally, as Chairman of the D.C. Circuit's Advisory Committee for Reorganization of the Local Court System. These were all non-compensated activities. A brief word about each follows.

Pearl Harbor

When the Japanese attacked, a sketchy report was prepared by Justice Roberts at FDR's request but, necessarily, security considerations masked the full truth because the fact that we had broken the Japanese highest secret Code was still a secret and unknown to the Japanese. After Pearl Harbor, the United States continued to read the Japanese messages that aided the war effort every day. After the Japanese surrendered, a congressional inquiry was inevitable. The inquiry awakened old controversies. America Firsters saw a chance to be vindicated, and Republicans hoped to tag FDR with the blame for allowing the attack to occur. William D. Mitchell, a Republican and former Attorney General and Solicitor General, was named Chief Counsel of the congressional investigation. He asked me to be his first assistant. I guided the day-to-day investigation and questioned many of the witnesses at the long hearings in the Senate Caucus Room that followed. Mr. Mitchell wanted to start at the point where a possible attack was imminent and known in Washington and then to work up, event-by-event, to a final confrontation on the witness stand with the two commanders, Admiral Kimmel and General Short. That was

our plan. Throughout, some Republican members persisted in trying to divert us into a review of how FDR got us into the war and to turn attention away from who was responsible for failing to intercept the Japanese planes when they attacked Pearl Harbor.

I had never met Mr. Mitchell. He said that he had been to the Supreme Court and asked for names, and my name was given to him by several of the Justices. Based on this he walked into my office at Covington & Burling one day and asked me to help after talking to my partner, John Lord O'Brian. Mr. O'Brian and I were very close, and I have always felt that Mr. O'Brian had much to do with it, and that Mr. Mitchell just checked me out with some Justices, but I don't know.

We hired a staff and we started out building the story from the ground up. We released all the pertinent intercepted Japanese code traffic immediately, and I personally read all the FDR correspondence and material at the White House concerning the President's contacts with Churchill. As we got nearer and nearer to taking the testimony of the commanding officers, some members of the committee became increasingly restive because the net was tightening. There were many people who felt that Admiral Kimmel, the Navy Commander, was being unfairly accused of dereliction of duty and that the real dereliction of duty was on the part of General Marshall, Admiral Stark and Franklin D. Roosevelt, who had not given adequate warning.

It got to be quite a political brawl. Senator Alben Barkley was chairman. The committee functioned on a rule that provided that any member could have any witness called that he wanted, and if the committee failed to hear some requested testimony or failed to go into some line of inquiry, all the committee would let it happen, regardless of relevance. Senator Homer Ferguson,

who had been selected, in spite of his limited capacity, because he had been a one-man grand jury in Michigan, kept trying to take over the investigation almost from the beginning. He was an America Firster and totally self-centered. The other agitator was a fellow named Keefe, a Congressman from Wisconsin.

Books have been and are still being written about the attack, and there is no point in discussing what we developed. Information later obtained from the Japanese confirmed much of it. However, the political controversy still continues unabated.

For my part, I had a lot of fun listening to Keefe when he took on General Marshall one day and fell flat on his face. It was really very humorous. There was a message that had been sent out to Hawaii shortly before the attack, and it had been written by Secretary Stimson. Usually, such military messages had been gone over by Marshall, who had an office next door to Mr. Stimson, to be sure the message was in militarese language and perfectly clear. But Marshall was out of town that day.

So Keefe asked him, didn't he think that a better worded message could have been sent if he, Marshall, had been there? Marshall was a very laconic, but honest man. "Yes," he said, "I think it could have been improved."

So Keefe began: "Now, where were you, General?"

"Well," he said, "I was on maneuvers."

"Oh, you were on maneuvers, were you? Were you down in Carolina?"

"We were having maneuvers there."

"And I suppose you had a good time?"

Marshall said, "I had a very good time."

Keefe said, "At night you saw a lot of your old buddies that you've known for a long time?"

"Yes," answered Marshall.

"You sat around and drank?"

"Well, I guess I had a drink after dinner. But I went to bed pretty early. But I had a very good time."

"How long were you down there?"

"Oh, three days."

"Wouldn't it have been better for the country for you to be up next to Stimson who is getting along in age, and you could have helped write a more proper warning message?"

"Well, in retrospect, maybe it would have been."

But Keefe didn't stop there.

Keefe said, "Now General, let me ask you this one final thing. (I was sitting right next to General Marshall.) Can you think of a single good thing that came out of those maneuvers that you accomplished?"

I saw a twinkle in Marshall's eye.

Marshall said, "Yes." The big caucus room was full of people, including many reporters. Keefe was stuck.

"Well, what was that, General?"

"Well," Marshall said, "I saw a major who performed well with tanks and I promoted him on the spot and sent him overseas."

There was a silence. Keefe had to ask, who was it, and he did.

Marshall said, "A fellow named Patton."

The audience stood up and clapped and cheered and yelled, and all the press laughed. Keefe got redder and redder and redder in the face, and soon he walked out of the hearing room.

Then we later had a very momentous, historical occasion involving that bumbler, Senator Ferguson. It has never been written up and I believe it ought to be known.

One morning out of the blue Senator Ferguson came in and said on the record, "I've just learned the most terrible thing." He said, "I have just learned that the man who is responsible for breaking the Japanese code has not received even a measly medal from President Truman. I want that man here tomorrow so we can give him the thanks of the nation."

Well, the true story was that the man who broke the code had broken it by computer techniques unknown anywhere else in the world, aided by IBM. United States authorities had put out a story that our people had broken into the Portuguese embassy of the Japanese and stolen the code. The Japanese believed this and had simply changed the formula in the code, but not the code itself. As a result, the United States continued to read the highest Japanese traffic all during the battle of Midway, and probably won the battle of Midway because of it, and continued to read it all the way when MacArthur was going into Japan itself.

Now this guy Ferguson was about to bring out what had really happened. President Truman called Barkley, I assume, or somebody did. And Barkley scheduled an emergency early morning Executive Session of the committee for the day this code fellow was to appear. I had met him. He was a kind of brilliant, odd fellow, like many of those guys are. He could probably see a freight train go by and add all the numbers on the freight cars and take the square root in his head, but might not always know how to get on a bus to get home because his mind was

concentrating elsewhere. He and others who worked with him made a great contribution.

Anyway, General Marshall appeared at the Executive Session in full uniform with a letter from President Truman and said that we were reading the Russians, we were reading the Germans, we were reading the Italians, we were reading the French, as well as continuing to read the Japanese traffic, all by this same decoding method, and that if this man was called, we would lose everything that we had found so useful in post-war military and diplomatic intelligence.

Senator Ferguson stood up and said, "I'll not sit in the same room with this traitor." He pointed his finger at George Marshall, and walked out of the room.

Barkley said, "I can't do anything. We have this understanding. We've got to go ahead with it." We went to the hearing room. The guy was sitting there. He had been subpoenaed. Barkley nods at Mr. Mitchell. Mr. Mitchell shook his head. Barkley nodded then at me. I shook my head. Neither of us wanted to ask him a question. So Senator Ferguson has to bring it all out himself. He did. Various countries changed their codes by nightfall. That was a pretty bad show, in my opinion, dishonorable and immoral.

After this episode Mr. Mitchell correctly felt we had lost control of the proceedings. Supporters of Admiral Kimmel were claiming the Admiral should be heard before we were ready. Senator Ferguson was riding high and there seemed to be more political agitation than a search for the truth at work. Mitchell and I resigned.

When we left, the committee appointed Admiral Kimmel's lawyer as Mitchell's successor, a fellow named Richardson, who practiced law in Massachusetts. Soon the committee came out with a wishy-washy report.

The effort to vindicate Admiral Kimmel, which still continues, is understandable.

Admiral Kimmel was an outstanding naval officer and a great leader of men. If he hadn't had that responsibility at Pearl Harbor, he probably would have been one of the great heroes of the war. Indeed, I believe, any Navy commander who had that job at the time would have had the same thing happen to him. The climate at the time was that the attack just couldn't happen. For example, shortly before the attack, Admiral Kimmel turned to Admiral Halsey, who was at Pearl Harbor in charge of the aircraft carrier Enterprise. Kimmel asked, "What should I do? Should I send all the ships to sea if there is to be an attack or should I bring them all into the harbor?"

Admiral Halsey said, "Bring them into the harbor. Put a net across." That's what Kimmel did. That decision caused much of the trouble because these Navy officers had failed to realize that the Japanese had learned from the Italians to mount their torpedoes from aircraft with a different kind of fin so torpedoes would take effect after a very short run. And, of course, the Japanese also made a lucky hit when they dropped a shell down the smokestack of the Arizona.

When the attack came, Halsey, coming into Pearl, flew the cream of our naval aviators into Diamond Head. As they approached the island, all unarmed in the plane, they flew into the face of the attack, they were shot down and killed. This occurred, even though the Command had even war-gamed the attack. It would come on Sunday. It would come from the north. Exactly the way the Japanese did and it was what the Navy had war-gamed and expected, if it ever happened.

Consider the following. On November 28, 1941, a message went out to the Panama Canal Zone, the Philippines, Hawaii and San Francisco saying, something like this: "This is a war warning. Expect enemy attack. Effect necessary reconnaissance." San Francisco put everybody down on the docks with iron hats, guns ready, everything they could do. The Panama

Canal Zone took every precaution for protection of the Canal Zone. From the Philippines, General MacArthur indicated, we would do very well in the first wave. Our pilots could shoot down a large number of Japanese. "But," he said, "we'll be destroyed on the ground. We don't have enough fuel. We'll come back to refuel and they will eliminate us. But we'll do our best."

In Hawaii, they went and played golf. It was the climate of the times, a lack of imagination. But I think it was endemic to the Navy at that time. The Navy was not as superior as it believed.

I think any commander would have been cashiered, and probably any commander would have made similar mistakes. Where to put the blame -- I don't think it was fair to blame, but you had to blame the commanders. It wasn't just Admiral Kimmel's fault. It was the fault, in my judgment, of the inability of the military, the Navy in particular, to recognize its vulnerability or to realize that we were no longer necessarily the masters of the Pacific. The Japanese were very clever. They sent all kinds of ships down by Indonesia, publicized a fake attack that was not to go on down there. The Japanese papers are fascinating about the planning of this attack. They really knew what they were doing. But it certainly wasn't Marshall's fault, or Nellie Stark, or Short or the Army commanders' fault or Admiral Kimmel, the Navy Command's fault alone. We were, in a sense, victims of overconfidence and tended to discount intelligence information accordingly.

The Pearl Harbor investigation was unsatisfactory. This was caused by the inability of some members of the Joint Committee to forsake political opportunity and personal advantage. Two Republicans, Senator Homer Ferguson from Michigan and Congressman Frank B. Keefe from Wisconsin, sought to turn the inquiry into vindication of the America First movement that

had worked to keep us out of the war. Their contention was that FDR and General Marshall had known the attack was coming and had allowed it to happen because FDR had long before committed us to aid the British without the knowledge and approval of the Congress or the public. From the outset, Ferguson sought to take over the investigation, demanding, unsuccessfully, access to all the staff work as it developed. Admiral Kimmel and his ardent supporters contended they had been kept in the dark and not allowed to see the intercepted Japanese diplomatic messages. This heaped fuel on the fire. Mitchell had insisted, and I fully agreed, that we should work up the facts in chronological form, ending with the commanders. As the hearings progressed, the noose tightened as circumstances indicated how clearly Kimmel and Short had been alerted to the danger of attack. General Marshall had left a slight gap. He could not remember where he was the night before Pearl Harbor. He declined to speculate and was pictured as conspiring at the White House with FDR, although there was no record he had been there. He was returning from retirement to accept a presidential mission to Communist China, and the two obstructive members implied he was about to perform another act against the interests of the country. Two incidents reflect the vicious effort to impinge the integrity of the great man.

[Inserts re incidents not found.]

Left with no further ammunition, the Committee insisted that Mitchell call witnesses out of order so that the America First attitude of Ferguson and Keefe which, by this time, Kimmel perhaps unconsciously shared in his search for self-justification could be presented by Kimmel and others before all the chronological proof was in. Mitchell and I resigned, and Kimmel's lawyer was put in charge of the investigation. A mild, incompetent, slanted report issued. No

commander who is surprised can ever be exonerated. But, as time has passed, the public has, I believe, come to recognize that the U.S. Navy and U.S. Army were unable to appreciate the might and zealous dedication of the Japanese and overestimated our superiority. Kimmel would have been a public hero and a fine commander in the war that followed had he not been in command when Pearl Harbor was attacked. Many books have been written since continuing to argue the basic political argument the Committee reflected. This hindsight has not changed the basic fact -- our country was unprepared, overconfident and unsophisticated. It took the war to wake us up.

President's Committee for Equal Opportunity in the Armed Forces

President Kennedy appointed me chairman of this significant committee, which included key black leaders and well-known figures like Abe Fortas. Judge Fahy, before he became a Judge, had headed a similar committee under President Truman, and this was to follow on as an update. The committee was given offices at Lafayette Square. I employed some young lawyers, and we reviewed voluminous records and conducted limited field investigations, sending teams around the country and to Europe to look at the situation, particularly in Germany, where many troops were then stationed. We published two reports that still make interesting reading today. The first concerned opportunities for blacks for advancement from within the Services and the second dealt with treatment of blacks by the local communities (stores and real estate renters) where bases were located and their families lived. Secretary of Defense McNamara gave full support, and our work had some affirmative effects and resulted in several important changes.

It proved to be a lot of work to get the Services to disclose the true facts, and for a long

time I was at the committee offices most mornings giving things a push, scheduling interviews, and the like. It was soon apparent that the Army was doing the best job, the Navy much less so, and the Marines were dragging their feet. They even selected a striking red-headed, blue-eyed junior officer as my contact, but it didn't work.

The most interesting part for me were the visits I made with Whitney Young, the black leader and member of the Commission whose name is now on one of Washington's bridges. He was a tremendous man, large of size and vision. We got to know each other well while riding around in an Air Force plane as emissaries of President Kennedy. I remember telling him one time early on that I really disliked some blacks. He stuck out his big hand and shook my hand and said to me: "So do I -- brother, you are emancipated." We got along fine and worked in tandem.

I remember, particularly, a couple of incidents. We went down to a Navy base near Jacksonville. The way we would approach a field trip was that I would go see the whites and Whitney would go see the blacks. He told the blacks, among other things, that I was O.K. I told the whites that Whitney was O.K. Then we would meet with everyone, having hopefully quieted fears we were acting on preconceptions or coming from different philosophies.

Down at this base, we sat with a fine commander, a pro, the kind of fellow you were glad was in the Navy, defending the country, and all that. A real experienced officer. We said to him, first of all, why is it that there has never been a black assigned to the gate as a sentry to control who comes and goes? We had heard there had never been a black at this visible post. He said, "That's not true." He looked around at his young aides, and they all said it was true. He blew up. He didn't know anything about it. Right then and there he issued orders correcting the situation.

Then we said that we had a more serious problem. We had been out around the base and noted that all of the new quarters on one side of the high railroad tracks were occupied by whites, and the very old, dilapidated quarters were occupied by black sailors and black pilots. He again said that it couldn't be so. We said, "Get in the car; we'll show you." We got in the car and we took him out and showed him.

When I got back to Washington I sent him a wire and said that I was about to report to the President and I would like to know, within twenty-four hours, what solution he had arrived at with respect to the housing. I remember there came back a wire telling me that the old housing had all been destroyed and that he had arranged to place the blacks who were there, along with some whites, in the area that had been occupied only by the whites.

On a different occasion, we went to a base in one of the Carolinas where the commanding officer, this was an Army base, had been trying and trying to stop segregation in town. The taxis would not take blacks to and from the base. Blacks were excluded from the stores, even the Army-Navy store. These were soldiers defending the country! The Colonel in charge had really done everything he could to change local attitudes because it was bad for morale. In fact, it was bad for everything. He hadn't been able to do much because the Army is trained to keep out of civilian affairs. Our presence was known all through the town right away, of course. I had been invited to go down to a meeting of the board of commerce, or whatever they called it, for lunch. I said I'd thought I'd go down, and that I was going to give them a message. The Colonel backed me up when I mentioned my plan. The military guys were all with me but felt that the military should not interfere in local affairs. They had been trained that way.

At lunch, while I was talking about the Committee they asked what I thought of the base

and what I observed. "Well," I said, "it looks to me like a pretty efficient base." I remarked, "Of course, it's going to be on the list to be closed." Boy, did they wake up. They said, "What do you mean? We hadn't heard it was going to be closed." I said, "No, but you understand the country is retrenching after the war. And one of the things our group is doing is seeing what bases ought to remain open; and obviously, a base that has the degree of segregation that you've imposed on the troops will be one that I don't think President Kennedy would put up with." "Well, how long are you going to be in town?" I said, "We are leaving in less than twenty-four hours."

By that time, I got a message that the situation was changing; and it did change. They changed it almost overnight. They opened up the stores. They opened up the whole thing. It's just amazing when you think of it now. It just needed a bunch of b.s. from me. That's what it was. But you have to do something to break some of those old traditions and attitudes. I got a nice letter from the commander. He said that he wanted to thank me, that morale was much better on the base. Sure. Of course, it would be much better on the base. Can you imagine, if you were black, when leave time comes and you would go out looking for a cab and they would only pick up the whites and leave you stranded outside of town. Today there would be riots.

We got off a couple of good reports. Perhaps the most important step taken based on the committee's work was to establish a firm policy, accepted by all branches of the military service, that if there was segregated housing near a base, whites as well as blacks could not rent for themselves or their families. We also succeeded in integrating the National Guard, which had remained segregated in several states, north and south.

As I write this account focusing on my personal experiences, I find it difficult to tell what

happened because it may appear that I exaggerate my importance, which is not my purpose. This rather prosaic reference to the committee's "off base" recommendation is a case in point. Thirty years ago it was a bombshell that stirred up violent personal attacks and much public comment, mostly adverse. Inevitably, as happens often, the committee's work and the endorsement by Secretary McNamara all became known as the "Gesell Report." Some prominent southern senators and congressmen loaded the Congressional Record with a mounting attack, attempting to justify these claims by drawing me, through public correspondence and challenges, into a personal debate. I ignored it all, particularly a very persistent rogue from Louisiana who led the attack on the House floor. Every possible theme was played to exhaustion. Traditionally, the military was trained to stay out of politics and social affairs. I was pictured as attempting to make each serviceman a political agent beating the drums for blacks. It was claimed this ignored military needs, weakened national defense, interfered with states' rights, would cost taxpayers money, involved the military in the segregation battle, weakened enlistments, denigrated men in uniform, and resulted in closing southern bases so skillfully and strategically placed at the invitations of Senators Stennis and Vinson. This twaddle is difficult to believe.

Today, integrated off-base housing and facilities near bases is accepted as obviously desirable for the communities involved as well as the servicemen.

Gradually the attacks receded. Legislation to set aside the proposals failed in both Houses. It was not pleasant to be on the receiving end of the tumult, but I simply grinned and kept my mouth shut and it finally went away. A thumbs-up from Whitney Young was worth the unsought prominence. The loudest and most unfair attack came from senators and congressmen in the Deep South, but it should be noted that when my confirmation came before Senator

Eastland he never mentioned this facet of my career four years later.

Judicial Council Committee

At the time President Johnson nominated me to the court and for about two years before, I had been spending a great deal of time assisting on various plans to reorganize the D.C. Court system in my role as chairman designated by the Circuit to provide input from the Bar.

Originally Chief Judge Bazelon called me over and asked me if I'd do the job. While I was talking with him about it he said to me, in effect, "You know, if you take this job, I'll hate you before its over."

"Why is that," I asked.

"Well," he said, "I'll get angry, I'm sure, with you and we'll have a lot of rows."

I went back and thought about it and wrote him a letter saying I would not take the job unless I was the unanimous selection of the entire Judicial Council.

This helped me. Judge Tamm told me later that was a smart way to start. There was a wonderful bunch of people who agreed to help at my request. Many of them are now judges: Pat Wald, June Green, Tom Flannery, Barrington Parker (deceased), Paul McArdle (deceased), and others. They worked on various studies and were members of the committee. Later the Council met, and I was unanimously asked to be chairman. We had meetings with many practicing lawyers who gave us the benefit of their specialized experience and pitched in to do some of the work. Gradually we sketched out the general direction that we thought the reorganization ought to take.

There was a mess over at the local courts. Aubrey Robinson was judge for the juvenile court, which consisted of three judges, but they would not even all talk to each other at once.

Each of the other judges would talk to Aubrey, a sensible, talented leader, but the other two would not talk to each other. We urged that this court be abolished, along with some other special courts, and that greater jurisdiction be given elsewhere. We worked out some of the provisions for transition. Joseph Tydings, who was in the Senate then, was very active in trying to bring this about, as was Ramsey Clark, the Attorney General. Clark worked very closely with us. By the time I left to become a judge, we had finally broken down the problems and, after examining various state courts around the country, we came up with two basic recommendations.

One was that the United States District Court should give up the master calendar and go on the individual calendar, which is, I think, the biggest single internal administrative change made in that court for many years. The other was to free the U.S. District Court of much of the purely local business and thus to make it a more truly federal court.

We felt we needed to get an outside outfit to come in and pull together a lot of the material we had gathered during our studies -- get the statistics and information as to how the business ought to be divided between courts and the mechanics of transition. We had started raising that money, and after I left the money was raised. The committee continued and the report was finally accepted in all respects.

And that was a very interesting project. We met with judges, almost every judge in one way or another, all over the city. We talked to many practicing lawyers. We would have sessions related to juvenile justice, divorce, the nature of the business of the District Court, night court, all those different things. We met every week. I found it time-consuming, but worked hard because it was very important. This project was the most active thing I did in terms of the local Bar. I was also active in the early organization of the American College of Trial Lawyers

and one of its original D.C. members.

Personalities

Before being nominated to the court, it was my special fortune to become involved over the years with some of the leading personalities of the time. While I can add nothing of consequence about these extraordinary men, my contacts will suggest how informal and exciting it was to be part of Washington in the days before Pearl Harbor. There were three such men in particular who influenced and heightened my continuing concern with public affairs and desire to be involved: Dean Acheson, Felix Frankfurter and Louis D. Brandeis, all Harvard lawyers at the beginning of their careers.

Dean Acheson became a close friend as we were brought together in common undertakings at the firm over the years and before. I admired him and reveled in his company whenever he let me behind his outward aloofness and sometimes haughty manner. Inside he was a warm and caring person, full of fun, perceptive, with an eye for the bizarre and he loved to “undress” stuffed shirts with his penetrating wit and control of the English language. We were on opposite sides in the Richard Whitney matter but shared a common view of Whitney and his ilk. Riding back from New York on the fast evening train, the Congressional, we would sit together, have a drink while we laughed over the doggerel he would compose summarizing the day's events.

When we, much later, became partners, we often walked home together, and there were many enjoyable lunches at his Maryland farm where he gardened and made beautiful furniture in his shop. I met many interesting people at Dean's house. We lived near each other and sometimes he had me drop in for a drink on the way home. Usually others were there, including,

often, Felix Frankfurter, who loved to banter with Dean, or one of the bright Acheson children.

I met Felix Frankfurter under unusual circumstances and came to know him as a person as time went on, through Dean, by personal contacts, and as a Justice sitting on cases I argued or worked on before the Supreme Court. He was a firecracker of a man, and I could never figure him out. That he was complex, volatile, egotistical and far from a shrinking violet is apparent from the many conflicting glimpses of his extraordinary personality released since his death. For my part, I enjoyed being around him as he expatiated, but often winced when he sat on one of my cases.

When I was working for the SEC on the Whitney case, the telephone rang one day and I picked it up in the office. A voice said, "This is Felix Frankfurter. I wonder if you'd have lunch with me?" At first I couldn't remember who Frankfurter was. I had forgotten. I had read one or two of the articles he had written on federal jurisprudence and on Sacco and Venzetti. When I kind of paused, he said, "I'm a professor at Harvard Law School. I want to talk to you." I said, "Fine."

So I met him at what was then the Powhatan Hotel, which later became the Roger Smith Hotel across from the SEC offices at 19th Street and Pennsylvania Avenue. We were in an old building that has since been torn down. So I just went across the street.

When he got to the point, he said, "I'm teaching evidence at Harvard Law School. I have been reading in the New York Times the verbatim transcripts of your questioning in the Whitney case. I called up Thurman Arnold at Yale and I said, 'Who's this fellow Gesell?' And Arnold told me that you were just a "C" student and just a typical Yale Law student, there wasn't anything very special about you at all. I can't understand where you learned to question a witness

so succinctly and how you get at the subject matter without getting rattled or taken off the track by the answers.”

I said I didn't know. Nobody taught me that. That's just the way I ask questions.

He said, “I've got to find out about it, because I think we've got to get people up at Harvard to learn how to do that.”

I said, “Well, I don't know. I can't help you.”

We got to be friendly and chatted. Then he said, “By the way, how would you like to meet Brandeis?”

I jumped at the chance, saying, “God, I'd love it.” As a result, I got invited with some regularity, Peg and myself, to the Brandeis teas.

I had another very special relationship with Frankfurter. Naturally, some of his clerks wanted to go back to Harvard to teach. He would land on them with both feet and say, “You've got to spend a year with Gerry Gesell before you do it. You won't be any good as a teacher if you don't know something about the trial practice.” He had always felt he had learned a great deal from being an Assistant U.S. Attorney.

So, Covington was in a situation where we would take one of his clerks, and they would work with me for about a year and a half, and then go on to Harvard. Al Sachs worked for me for a year and a half. So did Abe Chayes. Frankfurter was curious and would follow up and ask, “How are they doing? Are they making any sense? Are you giving them a real chance?” All this kind of stuff.

I used to be in his chambers occasionally. He dictated right to the typewriter. The typewriter was on wheels. He rarely made carbons. He would write, I guess, ten, fifteen letters a

day --notes, little things, like, saw about you in the New York Times. And I was down there several times and saw that process. I can't remember why I was there.

As I have indicated, he was a pain in the neck sometimes when you were arguing a case. He could lose a case for you quicker than anybody by agreeing with you too much during argument. I was arguing a case up there one day in the Supreme Court and he agreed with me one hundred percent. And he kept rubbing it in until he alienated several of the Justices. He never ceased being a teacher and did many kindnesses for young people, as he did for me.

I came to know Brandeis quite well later when I was doing insurance work for the Temporary National Economic Committee. He had been the person who had developed Savings Bank Life Insurance in Massachusetts and, of course, was a man who was against bigness in any form. We were directing our attention to the bigness of the Metropolitan and Prudential life insurance companies, particularly because they were then considered enormous. Metropolitan was five billion dollars of assets, and I think that Prudential was about four billion -- examples of concentration of economic power.

When I had succeeded in displaying how that power was obtained through salesmen forging ballots, this tickled Brandeis to death. And he wrote me letters about it, and I'd go out and see him and he would chuckle about it and we'd talk about how the hearings were progressing.

I remember telling Brandeis how I sent the investigators up to Metropolitan Life at the beginning. The company had a beautiful, big building up in New York. I told Brandeis the story of what happened when the investigators arrived, which he thought was very funny.

Company officials greeted my crew and cordially said, "Now, is there anything we can do

for you? This is an extraordinary building and we're very proud of it. We have a big conference room. Would you like to see that? It's where the directors meet. We also have the largest kitchen and dining facility of any building in New York City.”

And my fellow, Blumquist, who was the chief investigator, said, “Well, I'd like to see that kitchen. I cook for my wife, and I'd like to see the kitchen.”

They couldn't find it. They didn't know what elevator to take to get to it. And all these vice presidents suddenly were running around and calling their offices, saying, “What floor is the kitchen on, and where is the dining room?”

Well, I told Brandeis that. He really thought that was funny.

At the teas I met people who became my life-long friends. Two of my partners were Brandeis clerks, in addition to Dean, and that is where I met Joe Rauh, for example. My acquaintances expanded enormously with the kind of people at the teas because almost nobody was coming down to Washington from Yale, and I didn't know many people. This really opened up friendships for me and I also met several interesting people, including Henry Wallace, Ma [Frances] Perkins. Although the cookies were terrible and the tea cold, the teas were always a high point never to be missed.

Brandeis was getting feeble but he was still an advocate for his points of view and very interested and informed about what was going on everywhere -- full of questions, many of which I couldn't answer. He had a great curiosity. Although he was in his declining years, he was still very influential. My limited contacts were a very special experience I will never forget.

Politics

My father was a Wilsonian Democrat, and my instincts seem to have always put me on the side of the Democrats. Indeed, for a while I was a member of the Democratic Central Committee for D.C., after being elected, until defeated a few years later. When Averell Harriman and Hubert Humphrey campaigned for D.C. delegates, I was actively supporting their campaigns with both routine work and some money.

My principal local concern was to try to get the citizens of D.C. a vote. A small committee, headed by Walter Washington, who later became Mayor, and Mrs. Marshall Hornblower was formed and as one of several lawyers in the group I met at night at the Hornblower home or at the old Occidental restaurant for lunch. We drafted proposed legislation, helped to develop strategy on the Hill and some of us (not me) lobbied vigorously. Eventually we won, but I can take little credit because my practice kept me on the road.

Nationally, I was an advance man for Stevenson during his second campaign and traveled on the campaign plane from Portland, Oregon, down through California and on to Phoenix and then to Boston. After tutelage from Oscar Chapman and Jim Rowe, the wise, old campaign men, I spent a week in Portland, Oregon, setting up the visit. No help. No sleep. Too much to do. Bobby Kennedy came in on the campaign plane, undoubtedly learning what to do and, mostly, what not to do. Months later I set up a big rally in Los Angeles for Stevenson on another trip West.

I had nothing to do with the Kennedy campaign. My sympathies were with Humphrey. When Johnson ran, Jim Kellogg, Chairman of the New York Stock Exchange and a close friend, and I were asked to line up "Intellectuals for Johnson." This was to offset the false claim that

Johnson was simply a country hick. We wrote out a full-page ad and solicited signatures of support from college presidents, Nobel prize winners, and the like. Whether it got a single additional vote I, of course, have no way of knowing. Somebody must have been pleased because I became chairman of the Credentials Committee at the Inauguration after Johnson won. I had an office and staff for a short time and controlled the sale of souvenirs along the parade route. This earned me a seat in front of the White House to watch the parade close to the stand where the President took greetings from everyone passing by.

These experiences gave me a chance to see politicians at work, to learn how complicated the election process is, and to respect those who succeed in the very controversial, sometimes even violent context in which they practice their art. It greatly broadened my acquaintance with varying ranks of people, high and low, and convinced me irrevocably that I never wanted to run for office.

This was the last of my politicking, except for some interesting contacts with President Kennedy, Bobby Kennedy and President Johnson.

My relationship with the Kennedy Administration was mixed. The record of John and Bobby did not impress me. I was working for Humphrey and bitter over the way the Kennedys stole the key West Virginia vote. In spite of this, when Kennedy was elected (he then lived directly across the street from me, but I didn't know him), the cabinet search committee, consisting of Sargent Shriver and Harris Wofford, had me listed toward the top as possible Attorney General. No one ever spoke to me about this idea, but it leaked out to the New York Times. Harris Wofford was an old friend and although there was nothing to it, Peg and I were watching the appointment process because Kennedy was making all the appointments on the

front steps right across from our house. Peg would call me at the office and say, he just appointed McNamara, let's say, the head of Defense. I'd hurry over to the Metropolitan Club for lunch where everybody was wondering who was going to be Secretary. Well, I'd opine it's a tough thing, but my sources tell me it's going to be McNamara. Soon I would be confirmed in an early edition of the Washington Star. After a while, I was considered quite a guru, so much so that Arthur Krock even came up and asked me how I had found out so much.

In any event, we were all waiting for his announcement about the Attorney General, not believing it was going to happen, but yet it was dangling out there. Then all of a sudden the President decided that instead of sending Bobby to be McNamara's right-hand assistant, that he needed some legal experience and he was going to be Attorney General.

I had met Bobby because he rode the Stevenson campaign plane when I was advance man, but I didn't know him. He kept very much to himself then. After he became Attorney General he asked for my advice about the post of Assistant Attorney General for Civil Rights, and I talked with him about Burke Marshall. Several friends went to work for Bobby, including two of my other partners, John Douglas and John Jones. President Kennedy telephoned me and offered me the job of Assistant Attorney General, Criminal Division; and I said no immediately, remarking that I didn't want to play "cops and robbers." I did not say more but I was suspicious of Bobby with his McCarthy connections and unconstitutional vendetta against that bum, Hoffa. Later, Bobby asked me to prosecute U.S. Steel for price-fixing and I said no, telling him Roger Blough, the president of U.S. Steel, was a friend; we had worked together closely at Yale in alumni affairs. Still later when the President made me chairman of the Committee on Equal Opportunity in the Armed Forces, Bobby called me over asking me to lay off integration of the

National Guard for political reasons. I told him I worked for his brother, not for him.

I'm sure I misjudged Bobby and that he reached a taller stature later, but we didn't mesh. He was a complex, sensitive man who grew with experience.

Nominated and Confirmed

When President Johnson nominated me a U.S. District Judge for the District of Columbia, our paths had crossed only in a couple of ways. Sometime in the early '40s, I had had dinner with him and Lady Bird at Ganson Purcell's house, just the six of us. Ganson Purcell, later head of the SEC, knew him well because Purcell had been staff counsel to the Senate and had come to know Johnson in that connection. Johnson was then a young congressman. He wasn't even in the Senate. It was just a pleasant evening, nothing of any consequence.

Then when Kennedy was killed, after a reasonable interval had passed, I called up Bill Moyers at the White House and said I wanted to come over to see whether the President wanted me to continue as chairman of the Committee on Equal Opportunity in the Armed Forces. I didn't know Moyers, but I thought from what I had read in the paper he was the guy to see. He was sort of, at that time, the administrative assistant to Johnson in the White House.

When I got over there, Moyers said, "Mr. Gesell, the President wants to see you." I was surprised and pleased. I hadn't expected to see the President. After a few minutes, President Johnson came out and put out his hand, "Well, Gerry," he said, "how the hell are you?" He was one of those Jim Farley types, who never forgets anybody's first name. He remembered it all the way from having met me once at Purcell's. He may have heard my name because I had worked in his campaign. Whether he ever knew I had anything to do with the campaign I don't know. He asked me to continue as chairman and wrap it up.

I had one other rather extraordinary meeting with him before I was nominated. He was having a meeting of black leaders in the Oval Office and he wanted me to be present. Of course, I went over to the White House. Burke Marshall was there, and Whitney North Seymour, the father, the real Whitney North Seymour, was also there. All around the oval table were black political leaders from Chicago, Texas, New York, Kansas City, various parts of the country. There must have been ten of them. I didn't know what the meeting was about at first but it was soon apparent.

When President Johnson came in he said, "Now, the purpose of this meeting is to explain to all of you why I haven't appointed more black judges."

He said, in effect, to put it right on the table, its your fault. You've been sending me the most outrageous names that I couldn't possibly get one of them through on the Hill. You've got to get out and get some decent candidates so I can appoint them.

The President didn't have a note in front of him. He was all alone, except for a photographer who hovered around.

One fellow spoke up, I remember, and said, "Well, I sent you [so-and-so]."

"Yeah," and he said, "you know what the FBI told me?" Johnson reeled off three or four devastating facts about this fellow's past.

Then he picked on a fellow from Texas. And he said, "You're sending me tripe up here. You don't realize what a job I had to get a Jew on that court down there."

And he went all around, berating each one. They were obviously beginning to get kind of angry with him because the tone had gotten sort of antagonistic to blacks. Johnson wasn't. He was simply talking dirt politics. I began to wonder what I was doing there. I had nothing to do

with the whole problem.

Then he pointed his finger at me, and said, "Do you hire any blacks in your law firm?" I said, "No." I said, "Do you want to know why?" He said, "Yes." I said, "We won't take anybody that we don't think will be a partner. We're not going to have token blacks in our law firm. As soon as we get our hands on someone that we think can make the partnership, we're going to take him." Whitney North Seymour said, "That's our view." We both said we were looking very hard.

He turned to the other fellows and said, in effect, you see, you've got to send me lawyers or bankers with law degrees. People who amount to something. You can't just send me somebody who is going around passing stuff out at voters' doors and expect that I am going to appoint them to be a federal judge.

Then he said something to Burke, who headed the Civil Rights Division at the Justice Department. And Burke, in a quiet way, said, "Well, I think there are people in all of these cities, and I'd be willing to be helpful in identifying them." So then Johnson began, and said, "Well, we're moving along." And Burke said, "You have appointed some blacks." Burke was being helpful. "Yes," he said. And he remembered a couple. Burke said, "And you appointed Spottswood Robinson." President Johnson looked at him straight faced and said, "I didn't know he was a black."

Well, that went on awhile, then it began to get kind of humorous. Everybody got the message. We were breaking up. As he was leaving, he stopped at the door, saying, "And, by the way, I forgot. I put Marshall on the Supreme Court. Oops!" And he walked out. Of course, he hadn't sent his name up yet. Classic Johnson!

Then I received the most important telephone call in my life. One evening I'm at home packing to go to Los Angeles for Procter & Gamble, one of the clients I was working with. I was going to go out to Dulles and get a night flight. The telephone rang and Peg said it was the White House. The President was soon on the telephone. He said, "Gerry, how the hell are you?" And I said, well, I was fine. He said, "How would you like to be a judge?" I hadn't applied for any judgeship anywhere. I kind of stopped and blurted out, "What court are you talking about?" And he said, "The D.C. United States District Court." And I said, "Well, I don't know. I guess so. I guess it would be all right," or something like that. I was utterly dumbfounded. He said, "Don't be surprised, then, if a lot of FBI agents are sneaking all around asking about you." I said, "Thank you very much, Mr. President."

I didn't tell anybody at the firm. First of all, I didn't know if Johnson meant what he'd said or anything else. And I knew that you had to keep your mouth shut with Johnson because if he had something planned and it became prematurely public, he would get very angry about it. So I didn't tell my partners. I didn't tell anybody. And I went on that night flight out to Los Angeles.

Well, it turns out that our neighbor had been a secretary for Johnson at one time and had married a congressman from Texas, who was living down the block. She telephoned a few days later, saying, "The other night the President called me and he wanted to know whether you have any wild parties going on in your back yard, and what kind of a fellow you are." And she said, "I figured something was up. I told him, no, that you weren't a drunk and that things went along all right at your house. He seemed reassured," she said. Mine was truly a personal presidential appointment.

I have since found out what happened. At least, I believe it's correct, but I can't prove it. Ramsey Clark was Attorney General. He recommended me to be Solicitor General. He sent over to the President a full presentation about my qualifications for Solicitor General. I didn't know about it. He never talked to me about it. I didn't know Ramsey Clark, except during the Judicial Council study. But I think everybody understood, from the kind of life I'd lived, that Solicitor General would be something that any trial lawyer in a similar situation would seriously think about.

Johnson then called in Clark Clifford, so I'm told, and said, "What do you think about this fellow Gesell for Solicitor General?" And Clark Clifford said, "Well, he's a good lawyer. He's a damn good lawyer. But you ought to get somebody of distinction." Which was a perfectly proper "put down" comment on his part. I wasn't a person of distinction.

And Johnson asked, "Like who?"

He said, "Like the dean of a law school."

So Johnson said, "Well, what's the best law school?"

Clifford apparently said Yale right then was considered the best law school.

They looked up the dean of the Yale Law School, who is now a judge up in Philadelphia. Johnson quickly found out that he was against the Vietnam War. That was the end of that. His opportunity to be Solicitor General disappeared down the drain. Then he came to Griswold, the Harvard Dean. Griswold accepted. He'd been very active before the Supreme Court and was a very distinguished man. Griswold got the appointment.

What I understand then happened was that there was a vacancy on the U.S. District Court in D.C. There had developed a lot of hard bickering between different Senators who wanted to

put somebody there. Apparently Johnson didn't like to hurt anybody's feelings unnecessarily and he wanted to make an appointment that would be generally acceptable to put an end to this thing. And here was this fellow Gesell. He had all this write-up about him from Ramsey Clark. He sounded like a good one to be a judge. So he decided. He never talked to Ramsey Clark about it. I never received a recommendation from the Justice Department. It was the President's own personal choice. And so he decided to put Gesell in that job, telephoned and did it.

All this just came out of the blue as far as I was concerned. I had a good friend, Jim Rowe. Jim was close to Johnson. I'm sure that Jim in some way or another was consulted at some stage. But I never told Jim or anybody else to help me be a judge. That is how it happened. And so I never had to go around and talk to members of Congress or discuss how I would decide something.

I went down before Senator Eastland's subcommittee. I had raised Cain down in Eastland's district with the Equal Opportunity in the Armed Forces inquiry. They had Leander Perez down there. It was a bad situation for blacks locally. Many whites thought I was having the military take over private life, and there had been personal attacks on me in the newspapers and on the committee. So I didn't know what was going to happen. I didn't have any sponsor. I didn't know any senator well enough to ask him to say a good word for me. So I asked Mr. O'Brian, my partner, to go down with me because I had to have somebody down there with me. I went down to the confirmation hearings with O'Brian and Peg, not knowing quite what to expect.

It turned out there was a list of several people up for confirmation. Eastland sat there. He had his cigar in his mouth, most of it chewed up, you know. The first guy that got up was a nice looking guy. He had four redheaded kids with him and a redheaded wife. And he came from

upper New York State. And he looked like a fine person. I'm sure he was. Eastland looked at him and said, "What do you know about the civil rules of procedure?" Obviously he was in a testy mood.

Then the fellow gave some answer that indicated that he didn't have much practical experience. And before it was over, it was perfectly clear that fellow was in trouble. I believe he never did get confirmed at that time.

Next somebody else stood up and Eastland was at the same old business. Well, let me see what the Bar Association says about you. I began to think, God, what am I doing here, I didn't know what was going on.

Finally he called my name. I stood up. He said, "Mr. Gesell, you have the best FBI report that I have ever seen in this job. Welcome to the federal judiciary." And then he said to the staff, "Let me see that Bar Association rating." And they handed him up the D.C. Bar rating. Well, the D.C. Bar had been a little mediocre about me. After all, I came from Covington & Burling. "No," he said, "I want to see the ABA." He holds it up and it says, "Exceptionally well qualified." He read it out. He gave it back to the clerk, "Welcome, again."

I went through the subcommittee, the full committee and the Senate all in one day. They were about to adjourn. Somebody put it on the fast track. Eastland, or the President, or somebody. I had no waiting around or anything else. Eastland gave me no trouble. There were two other members of the committee. One was a Florida Senator, George Smathers. I knew Smathers because I had been chairman of the board of St. Alban's School, and he was a member. So he gave a flowing speech about what a wonderful person I was. He didn't know anything about me, really. The third Senator was a Republican, Hruska, who had been on the Kefauver

committee. He never said a word. When I got outside, he came up to me and said, "I was all for you, Gesell, but you know, I am a Republican, I thought I'd better keep my mouth shut." So I had a very easy confirmation. My commission was signed December 7, 1967; and I took the oath of office that day.