The Reminiscences of

CHARLES FAHY

Oral History Research Office
Columbia University
1959
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(signed) Charles Fahy

(date) Dec 815
Charles Fahy

This biographical material grew out of a letter to me from Mr. Allan Nevins of Columbia University, 6 May 1953, attached hereto. Over a period of time Dr. Phillips came and recorded the interviews. From the recordings typewritten transcripts were sent to me. These have been edited, revised and enlarged somewhat by me, so that they now take the form and content here given. But the original recordings gave character generally to what has resulted. It will be seen that the contents are largely factual rather than reflective, are too personal, display little if any literary style, are not well proportioned to the importance of the subjects and persons mentioned, and do not contain enough about the times during which the events occurred.
6 May 1953

Judge Charles Fahy
United States Court of Appeals
Washington, D. C.

My dear Judge Fahy:

This university is attempting to interview, more or less systematically, a number of men who have played important parts in the history of the American nation, to record their reminiscences, and to file this material away for the use of historians. In the field of the nation's legal history Judge Learned Hand, Mr. Justice Robert H. Jackson, Mr. Telford Taylor, Mr. Sidney S. Alderman, Mr. Chester T. Lane, Mr. Thomas I. Emerson, and the late Henry L. Stimson and others have contributed and the results have been highly profitable.

If you would consent to allow Mr. Harlan B. Phillips to call upon you at your convenience, your memoirs would make a very important addition to the work we are doing. Our method is to hold a series of interviews with you, take down your reminiscences on a tape-recorder, and transcribe this record into a manuscript. The entire manuscript is returned to you at the completion of the interviews for your corrections and additions, and then it will be filed in the Special Collections Department of Columbia University Library, subject to whatever restrictions as to use by properly accredited and serious research scholars you may wish to impose.

Mr. Phillips plans to be in Washington the week of May 11th to continue with interviews with Mr. Sidney S. Alderman and Mr. Gordon Dean. He would be glad to call, as far as possible, at such hour and such place as is most convenient to you.

Sincerely yours,

/s/ Allan Nevins

Allan Nevins
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Family Foundations, Fortunes, and Fundamentals

Thomas Faby, my father, was born in Ireland. His home there was in County Galway in the countryside near Portumna. He came to this country a few years after the Civil War, in the late 1860's I think, and came to Rome, Georgia, his future home, in 1873. My mother was born in Rome in 1880. Mother and father were married there in 1880.

My father had an apprenticeship "in linens" in Ireland. With this preliminary direction to his life he became a drygoods merchant in this country. Soon after his arrival in New York he made the acquaintance of an older Irish gentleman named Gill. At Mr. Gill's suggestion, as I understood, my father went to Mobile, Alabama, where he worked in a store for a year or so. Then he went with a similar but perhaps better known establishment, the White Store, in Augusta, Georgia. After several years in Augusta he selected Rome as the place he wished to start his own business. He liked the appearance of the country around Rome, and told me later in life it reminded him of the countryside where he lived as a boy. This year (1953), the store he founded, which is still active and owned by the family, is celebrating its eightieth anniversary.

The Etowah and Oostanaula Rivers converge at the foot of Broad Street in Rome to form the Coosa, which flows eventually into the Alabama River and thence to the Gulf of Mexico. There was considerable water traffic by steamboat when I was growing up in Rome but Atlanta became the railroad center of northern Georgia.

Father must have done fairly well from the beginning because the business grew, considering the size of the community. Rome was a small town,
and even now has a population of only about thirty or thirty-five thousand. Father stayed in the original location for about twenty years. In 1893 he built a new store a few doors away, which has remained the site of the business with the addition by rental in more recent years of premises next door. The store was extensively remodeled and modernized in 1952.

In 1896, a new stock of goods bought in New York was almost entirely ruined by a flood. Father had acquired good credit and so was able to re-stock. There were other periods of difficulty, such as the so-called Panic of 1893. I remember personally the money shortage of 1907 when I was working at the store. But on the whole, and always with the heavy expense of a large, growing family, the store kept the family going, with at times help from mother, who inherited some home real estate from her mother.

Father was not very expressive about his difficulties. He took them seriously but quietly. I remember being conscious of financial problems at times, but not because he talked about them. And over a period of eighty years — my father died in 1917 — the store has never failed or gone through reorganization or bankruptcy.

My mother's father and mother came to Rome from Germany. My maternal grandfather, whose name was Jonas, was accompanied to Rome I believe by two brothers, one of whom became a Confederate soldier. Because of this my mother in later years was a Daughter of the Confederacy, President of the Local chapter when I was a youngster.

Mother became a convert to Catholicism when a young girl about eighteen or nineteen years old before her marriage and, as I understood, independent of the courtship. The story as it came down to me is that she attended a
mission given in Rome by a Dominican priest which turned her toward Catholicism. Throughout the remainder of her life she was a devout Catholic. She and my father raised eleven children who grew to maturity. Three children died in infancy. Will, the oldest of all, passed away while I was in London on the naval and air base negotiations in the winter of 1941. He was then living again in the old home at Rome. My mother died there in February, 1934, seventeen years after father's death.

I was born in Rome August 27, 1892, about a year before the family moved into the new home father had built, which has since remained the family home.

Mother as much as father had a broad viewpoint as to the life they envisaged for the family, and such good qualities as the children developed were a joint contribution of their parents. Mother was a remarkable and beautiful character and I shall have more to say of her.

As father grew older -- he was nineteen years older than mother -- the store lagged behind in improvements and began to lose ground notwithstanding its fine reputation. My brother Albert had not gone to college, no doubt because when he reached college age the 1907 financial difficulties had not been recouped. He had begun to work with an insurance company, but drawn by allegiance to the family decided to come and help at the store. This was in 1912 when father was over seventy.

Soon after father's death in 1917 my brother Duke -- Bernard -- also came into the business. He was doing well on his own as an advertising man with the old Chamberlain-Johnson-Dubose Company in Atlanta, but joined the management of the store with Albert, unquestionably through family loyalty.
The work was uncongenial to him at first, and though he sacrificed his own career I do not think he regretted it. He devoted his life to the family, the business, the community, and the Church. Albert and Duke supplied the new impetus which the store needed. Duke died in 1930 beloved and respected by all. In his later years he was knighted by the Holy Father.

All the boys as youngsters worked in the store at times, but there was never any pressure on the part of father to keep us there. I think he might have been pleased if I had decided to make it my life work, but I never had the feeling that either he or mother wished us to confine our outlook to the store. On the contrary. It did turn out, however, that for Albert and then Duke it became their life work, and in later years Leo also gave some years to the store. This was not a narrowing experience. Duke was a cultured man of broad interests. So, too, are Albert and Leo. Each kept well informed and active in the life of the country, the community, and the Church.

As to the reading matter available in the home at this early period I remember we had the complete works of Shakespeare, Dickens, Thackeray, Scott, Bulwer Lytton, and James Fenimore Cooper, as well as other books of well known English literature. Father was an original subscriber to the Catholic Encyclopedia. We already had the Encyclopaedia Britannica. Mother would often read aloud to the children, one of the most pleasant recollections I have of my childhood. This was not altogether because of what she read but because she was an unusually good reader.

There were two Home papers at that time. In addition we received the Atlanta Constitution and Journal. I am vague about other publications, though I remember the Youth's Companion, and the Ladies Home Journal. When my brother Will was home he would sometimes bring the New Republic.
There was no resident priest in Rome during our childhood and youth. There was a frame Church, small but adequate. A priest came from Atlanta twice a month except during the summer. He was from Sacred Heart parish, which was in charge of the Marist Fathers. Rome was one of their missions. There was a devoted little Catholic group in Rome. The heads of several of the families were Irish immigrants, but not all the Catholics were Irish. On Sundays when we had no Mass the children went to the Church for a class in the catechism taught by one of the ladies of the parish. During Lent, on Fridays particularly, we went for the Stations of the Cross.

It was almost a frontier sort of Catholic life because of the inadequacy of priests and sisters and also because we were a small group in a much larger non-Catholic environment. But the environment was not a hostile one. There may have been at times among the youngsters some display of misunderstanding or prejudice, but on the whole Rome was a church-going community which respected our religion even though our Faith was not fully understood by many. The family grew and lived in Rome in mutual respect and friendship with the community.

As there was no Catholic school, we attended the public schools. These were good schools, and I shall always be grateful to them.

In later years the number of Catholics has gradually increased but has remained a minority. There is now a beautiful Church on a new location, and Rome for some years has had a resident priest. In addition, there is a fine school conducted by the Dominican sisters, attended by many non-Catholic as well as Catholic children.

I am grateful to have retained the Faith and I attribute that primarily to the influence of my mother and father in the home and of the priests who
came to Rome as I have outlined. These priests were dedicated and attractive men. The baby and other boys served at Mass, and I often went to the depot to meet the priest on Saturday afternoon and to see him off on Sunday, helping at times with his bags. Usually in the years of which I now speak the priest had his Sunday dinner at our home.

My sister Janie still lives in the home. Rosa, Duke's widow, lives there with her now, and my sister Sarah, who keeps a little apartment in Atlanta, has her room available there. It is a beautiful old home, and its story, and that of the store downtown over the hill, are more interesting than my own. Albert's home is just across the intersection.

Educational Experiences

The custom in our home was for our lessons to be heard by mother in the early morning. She went to a great deal of trouble to see that we knew our assignments. This perhaps was more responsible than anything else for such standing we had in class.

I liked Latin and did not find it difficult. Miss Wyly who taught this subject, was an extraordinarily fine teacher and a woman of unusual personality. Years later when I visited Rome some of my classmates and I would call on her. I also liked English, History and Physics but found higher mathematics more difficult.

The teachers were a fine group. Miss Clara Rhodes inspired a lifelong devotion, and there were those other excellent educators, Professor Harris, Mr. Jones, Miss Mary Williamson, Miss Trauernick, Miss Jenkins, among others whose memories live in their helpfulness to me.

When my oldest sister, Janie, finished school and mother's problems increased with the growing family, Janie took some of the burdens. She
became in this respect a kind of second mother to the younger children, although not much older than I.

After finishing the public school in 1908 I attended Darlington School. Joseph J. Darlington as a young graduate of Berea College in South Carolina had come to Rome as assistant professor at the old John M. Proctor School for Boys. This was before I was born. John Paul Cooper was one of Mr. Darlington's pupils. My mother's only brother, Israel Jonas, -- she had no sisters -- was another. In later years Mr. Cooper became a prominent citizen of Rome and a man of means. In the interim Mr. Darlington had left Rome for Washington to study law and in later years was the leader of the Washington bar. About 1908 Mr. Cooper founded in Rome the Darlington School for Boys and named it in honor of Mr. Darlington.

It is hard to remember now whether when I attended Darlington I had decided to be a lawyer. It is probable that I went to Darlington simply to gain more education available in Rome after one finished the public schools. Also I wanted to play high school football again.

Rome was the county seat of Floyd County. As a young man I occasionally went to the county courthouse to watch a trial. The court was one of general jurisdiction in the state judicial system.

The judge was Moses Wright, a member of a distinguished family. One of whom, Seaborn Wright, was an unusually capable lawyer with significant oratorical ability. He was a candidate once for President of the United States on the Prohibition ticket.

Moses Wright presided with easy dignity and held the respect of the bar, which was no mean bar. He was also an orator. On Confederate Decoration Day, the 26th of April -- not the 30th of May -- when we decorated the graves
of the soldiers in Myrtle Hill cemetery, Moses Wright was likely to be the orator of the day, or it might be Congressman John V. Maddox. When the first statue ever erected to the Daughters of the Confederacy was unveiled in Rome, a memorable day in the town, Moses Wright was the orator.

In school we had some practice in speaking. The principal orator of our class was Graham Wright, a son of Seaborn. He is an old friend of mine still living and practicing law in Rome. At Darlington, much to my surprise, I won the declamation contest the fall year I was there — I was there part of another year. This took me into the County contest where I lost out. As things turned out, advocacy became a considerable part of my legal work but I could never consider myself an orator.

In the fall of 1910 I entered the University of Notre Dame for one year. The three oldest boys, Will, Joe, and Duke had gone to Notre Dame. Will had a very fine mind but he became somewhat impatient with the discipline or something at Notre Dame and did not remain. Joe graduated in 1903 in civil engineering with an exceptionally fine record. Duke graduated in 1905 with an A. B. degree and was valedictorian of his class. I suppose my elder brothers were the first Georgians ever to attend Notre Dame. At any rate, Georgians were rather rare birds there in those years.

I did not return to Notre Dame after leaving in the early summer of 1911 until my wife and I went there for the graduation of our son Charles in 1952. The University had grown a great deal but the old central buildings remain, and there is the same beautiful Gothic Church I remembered so well.

The atmosphere at Notre Dame was good on the whole and conducive to study. Generally speaking I think the students were pretty serious about trying to
gain an education. I was very homesick for a while but this receded as friendships were formed.

Knowing when I entered that I could stay only one year I took selected studies, some economics, logic, English, German and Spanish, a class in election, a special course in political science, and Christian Doctrine.

My teacher of Spanish, a one hour class weekly, was a senior, John F. O'Hara. The next year upon graduation he entered the seminary and became a priest of the Congregation, O.S.C. He later was president of the University. During the First World War, I believe he had charge of the Catholic chaplains in the Army. He is now Archbishop of Philadelphia. Years later when we were living in Santa Fe he came through and we had a visit. I went to Philadelphia for his installation as Archbishop a few years ago.

One of my teachers, in economics, was Father Matthew Walsh, an excellent teacher and a priest to whom I have always felt grateful as his influence. I was not an intimate of his and did not see him any more than others in his classes, but I remember well his character and personality, and his devotion to the work. He too became president of the University. And I also remember well Father Charles O'Donnell, the talented poet. My room on the third floor of Corby Hall was next to his. He also became president of Notre Dame. He had been a classmate and friend of my brother Duke.

I was at Notre Dame for a week-end this last June (1953) at the invitation of Dean O'Neill of the Law School, to be one of the judges of the final moot court competition. I went over to Corby Hall to see Father Walsh. As I walked up the steps he was coming out onto the porch. He looked at me for a moment and said, "Well, Faky." Something might have stimulated his recollection.
I'm not sure that he knew I was Charles. He might have thought I was Bernard, whom he knew also, or Joe. We had a good visit.

The university in my day had the same fine spirit as now. She also had a good football team. Knute Rockne was playing that year. The quarterback was Boriais. Later I saw Notre Dame play occasionally, but not often. It was the next year I believe, or 1913, the team went to West Point and Rockne and Boriais ran away with things with the forward pass.

It was not feasible for me to continue at Notre Dame. The plan was to go one year there and then on to Georgetown where I could help educate myself by working, but with the family helping too.

Home was never to be my residence again but I have continued over the years to return there when I could. The old home has mellowed in beauty. After mother's death this continued under the gracious care of Janie. It has been a lovely place to which to return, alone at times, at times with Agnes, and once with Charles and Anne. Sarah and Mary Agnes have also been there. Home itself, with a multitude of indefinable memories and associations is still very real to me and shall always retain a place of warmth in my affections.

Immersed in the Life of the Law

After Notre Dame came Washington and Georgetown Law School. Before leaving home my mother gave me a letter to Mr. Darlington, whom she remembered when a young girl in Rome. As I planned to work during the day and attend law school at night, mother thought perhaps Mr. Darlington could help me.

Soon after my arrival I took the letter to Mr. Darlington. His office was at 410 Fifth Street on Judiciary Square. In contrast with later years,
most of the lawyers in local practice had offices in that vicinity. The trend into the newer buildings farther uptown came later.

Mr. Darlington received me cordially. He spoke of remembering mother and her brother. But at that time there was no opening in his office.

During the summers I had taken some lessons in stenography and typewriting at the old King Business School in Rome, and had worked before going to Notre Dame at the Southern Railroad city office in Rome, principally helping Captain Scay, who then had charge of the office. He was a fine older gentleman and a good friend.

I found a job in Washington as stenographer with the Thompson Steel Metal Company, then located in the 2500 block of Pennsylvania Avenue, Northwest.

At the end of the Christmas holidays of 1911 I received a message that Mr. Darlington wished to see me. The young man in his office was leaving and there was a possible place for me. Mr. Sullivan, who was Mr. Darlington's principal associate, gave me a test. I was not a very competent stenographer. Through the goodness of his heart, I suppose, Mr. Sullivan said I was "satisfactory." Anyhow, Mr. Darlington took me into his office as stenographer the beginning of 1912, and I remained with him in one capacity or another until his death in 1920, except when I was away in the service during the First World War.

On admission to the Bar in 1914 I ceased to be a stenographer and had an office of my own. But I helped Mr. Darlington in some of his work and remained associated with him. Then, in 1917, I went into Navy aviation for the "duration." When I came back early in 1919, the association with Mr. Darlington was not so close. My office was now on the ground floor and I was more on my own but continued to do some work for Mr. Darlington.
Georgetown Law School was situated, as it still is, in the downtown section of Washington and we had little contact with the "Hilltop," the center of the University. Our teachers were not priests, and there was no religious instruction at the law school. At Notre Dame the undergraduate body felt the religious influence more, as no doubt was true at Georgetown Hilltop in contrast with the law school downtown.

The professors, much more than is true now, were drawn from the active life of the law. For example, our teacher in equity was Justice Ashley W. Gould, one of the judges of the Supreme Court of the District of Columbia, the predecessor of the United States District Court. Justice Gould actively presided at trials during the day and taught his classes at night. He was an excellent teacher.

Other professors were Daniel V. Baker, Frank J. Hogan, J. Emery-Smith, Justice Daniel Thayer Wright, A. A. Hoehling, Charles A. Douglas, Chief Justice Shepherd, and Daniel W. O'Donoghue, Sr.

The student body was large and the lecturers taught the whole class. Then the class broke up into smaller groups where other professors would go over a subject in more detail.

I had no previous hard and fast conception of the law but do remember that I expected it to be more settled. I anticipated that one would learn what the law was. Of course, to a degree one did, but only to a degree. It comes as something of a surprise to find as the years go on there is still so much uncertainty in application of the law.

In contrast with most of the boys going to the Hilltop the law students did not live on the campus. I lived in the Neale home with several classmates.
The Seales were a fine old family from Charles County, Maryland. Mr. Seale was an elderly widower, and a Confederate veteran. The household was in the capable and gracious hands of his oldest daughter, Miss Hattie.

Mr. Darlington had an exceptionally fine mind and an orderly method of work. I think he was one of the greatest lawyers the country produced. He could take a mass of material, legal or factual — he engaged in some of the most complicated trials in the history of the courts here — and find the essence, that which made the difference.

He had an exemplary and effective method of cross-examining. By every appropriate means he would learn all he could that the witness himself knew. When it became clear to the witness that Mr. Darlington knew a great deal about the facts and was treating him fairly, the witness became cooperative and helpful in developing the facts, the principal purpose of cross-examination.

He was a kindly gentleman. There is a monument to him — "gentle" reminds me of it — I believe the first erected in Washington to one who never held public office. It is on Judiciary Square across from his old office, a beautiful fountain with a pedastal on which stands a nude maiden with a fayn by her side. Some thought this was inappropriate because of Mr. Darlington's own modesty but the reason for the selection was that the fayn, the most timid of animals, did not hesitate to approach the maiden. And so with Mr. Darlington. Because of his gentleness and kindness one did not hesitate to approach him.

Mr. Darlington represented the Washington Gaslight Company and the Washington Railway and Electric Company, then the largest street transportation system. It later merged with the Capital Traction Company to become the Capital Transit Company. He also represented the Potomac Electric Power Com-
pany. He did not take care of all the legal work of these companies; he was
general counsel for some, and perhaps on a retainer or consultation basis for
others. He also represented the Washington Loan and Trust Company, the Na-
tional Savings and Trust Company, some of the large real estate concerns, and
he became, during the later period, one of the attorneys in the difficulties
the Riggs National Bank had with the government. With the exception of the
Riggs Bank case he had no criminal practice. In the criminal aspects of that
case he was consulting counsel.

In addition he represented and helped the poor, and lawyers would come
to him for counsel.

Mr. Linton was second to Mr. Sullivan in length of association with Mr.
Darlington. Others associated in one way or another with the office during
my time were my good friend the late F. Edgar Noll, Paul B. Cromelin, Paul V.
Rogers, Frank G. Smith, John Hood, and Miss Hohn.

Upon admission to the Bar in 1914 my practice began from my own office
at the rear of the second floor of 409 Fifth Street, a building Mr. Darlington
had acquired adjoining his older offices at No. 410.

I had no particular prospects, only the expectation that if I did reason-
ably well with anything that came to me a practice would gradually develop.
The cost of living was much less then than it is now, and I earned a little
more each year and was moving along satisfactorily when we entered the war
in 1917.

In the intervening three year period I engaged in some trial work, but
not a great deal. A colored man came to the office one day and said that so-
and-so at the jail wished to see me about his case. This led to the first
trial of any significance in which I engaged on my own. It was a second-
degree murder case. Aloysius Sulzer, a classmate -- he later returned to his home in Indiana -- came into the case with me. The trial resulted in a conviction which was reversed by the Court of Appeals, where it is reported as Marshall v. United States, 45 App. D. C. 373 (1916). After the reversal Marshall pled guilty to manslaughter and received a fairly light sentence.

Another interesting experience in the courts was a will construction case which came to me through my good friend John Connally, a former roommate, who had gone home to Iowa. It also reached the Court of Appeals, where it is reported as Brown v. Wells, 45 App. D. C. 428 (1916).

During this period no question arose in my mind as to the choice of my profession. The practice of law engaged my strong devotion, and this has continued.

War Interlude

When the First World War began in August, 1914, shortly after my graduation, I followed closely the events of the period and believed in the leadership of President Wilson, both in his domestic and international policies. His Presidency became a turning point in our relations with the other nations of the world. When we entered the war in April, 1917, I felt we should do so. The great controversy in America about whether Germany or England was in the right is largely forgotten. At the time, however, there was disagreement. Some thought, for example, that the German submarine warfare was no more illegal than the conduct of the British in taking our vessels into port and interfering with our trade. Wilson carefully approached the whole matter in an effort to bring about a solution without our entering the war. As I saw it, however, and as I still see it, the Kaiser felt he could pursue his course and we would stay out, or that he could succeed even if we came in — probably the former.
When Germany declared unrestricted submarine warfare and began to sink our ships at will, without regard to whether they were passenger or freight, Wilson asked for a declaration that a state of war existed, the same request President Roosevelt made in 1941 when Japan attacked us at Pearl Harbor. I thought Wilson was right, as I continued to regard his leadership in the conduct of our foreign affairs. He was his own Secretary of State, in essence, and properly so in the circumstances.

Mother had been a classmate of Ella Lou Axson, the first Mrs. Wilson, when they were young women in Rome. Mrs. Wilson, who died during the President's first term, is buried in beautiful Myrtle Hill Cemetery. When the President brought her to Rome to be buried there my mother and one or two other of her classmates were among those who greeted him.

Being unmarried and with no dependents I felt I should go into the service. I was eligible for the draft and in good health. I did not go immediately, however, as I didn't quite know what service to choose, and then I decided on aviation. At first it was to be Army aviation, but Frank Smith, who had an office on the first floor of 410 Fifth Street -- for a while he read law in Mr. Darlington's office -- returned one day from Norfolk where he had looked into Naval aviation and had decided to go into that service. I did the same. One went over to the Navy office on Pennsylvania Avenue in Southeast Washington where young men who could pass the physical and other tests were being recruited. This was about the middle of August. They gave me the necessary tests very quickly and orders came to report around the first of September to MIT -- Boston Tech -- for eight weeks of ground school work.

I kept in close touch with the family. Joe was also making plans to go into the service. Like myself he was then unmarried. He became a Captain,
later Colonel, in the Engineering Corps and served in France for some time. We were there part of the same time but did not see each other.

I was twenty-five, older than most of the boys who went into aviation, and had been practicing law about three years, away from an athletic life. The younger men of college age, around nineteen or twenty or twenty-one, were the best aviators.

We learned what we could in those eight weeks, a smattering of theory of flight, some navigation, some study of motors, some Morse code, and plenty of physical training. At the end of the course we were sent to Pensacola, Florida, for instruction in actual flying.

At Pensacola, which was then perhaps the best Naval air station, we trained basically on E-9a, single pontoon biplanes with Curtis motors supposed to have 100 horsepower. We had good instructors, but the training was simple compared with that of aviators during the Second World War, when my nephew, Albert’s son, joined Army aviation in the early fall of 1941, a little before Pearl Harbor. He has made aviation his career and is now a Colonel in the Air Force. He left the law when war seemed imminent. For some time now he has been with the large strategic bombers. He was awarded the Distinguished Flying Cross during the War.

Our instruction planes at Pensacola had dual controls. When the instructor pressed his foot on the rudder the student’s foot on the dual rudder moved in the same manner; so, too, the hands on the “wheel” which controlled the ailerons and elevator when they were manipulated by the instructor. Landing was the only difficult part of this flying. In the air itself flying was easy. I do not mean that this is so with modern planes of tremendous power and equip-
ment, but with us landing was the problem. This took practice and skill in timing.

I enjoyed flying, and preferred aviation to joining the infantry, though I was often frightened. There was a sort of challenge to be able to fly reasonably well, and that is about all I can say I ever did. I never considered myself a particularly skillful pilot.

In the earlier history of aviation in this country — and therefore, everywhere — our Navy was the leader. Later on Navy aviation became relatively small compared with Army, because Army expanded so much, but Navy was superior in the beginning and did most of the pioneering in the armed services.

We learned only basic flying at Pensacola. I finished my course in January and was then commissioned as Ensign and received my wings. The Army stepped in to help us in aerial gunnery, which the Navy was not equipped to give at Pensacola. In the winter of 1918 a group of us were sent to Tulliaferro Field No. 1 near Fort Worth, Texas, for this Aerial gunnery experience with Army. In the meantime I had been kept at Pensacola as an instructor of new men.

The experience in Texas consisted of target practice on the ground and some practice in firing machine guns from a plane in flight. The Army sent there was assisted by the Royal Flying Corps, sent in from Canada. The guns were not synchronized with the propeller. I first came in contact with these synchronized guns after going abroad, but no plane I flew used them.

Once while I was in flight in Texas a "northerner" swept over the area, bringing a huge curtain of sand. It was like a moving wall. We had to get down fast.

On my way from Boston to Pensacola I had gone to my home in Rome. My father was quite ill. He conveyed to me the impressions that this was his last
illness, which proved to be so; for at Pensacola a few weeks later word came he was dying. Before I could reach home he was dead, at 77 years of age. This occasioned indeed a sad gathering of the family, mother, four daughters and seven sons. Father had done well by us, and had acquired the respect of the community. As we left St. Mary’s Church with him for the last time, to which we had gone so often with him as children, Broad Street closed down business activity while he was taken to Myrtle Hill Cemetery across the Stowa. His body lies there now far from the countryside in Ireland which he left so long ago. Father never returned to Ireland, but I understand kept in touch with his mother there until her death. In later years we have been in closer touch with his relatives who still live near Portumna. The last time I saw Papa alive, on route to Pensacola, he gave me the name and location of this place, thinking that in traveling during the war I might go there. Many thoughts come to mind now about his life. He was a man of great integrity. He built well, and he loved his many children. He devoted his life to the home and family, including devotion to the business on their behalf. He was a fine looking man of the darker Irish type. He never lost interest in the welfare of the old country, and he would read the "Irish World" regularly. But his life was in Rome, though his thoughts might often have been of Ireland. I always loved and respected him I am sure; but as the years have passed, with more reflection and perspective, I am also sure that I have come to appreciate him more. I feel very humble now in thinking of him, and proud of him, and grateful beyond words.

We sailed for England in April, 1918. There was quite a contingent of Naval aviators, perhaps fifteen or twenty, on board the American Line St. Louis. We docked at Liverpool and were disappointed in not going to London, as our orders read. When we landed our commanding officers told us we were to go
straight to Killingholme, a British seaplane station on the North Sea on the east coast near the River Humber. The British had quite a lot of seaplanes there, and some big flying boats, which were engaged in patrolling out over the North Sea looking for submarines so as to protect shipping. The British were pulling out and our Navy had agreed to take over the station.

At Killingholme we lived in simple wooden frame huts, with bunks, good blankets and bedclothes, and we were as comfortable as young men will be. We were in the service, and didn't expect or need anything more than we had. The station itself had some very large steel hangars which protected the flying boats and seaplanes from the weather. There were some buildings more permanent than our living quarters, in one of which we had our meals. The food was simple but enough. We arrived in early April, and it was a very blustery, coldish spring, but we were well cared for.

There was not much doing there. A Zeppelin came over one dreary, cloudy night. We couldn't see it but could hear its droning motors. It came across the North Sea and dropped bombs in the area inland from us. This was the first actual firing of the enemy that I heard.

My recollection is that I went on but one patrol, in a British seaplane, while at Killingholme. The weather was bad and not many trips were made.

After about a month orders came for me to go to a British air station on Salisbury Plains, which, figuratively speaking, was the British "Texas" in terms of aviation training. I was sent to a place near Stonehenge and trained there for night bombing on land planes. This was a very interesting experience. Our Navy had decided to take over some night and day bombing, operating from Northern France. Belgium was then occupied almost entirely by the Germans and we were to try to get at the submarine menace by getting at the submarines when they
came in from the sea to Belgian ports for repairs or supplies. We finished our training for this work on the Handley-Page plane, which was the big British night bomber and the best, I think, that came out of the First World War. It had two Rolls-Royce motors and was a fine, powerful plane.

On Salisbury Plains we lived again in a frame hut, dormitory style, with cots in a row. Conditions were perhaps more comfortable than at Killingholme because of improved weather. It was usually dry. Spring was ending and we were entering summer. The food, again, was simple but adequate, with a good deal of Australian hare. They were pests then in Australia and great quantities of them were killed and shipped as food to England. In the middle of the morning, both at Killingholme and I think at Stonehenge, we had light refreshments, and tea in the afternoons, consisting at Stonehenge of good crackers —"biscuits" — and Holland cheese with tea or chocolate, or maybe some soft drink like ginger ale. Our accommodations and food at both places were primarily supplied by the British under arrangement with our own government.

During all this time I was able to keep in communication with the family. Mother wrote regularly, and also other members of the family. Ambrose had come with me to the boat in New York. It seemed that Joe and I would be the members of the family in the service. Albert had been married and he and Duke were not likely to be called; nor Will because of age. Leo was too young and Ambrose I believe was taking training at Plattsburg for a while. (Albert's son was to have a rather notable service during the Second World War.) Duke and Rosa married, in Atlanta, while I was at Stonehenge. I was able to cable them on their wedding day.

In the course at Stonehenge we had practice in bombing and in night flying, with some night cross-country flying, including a course to Oxford
and return. I enjoyed the new work very much. At the end of this training we were sent to France. I reached France in the early days of July, 1918. I was first attached there to a British night bombing squadron of Handley-Page planes. We were moving into this work to supplement the British or to relieve them of certain phases of it. We were attached to them pending organization of our own group to operate as a unit under American orders.

With the British squadron in France some of us, including myself, at first lived in tents. Mine was a good tent. It was small, with a good iron cot and exceptionally fine woolen Navy blankets. Nearby were frame huts, one of which was used as the British mess hall where we all ate together. Later when enough Americans arrived in the vicinity to form our own unit we took over an old chateau. Though not particularly well-appointed it was comfortable. It was not adequate however, to house all officers so in the rear were erected the familiar frame huts, and for a while I was in one of these. It was completely adequate. I may be mistaken but I believe a great deal of our food was transported directly by our Navy from the United States, with arrangements for getting it to us across land. We were inland about 16 kilometers from Calais at a small community called St. Inglevert.

After being with the British in France for a few weeks, maybe a little longer, some of us received orders to go to Milan, Italy, via Paris, to pick up there and bring back to northern France some Caproni planes our government was obtaining from Italy. The British could not supply us with Handley-Pages, which we preferred, and the United States aviation industry was not able to supply us with night bombers. These Capronis were big biplanes with three Fiat motors, but I never thought they were equal to the Handley-Page. We undertook to ferry seventeen or eighteen Capronis from Milan to northern
France, but only seven finished the journey. Several of our finest young men were killed in this ferrying operation. I do not know quite what the trouble was. Perhaps our mechanics or pilots did not know the motors well, or we got a bad lot.

We went to Milan by train from Paris traveling in a wagon-lit. I visited the Cathedral at Milan and also flew over it on leaving, with a remarkable view of its intricate symmetry. It is probably as beautiful a building as I have ever seen. I did not see the Last Supper -- my own fault, I suppose. And I did not see Saint Charles, but was near the place of his burial in the beautiful Cathedral.

There were two pilots and a mechanic to a plane. With me were Lt. (j.g.) Otis, a very good pilot and Jenkins. From Milan we flew to Turin, there to await favorable conditions for crossing the Alps. There was a fine airport at Turin and we stayed for two or three days. Upon receiving clearance we took off and landed at Lyons in France, across the Alps. We did not encounter the highest Alps but those we did cross were fairly high. Mont Blanc loomed white and beautiful to our right as we flew westward. From Lyons we flew to Dijon and from there into Paris, landing at Orly Field. Otis and I parted in Paris and I finished the trip to St. Inglevert with Ensign Benjamin. We landed at our airdrome contiguous to the one used by the British. It could be described as a joint airdrome.

Our immediate commanding officer was Lt. Robert A. Lovett with whom I had had no contact in training. The Yale group of which he was a part had not trained in Pensacola.

Mr. Lovett was two or three years younger than myself. He had an attractive personality and displayed the qualities which gave justification
for his selection as commanding officer. We liked and respected him. Our whole outfit was composed of a fine group of men.

One of the Capronias was made ready, and we began to operate independently of the British, in close collaboration with them but under our own command. I had then been over with the British on three night raids, learning what I could about the work. The British plane to which I had been attached was in charge of Ellison, an experienced pilot of the Royal Air Force.

Once in going over with Ellison we had a pretty interesting time. He was taking over an experimental bomb weighing about 1400 pounds at least and requiring a special bomb rack. It was a terrific thing. The objective assigned was an ammunition dump near Middelkerke in Belgium. Ellison was anxious to make a successful attack.

Before we reached the objective a single enemy plane came along, looking for bombers. Ellison didn't want an encounter with a fighter plane as he needed down and got away out to sea and flew in again. This time the searchlights came pretty close, tremendous things, and anti-aircraft fire was bursting close too. We knew this because we could hear the shrapnel explode in the air above the sound of our motors. But Ellison, after coming down fairly low, got rid of the bomb all right, supposedly over the objective. It made a great splash, but missed the objective. All the searchlights and everything went out in the whole area and we came away without further trouble.

When one of our Capronias was ready Ensign Lester Taber, who had had some experience with the French before he joined us in France, was made first pilot and I second pilot. My designation as second pilot was something of a misnomer because though a pilot in a plane with dual controls I really acted
as observer. Dave Hale, who had gone through the Stonehenge training with us as an observer was made the nominal observer but really was rear gunner, and manned the Lewis gun which was erected to protect the plane from the rear. I also had a Lewis gun in the observer’s cockpit in the forefront of the nacelle which extended out in front. With this crew of three we went off on the first American night-bombing raid under American command in the history of the country.

We were to bomb the submarine works along the inland basin at Ostend where the submarines were thought to come for repairs and refueling. In this night bombing we were always given definite objectives. We were never told, either when with the British or in the short time we made raids on our own, to bomb Ostend or any other city, for example. We took all the care we could to find out how to reach a given objective. Of course there were limitations, but we had photographic maps on the station and we knew the contour of the coast, and of the basin, to help as guides. One could pick out the basin, if the night was clear, and distinguish it from the shore. We knew about how long it should take us to go a certain distance. We knew the flooded area and could identify it as we approached, and knew its distance from our field. We could follow the coast and then turn inland with a fairly good chance of visually picking up our objectives. We also had a bomb sight but I doubt I can now accurately describe it. There were adjustments to be made in its movable parts, and if we flew in a fixed direction at a fixed altitude and lined up our eye with the objectives across the bars in the sight thus adjusted, theoretically we should hit the target. There was likelihood of error, especially if the wind changed so that we would not be flying in the exact direction or at the exact height we were supposed to be in relation to
the adjustments. And our speed might not be exactly as calculated.

There was considerable inaccuracy in the bombing of those days, especially at night.

On this first all American night raid we damaged principally a rail-
road station, close by the works we were supposed to hit. Reports of the
raid later came to us through the underground. I never knew just how
this operated but there was an underground reporting system. In addition,
photographic planes went over in the daytime. They could sometimes pick
out the results of bombing.

It was considered a fairly successful raid. Only the one plane par-
ticipated, the only one we had ready. When the British went off at night
seven or eight planes usually participated, not in formation, of course,
and each likely with a different objective in the same general area at
the same approximate time.

On our first raid we ran into no opposition except anti-aircraft
fire. We had clear sailing in getting over the objective, released our
bombs and came away without much difficulty from the enemy although there
was a good deal of anti-aircraft fire. But trouble arose on the return
trip due to a shift in the wind while we were in the air, which had blown
in a haze and also made it difficult to allow accurately for drift within
the calculations we had made before leaving our station. We lost the
coast line on which we had principally counted to guide us back to a
place on the coast from which we could cut in to the station to land.
For a while it looked as if we were lost.

The arrangement was for us to signal for a landing in Morse code
with a large flashlight, whereupon the ground crew would throw on the
landing lights. Notwithstanding we thought we were lost for a bad little while, the ground crew picked up the signal I kept flashing. They switched on the ground lights which we saw off in the distance. We then landed visually. Mr. Lovett was there to greet us as we climbed out of the plane, and the whole station was pleased with our first operation.

A few evenings later the same crew went off on a second raid, no other plane being ready. Before we crossed the lines, and while at about 6,000 feet altitude, one of the motors failed. Taber signalled to me out in the front cockpit that we must land and indicated what the trouble was before I had independently become aware of it. Arrangements had been made for us to land on the beach near Dunkirk in an emergency. We circled back towards this place which was also used as a stop-off station by the British on returning from raids.

When near enough I signalled appropriately for permission to make a forced landing, but received in response the danger signal. The landing lights were accordingly not turned on to assist us. We learned later the Germans were over Dunkirk, bombing. Those operating the landing place did not wish to put on the lights and make a target for the German bombers. We gradually lost altitude circling around. We signalled again but received the same response. Finally we were obliged to land without the assistance of ground lights, and crashed. I jumped almost simultaneously with the impact and was catapulted some distance. The plane was badly damaged. Hale was cut about the face a bit but Taber though shaken was not injured.

I was taken to Queen Alexandra's hospital, operated by the British near Dunkirk. It was in charge of Quaker nurses from England, but the doc-
ters were of the British Army. This was an emergency hospital, particularly for aviation. As soon as possible those brought to it were sent rearward to a base hospital. It was excellently conducted and I was well cared for. The next morning an exploratory operation of a knee injury was performed. This injury healed well and caused no permanent trouble. My principal difficulty was a back injury and concussion through the chest. After about ten days in this hospital, during which time I became almost the oldest inhabitant in my hut, I was sent back to the station enroute to the United States Naval Hospital in London for convalescence. Hale's cuts healed well but I believe he still bears a facial scar, which, however, is not disfiguring.

Within a matter of days two of my close friends, Foster and Stocker, were also injured. Foster's accident was in a take-off crash while still attached to the British. He was thrown out of the plane and his elbow and arm badly hurt, but he went back in and pulled out the British man, who might have been burned except for Foster's exploit. The British decorated him for his heroism. Stocker was even more seriously injured in a crash on the airstrip, but recovered. The three of us were sent to the United States Naval Hospital in London for our convalescence. Stocker stayed in aviation after the war and was killed, the early ending of the life of a very fine, attractive young American. Foster and I have kept up our friendship over the years and now and then have managed to see one another. For many years he has been practicing law in New Orleans.

The hospital had been the home of some American or friend of the Americans who made it available to the Navy. The nurses were American Navy personnel. American Naval doctors were in charge. We were again extremely
well taken care of. I was up and about practically all the time and had
what proved to be a very pleasant visit in London.

When recovered enough to return to duty Commander Edwards of Admiral
William S. Sims's staff in London, in charge under Admiral Sims of over-
seas officers in Naval aviation, said I could return to the United States
to help instruct, but I preferred to go back to the station and was permitted
to do so. This was in October, 1918. The Germans had then fallen back in
occupied Belgium and our aerodrome was left a considerable distance behind the
lines. We were ordered to pack up to move forward and a great deal of
equipment was on trucks ready to move; but no move was ordered. The prospect
of an armistice became known, at least to the higher officers, and we re-
ained where we were. All soon became aware of the impending armistice.

It is my understanding that after our crash in August the Campania
were not used again. This caused the station to become more or less inactive
due to lack of usable night bombers. Had the war continued this somehow
would have been remedied. In the meantime some of our flying officers were
again made available to the British, who had the Handley-Page bombers, and
helped a great deal in that way.

After the armistice November 11th I sailed home from St. Nazaire.
November 29th, being among the first from our station to do so. I did not
wish to be part of the army of occupation, and was given the choice of com-
ing home. I had already begun the practice of law and when the war was
over wished to resume. We sailed on the old steamer Bremen -- not the
large and later Bremen. It had been renamed the Susquehanna when taken
over by the United States in one of our ports when war was declared. They
were sixteen days crossing in rough weather. Much to our disappointment
instead of landing in New York, as we had hoped, we were not landed at all, in a sense. The *Sagamore* anchored out from Norfolk and we came ashore on lighters.

On reaching Norfolk I learned that my sister Sarah was there visiting the Cammoms, old friends of earlier days in Rome. Mother was in New York with Hannah. So I stayed a few days to see Sarah and friends in Norfolk, arranging also to be placed on inactive service, or at least on leave. Then I went to New York to spend Christmas with Mother and Hannah. I stopped in Washington on the way to New York to have a visit at the Lane household. Christmas night, as I recall now, I left New York for Rome to see others of the family, and after a good visit there returned to Washington early in January, 1919.

It was of course a little out of the ordinary for Mother to be away from home at Christmas time; but she was freer since Papa's death, and thought it best for her at that particular time to be with Hannah in New York. This was a comfort and help to Hannah, I know, who the next year entered Trinity College in Washington, and after graduation began her remarkable and beautiful religious vocation as Sister Peter Claver of the Missionary Servants of the Most Blessed Trinity. She was one of my two sisters, Agnes Stephanie the other, to go to Trinity. This was due principally to my friendship with the Lane family in Washington, into which I married in 1929. Mrs. Lane's sister, Sister Gertrude, was Treasurer of Trinity and one of its founders, and the three Lane daughters at different times were graduates.

I suppose aviation went through its greatest period of development during the First World War. While on Salisbury Plains in England I trained
on an old Morris-Farmum, one of the earliest planes to fly. We also trained there on F-Hs. The Morris-Farmum was used only in training but the F-F was an early British fighter in World War I. It seems odd now to think of it as a fighter. Progress, before long, under the stimulus of the war relegated it to the past. There came along the Hamiley-Page, a superior plane for night bombing, and the Campbell-Brop became the principal British fighter. It was a single seater with a synchronized machine gun shooting through the propeller.

During World War I there was nothing like the bombing of cities that occurred in World War II. As I have said night bombing was inaccurate and no doubt innocent people and civilians suffered. The effort of the Allies, however, was to bomb only an assigned military objective.

On my way to my station in northern France after training at Stonehenge I was routed through Paris from England. The Germans bombed Paris the night I was there. A bomb dropped near La Vendome, outside the Hotel Continental where I was staying. There were a number of planes over and their engines could be heard distinctly. The next day the Big Bertha was shooting into Paris with considerable regularity. Although the Germans through this remarkable piece of artillery were able to reach Paris they could not control the place the shell would land. I was walking along the street when one fell a few blocks away, and I went to the place it struck. The trajectory of the shell was such that it came down almost vertically. This one landed near the curb at an intersection, killing a horse, damaging some shops, and injuring, but not seriously, one or two people. Of course, as is known now, at other times a beautiful church was hit, and the shelling caused the loss of many lives. I remember feeling very strongly on the
subject. As years went by the manner of conducting war changed. Then, however, this shooting into a big community and not caring what was hit was an outrage.

I think Big Bertha was something of a depressing influence on morale in Paris, but on the whole it caused the French to be more determined, if that were possible. Experiences such as this no doubt had something to do with the French desire for a harsh exaction from the Germans.

Notwithstanding we have not suffered the direct effects of war within our own borders as have France and England, and later Germany, we have assumed tremendous responsibility since the Second World War. No doubt if we had been more immediately in the path of the First we would have come to accept earlier the necessity and desirability of an international organization, such as the United Nations, and Wilson might have succeeded in his effort to have the United States take leadership in the League of Nations. In the end, however, we have accepted world leadership.

Many years later in the winter of 1941 I was in London with Commander Biesemeier and General Harry J. Malony to negotiate for our government the terms of the agreement and leases covering our naval and air bases to be erected in British possessions in the Western Atlantic, growing out of the "fifty destroyers exchange" of the previous September. Mr. Churchill invited General Malony and me to Chequers on a Sunday for dinner. Commander Biesemeier was ill. Mrs. Churchill asked my opinion of the reaction of the American people should England then bomb the open cities of Germany. The Germans were bombing London quite extensively at the time. The blitz was still on, although it had been worse and would be worse again a little later. The big fire that had destroyed such a large part of London had oc-
occurred in December. This conversation with Mrs. Churchill was in late January or February following and there had been no substantial bombing by the British of German cities. It had been pretty much one way.

I replied that in view of the severe bombing of London I thought the American people would feel that the British were justified in retaliatory bombing of Berlin, but that I did not think general indiscriminate bombing of open cities of Germany would be approved by our people.

In the light of what subsequently occurred this might seem inaccurate. But I think it was a fairly true reflection at that time of the sentiment in America.

Some few years later, in 1948, after the unconditional surrender of Germany, when I was in Germany as head of the legal work of Military Government, I saw the tremendous destruction which our own as well as the British bombers had wrought on the cities of Germany. Between the time of the conversation with Mrs. Churchill in the winter of 1941 and the end of the fighting — if I had been accurate in 1941 a great change had come in the method of conducting war and in the sentiment of the American people. Massive strategic bombing with its terrific destruction had become accepted.

I could not speak French, so my contacts with the French people during World War I were limited. Our airdrome was in the country-side, as I have said, about eighteen kilometers in from Calais. There were, of course, farmers and other French people in the vicinity, and contacts with them were only occasional but pleasant. There was a little stagnation down at the crossroads where we gathered from time to time, conducted by a French family who developed pleasant relations with the Americans and the British.
There was a Catholic priest nearby, with a rather small but attractive old stone Church and rectory.

On the way to Milan to help bring back the Caspuri planes I was again in Paris, and again after the armistice en route to St. Nazaire to sail home. These times in Paris were only as a visitor for a short time to a great metropolitan community. Some impressions, however, were definite. There was an unexpressed — at times expressed — mutual regard between the Americans and the French. The French were grateful to the Americans. The Americans, I think, realized that the French and the British held the fort until we came, although I suppose we attributed more importance to our own activities than we did to theirs. Yet the whole thing would have been over before we got there except for the tremendous stamina and courage of the French and British. I say the French and the British, but of course, there were others too — Belgians, Canadians, Australians, and to some extent the Portuguese, the Italians, and still others.

In England I had few opportunities to see the people except as a member of a military contingent. There were officer clubs in London and one would meet people on a somewhat different basis, of course, than in one's work, and there were occasional trips to a place like Bournemouth. But I had no significant contact with the British in their homes. My feeling for the people was always one of esteem, notwithstanding my father had been slow in overcoming — if he ever did — the great sense of wrong England had done Ireland in the centuries of religious and political persecution. I realized the truth at the basis of his feeling and had a clear appreciation of the reasons behind it. But notwithstanding this I suppose I looked upon the English as well as the French as friends of America in the troubled times...
of war. Yet I have no hesitancy in affirming my own conviction of the long injustice of the English treatment of the Irish.

In the early days of the First World War, when the contest was between England and France on the one hand and Germany on the other, there was a period of uncertainty in my mind as to the direction of my sympathies. This did not last long. I was conscious of the traditional friendship between the United States and France from the time of our own Revolution, and of the contribution of French thinking and civilization to the West. Knowing this, and conscious also of the continuous arrogance and lack of regard for international obligations on the part of Germany I fairly quickly straightened out in my own mind where lay our interests and the relative morals of the matter. My own feelings about the international situation, beginning in 1914, laying aside a separate problem like that which arose with respect to Mexico -- were like Wilson's, perhaps a little ahead insofar as his outward manifestations of policy were concerned. For quite a while he seemed to regard the British breach of international obligations with respect to our shipping somewhat on a par with the more vital and inexcusable breaches by the Germans in their submarine warfare. It did not seem to me that taking a prize into a port compared in seriousness with the sinking of ships by torpedoes. But on the whole my thinking followed that of Wilson. When we entered the war I felt we were right. Wilson's conduct of affairs I thought had been in the effort to avoid our entry and to achieve a peace if possible.

My personal experience in England and France in uniform, had very little to do with my later international activities. Rather, the reason for my interest in international cooperation was a conviction that the
community of nations should combine in an effort to prevent wars. I felt strongly also that since the United States was drawn into the First World War it was sound American policy to promote an international organization which would seek to prevent a recurrence. I thought it would be impossible for the United States, from the standpoint of its own interests, as well as our obligation to the international community, to remain out of a significant conflict when it really got under way. There was also an idealism about our leadership during and after the war (until other forces gained headway) which was consistent with my own beliefs. I think such idealism was right and sound, though time and experience might be said to have proven some of its incidents to have been defective.

Stocker stayed in aviation and as I have said was accidentally killed while still a young man. Foster, as I have also said, is practicing law in New Orleans. Taber I think is a practicing doctor in Patterson, New Jersey. Hale, whom I have occasionally seen over the years, reentered the service in World War II. Lovett, whose distinguished career is well known, became Under Secretary of State under General Marshall. In 1947 when I was The Legal Advisor of the State Department, our work there happily overlapped for a while, reminiscent of other days and of battles of long ago. I had decided to leave Government service before I knew he was to come into the Department. Else I think I would have remained to work with him. He asked me to do so, as Counselor of the Department, which appealed to me very much.

*Washington Years, 1917-1924*

Back in Washington in January, 1919, in a different part of the little building on Fifth Street, downstairs in No. 410 this time, I began again to get a foothold in private practice.
Mr. Darlington died in June, 1920, after an illness of some months. He came to the office as long as he could, and even went across to the courthouse to argue a case during his illness. But he was finally forced to bed and there, with Christian tranquility and fortitude looked forward with faith to joining his wife.

Mr. Sullivan asked me to stay with him, and this I did until 1924.

1. The City Through the Years

Washington in 1911 when I came here was like a big town, though its population was about 325,000. It was a leisurely place. The greatest change began with the First World War. The city grew rapidly again as a result of the Second World War. Places which in 1911 we thought far out have become close in. To one who has lived here over a long period the changes are striking; yet the development has had integrity. Through the effort to follow a plan, and with the direction given by the Fine Arts and other commissions, and with the pride Congress has taken in Washington, the change has not been as indiscriminate as the growth in size otherwise might have caused.

The development in public building has been tremendous, particularly since the Presidency of Herbert Hoover, who began new construction along Constitution Avenue and the Mall. This was expanded under the administration of President Franklin Roosevelt but accorded with older plans. The temporary buildings of the First World War are mostly gone. Those which filled the plan; in front of Union Station, for the young women who came to Washington to work during the war, are no more.

Rock Creek Park has been greatly extended over the years, and is perhaps the greatest city park in the world, with its own special beauty in
the fall, in the winter and in the spring and summer. I usually drive through
some of it every day. However, I miss good walking paths.

Mr. Darlington's city home was near Dupont Circle on 20th Street. All
that area was residential during my earlier years, and I think also in 1920.
The streetcars went all the way out Connecticut Avenue to Chevy Chase Lake.
There were no buses. Automobile traffic was relatively light, and there was
a great use of phaetons, victorias, and broughams.

The old Hobbitt House, on the southeast corner of F and 14th Streets,
was an interesting spot in our student days. Harvey's, on the south side of
Pennsylvania Avenue -- somewhere across from the Raleigh was another.

The St. James Hotel was also on the south side of the Avenue. When my
father went to New York on buying trips for the store, which he made about
twice a year, he would stop off at least during part of a day and would some-
times take me to the St. James, perhaps for a steak. I enjoyed his visits.
No other member of the family lived here then, but in the fall of 1911,
Mother came north on a visit. We went from Washington to New York City together.
We stopped during the day at Princeton and I saw the Yale-Princeton football
game, with Daly, my friend the previous year at Notre Dame, who had come on
to Princeton. Mother hoped to see her old friend Mrs. Wilson at Princeton
but she was away. In New York Mother looked up some relatives, one quite
old and ill whom Mother helped, as she helped so many during her life. She
was always quietly helping someone, however much the demands upon her.

Of course the cost of living was much lower then. When I first came
to Washington I paid $25 a month for my room and three meals a day -- and
the meals were excellent. After the war in 1919 it was perhaps a little
more, but not a great deal. (During Christmas holidays of 1924 I exchanged
greetings with my two roommates of those early years, Raymond E. Kist, who has continued to live at Derry, Pennsylvania, and Herman P. Hayes, who for some years now has lived in California.)

My recollection is that my first year of practice, beginning in 1914, grossed $1,200, which enabled me to get along. There was no income tax.

Washington had a southern atmosphere. The pace was slower than now and the city was not crowded. But even today, in contrast with other large cities, Washington is slow-moving in a sense. If one goes on a visit to New York, for example, there is a distinct change in pace and traffic conditions, and in noise, smoke, and congestion.

The weather in the summers of the earlier years was certainly no worse than now. At times we would have one of those incomparable springs. And the city has continued to grow in beauty, notwithstanding some very bad housing conditions.

In 1911 and for some years thereafter Washington was more distinct as a city in its own right rather than as the capital of the nation. There seemed to be more local community life. Of course I might be mistaken, because of the change in my own work and associations. Since I have been on the court, particularly, and for the two preceding years, 1947-1949, when I had returned to private practice, I felt closer to Washington as a community than during the years in the Executive Branch of the Government from 1933 to 1947.

3. The Struggle Over the League

Wilson's thinking about our entry into the war and about a world organization for peace seemed to me to be sound and worthy of our great
Christian heritage. But the Senate unfortunately was unwilling to ratify the Covenant of the League. This I thought a great tragedy.

I do not mean for a moment that the League of Nations, with us as a member, would have brought permanent peace. It is a confusion to attribute to those who have favored such an organization a belief that they are a solution for everything. Our own government with all its great institutions has never been able to prevent serious problems from arising within the Nation. Even if we had gone into the League serious international problems would undoubtedly have arisen. We might not have avoided the Second World War. But it seemed pretty clear to me that there was less chance of it if there were a strong League of Nations, and no chance of a strong League unless the United States were a member of it. We had become too significant a part of the world to expect that the problems of the world would be solved without our active assistance.

I do not feel that Wilson reflected in the end the popular will in the United States but I think he did reflect the popular will of the world. Originally he reflected the popular American will also; but the fight on the League changed the dominant sentiment in our country.

It is reasonable to say that Wilson did not handle the whole problem in a way that was conducive to success. But this was not, as has been suggested, due to a mistrust on his part of the democratic process. Wilson had great confidence in the people. He had good reason to believe the people were with him. He statesman in centuries perhaps had the world-wide acclaim Wilson received at the end of the war. He had done so much to win the war, including his effective appeals directly to the German people over the heads of their government. Our people were with him then. He had reason to sup-
pose also that the leaders of the Republican Party were with him. Senator
Henry Cabot Lodge had been one of the foremost advocates of a world orga-
nization for peace. And Wilson had every reason to suppose also that men
like Charles E. Hughes, Elihu Root, and William Howard Taft would support
his efforts to obtain such an organization.

Wilson went directly to the people when he saw that the Senate might
be lost. The trip across the country which ended in his breakdown was a
direct appeal to the people. And even, after that, in the next election,
he appealed again to the people for a great referendum on the issue.

Others, some in positions of great responsibility, changed, not Wilson.
Their motives I do not attempt to appraise, and I assume the patriotism of
all. Some, like Senator Borah, who perhaps never had favored the League at
all, were fearful from the best of mistaken motives. As the great debate
began we had a period when effective men were skeptical and critical in one
or two matters, and as their involvement in the debate increased they became
skeptical in larger measure. Argument was added to argument until they
were lost in argumentation, almost in dialectics, a dangerous approach to
great problems. America had not moved along the road as far as Wilson
thought. America in fact retreated under the pressures of the Senate de-
bate, under appeals to a nationalistic and asserted more patriotic point of
view, which in truth was not. The reasons advanced were fear of foreign en-
tanglements, involvement in great decisions which we might not be able to
control, and so forth. So we had the great cleavage.

Notwithstanding this Wilson could have won if he had been willing to
accept the so-called "interpretative reservations." In essence he had two-
thirds of the Senate with him. There is my criticism of Wilson in respect
to the League, and it is made with diffidence and uncertainty. I think it would have been better for him to have accepted the interpretative reservations and for us to have gone into the League.

I cannot go back now and analyse those reservations on the spur of the moment, but I believe if the Senate had passed the treaty with them the other members of the League would have accepted them. We would have been a member and perhaps could have made the League a workable and strong organization. Wilson, however, was unwilling to have the Covenant re-submitted, with our reservations, to the powers that had accepted it as it was at his own insistence. And so the great hope was lost for a time. But it was not lost permanently, because there is no question the experience through which we then passed was used to advantage later. Roosevelt was Assistant Secretary of the Navy under Wilson, and must have gone through that period in an intelligent, thoughtful manner, as many others did who lived through both wars. When he was President in the Second World War and again there was the problem of a world organization, Roosevelt handled the problem quite differently. Obviously he had profited by the lessons of the earlier era.

To illustrate, Roosevelt named as delegates to the San Francisco Conference Senator Arthur A. Vandenberg, the principal Republican leader on foreign policy in the Senate. He brought Senator Vandenberg into the actual formulation of the Charter of the United Nations so that the Senator became an advocate for it rather than one left outside as Senator Lodge had been. John Foster Dulles, another prominent Republican leader in international activities, and others, were also brought into the process of formulation.

In 1919-1920, the fight over the League was a live subject in Washington. I was not to be a part of the government until many years later; I
was only a returned participant of the war, and a young lawyer. The debate was a great struggle for people’s minds and thinking. But after the defeat of our participation in the League I doubt that even those who were the victors had a feeling they had done well. There was great disappointment on the part of those who felt as I did. Borah and Lodge had their victory, but what kind of victory, historically, was it? It did not have permanence in an affirmative sense. One of the most effective Senators against Wilson was Brandegee of Connecticut. I would go down and listen to the debates. Senator Brandegee was able in his marshalling of reasons why we should not go into the League. But what is his position in history for having won? And Borah did not add to his stature by his opposition. On the contrary, these men won not because of conviction on the part of the people but because of uncertainty about committing ourselves so fully as Wilson wished. We renounced our leadership of a great cause.

3. The Practice of Law

After Mr. Darlington’s death in June 1920, Mr. Sullivan and I continued in association as I have said until 1924. Mr. Sullivan was an industrious lawyer, exhaustive in research, and careful in preparation. Through his new practice and that of Mr. Darlington in which he had participated, he became a man of unusual experience. I was and am very fond of him and have good reason to be grateful to him. He was always kind to me and never neglected an opportunity, when I was a young lawyer, of helping me in any way he could.

We stayed in the old building of Fifth Street for a while but about 1923 moved into the Phillips Building at Fifteenth and K Streets, Northwest. The practice was a general civil practice (with an occasional foray on my
part into some criminal work) embracing probate, real estate transactions, defense of negligence cases, rent control problems, particularly involving the Alonso O. Bliss properties, representation of some of the mercantile establishments like Julius Garfinckel & Co., real estate firms and an insurance company. My first administrative hearings came in cases before the District of Columbia Rent Control Commission, which grew out of the housing congestion of the period of the First World War. Mr. Sullivan also did some condemnation work in which he was quite expert.

My practice was reasonably satisfactory from a financial standpoint. Each year saw some growth. The course of events indicated a natural development of a local practice drawn from the community, unrelated to Washington as the capital.

During the early twenties the famous Albert B. Fall-Eward L. Doheny oil prosecutions took place in the Supreme Court of the District of Columbia. Some prominent Washington lawyers participated, including Frank J. Hogan, and I believe William E. Leahy. A New Mexico lawyer, whose name escapes me, Thompson perhaps, came East and actively aided in the defense of Mr. Fall. Some years later I was to meet members of the Fall family in Santa Fe, and later still when I was Solicitor General Mrs. Fall came to see me on behalf of her husband, faithful to the end.

I went across to the courtroom during part of the trials. In the same court I had first heard George Wharton Pepper argue, defending the Federal Baseball League against the charge of violation of the anti-trust laws. This case furnished the precedent the Supreme Court followed at the last term (1933). Mr. Pepper made a brilliant argument I thought, though my own view of the legal question is that the courts made a questionable decision.
During this earlier period in Washington I became a member of the Knights of Columbus, and in 1923 or 1924 was Grand Knight of Potomac Council, resigning when I left Washington in the summer of 1924. And during my earlier years of association with Mr. Sullivan he was quite active in the National Catholic Association of Young Men. I helped him in this work. The organization went out of existence some years ago but was one of the earlier lay associations for Catholic young people on a national scope.

4. The Wan Case

On resuming practice in 1919 I became associated in an unusual case. Zhang Sang Wan, a young Chinese student in this country, was indicted for the murder of three fellow countrymen who had charge of the Chinese Educational Mission housed on Kalorama Road near Connecticut Avenue. The United States had been awarded a substantial sum as indemnity to be paid by China as a result of the Boxer Rebellion. As a gesture of friendship to China we refused to accept the money. As a return gesture of friendship China established this Chinese Educational Mission to educate Chinese young men in America.

The mission was in charge of Dr. T. T. Wong. Mr. C. H. Haie was treasurer. Mr. Wu was secretary. Perhaps it was the other way around as to the latter two gentlemen. At any rate, they all lived in a house on Kalorama Road, and at this particular time had no servants. They administered the business of the mission, and had a substantial deposit of mission funds in the Riggs National Bank.

Wan was not a student under the supervision of the mission. He was living in New York but he was a friend of members of the mission. He visited Washington in January, 1918 and was seen at the mission house late
on a Wednesday afternoon when another young Chinese friend of the mission who lived across the street came to inquire if he could see Dr. Wong. Wan, the accused, answered the door and said Dr. Wong was not in. On the following Friday, this gentleman returned to the mission house and noticed newspapers lying about and some accumulated milk bottles. Looking in a window under a shade, he saw a body on the floor. The police were called and discovered that all three members of the mission had been shot and had been dead for some time.

Wan was accused of their murders, the motive ascribed by the government being the desire to cash a five thousand dollar check on the mission funds which the government said he had forged. A check of that amount was, in fact, presented to the Riggs National Bank on Thursday, the day between the Wednesday mentioned and the Friday when the bodies were discovered. There was identification of the young man who presented the check as Van, the brother of Wan. The check was not honored because of lack of sufficient identification, but while Van was in the bank one of the officers called the mission house on the phone and received no response. The check itself was never again seen by anyone who testified at the trial, but the stub, bearing the legend "T. T. Wong - $5,000," was in the checkbook in the mission house. Some of the handwriting experts attributed the writing to Wan.

Wan was taken into custody in New York and brought to Washington where he was held incommunicado in the old Dewey Hotel for about a week while the case was being thoroughly investigated, with officers from time to time questioning Wan. At the end of a week he was taken to the mission house where the crime had occurred and kept up all night, following which he made a detailed confession.
Mr. James A. O'Shea, a lawyer of repute whose practice was then largely criminal, asked me to help defend the case, which I did. Mr. O'Shea died only a few years ago at about seventy-five years of age, highly respected by the bar and the courts. He defended perhaps more homicide cases than all other lawyers in Washington put together during his active life. He was Irish, likeable, diligent and faithful to his obligations to his clients. As a youngster at the bar I had enlisted his help in the Marshall case previously mentioned. A few years later he asked me to help him in this Wan case. I worked personally on the case for about five years. Wan's meagre funds from his family in China were all absorbed in printing costs and the like, so there was no fee. Yet he had some of the most eminent lawyers in the country on his brief in the Supreme Court.

He was convicted in the trial court, and his conviction was affirmed on appeal by the Court of Appeals of the District of Columbia. 53 App. D. C. 260, 289 Fed. 903. Our principal contention was that the trial court should have held the confession to be involuntary and therefore inadmissible in evidence. Instead the trial court, affirmed by the Court of Appeals, had left the question of voluntariness to the jury, and permitted them to hear the confession read to them. The Supreme Court granted certiorari and unanimously reversed in an opinion by Justice Brandeis, holding that the confession was involuntary and should have been excluded. Wan v. United States, 266 U. S. 1.

Mr. John W. Davis became associated in the case in the Supreme Court, as did also Mr. Frederic McKenney, a leading Washington lawyer, and Mr. William C. Dennis, who was then a prominent Washington lawyer in international affairs and later president of Mariham College in Indiana.
The case was argued in the Supreme Court in the spring of 1924, but was not decided until the fall. In the meantime, in August, I had moved to New Mexico.

The crimes were notorious and the case became a famous one. Mr. John L. Lasky was the United States Attorney, a fine lawyer and a man of character. The Assistant United States Attorney, who did most of the work on the case, was Mr. Bolitha J. Law, who is now the able and respected Chief Judge of the District Court of the United States for the District of Columbia.

Mr. O'Shea conducted an excellent cross-examination of the police officials, thus making the record on the basis of which the conviction was later set aside. None of the officers felt they had coerced Wan, and there was no concession of physical mistreatment, except, of course, there was the truthful testimony of the officers about the all-night session. They explained in detail the methods used in the investigation, including the following of leads and then coming back to Wan and questioning him in relays about what they thought had occurred. Over a period of days the total questioning assumed a great weariedown character. Wan's meals were brought to him. However, he was not well, suffering some intestinal difficulty. As soon as the confession was obtained and he was put in jail, the doctor for the inmates later testified, Wan was in a weakened condition, not through undernourishment but because of this intestinal trouble.

I could not say that the revelation of the tactics used by the police caused any public feeling of outrage. The community probably felt that Wan was guilty. The vindication of our position with respect to the confession did not come until years had intervened. The crimes were committed in Janu-
ary, 1919, and the Supreme Court decision was not until October, 1924. Justice Brandeis many years later told me that he had expected his opinion would have had a greater influence on the methods used by the police than he feared had been the case.

I stayed with the case constantly until after the argument in the Supreme Court in the spring of 1924, although at different times, as I have indicated, a number of other lawyers were connected with it. The petition for certiorari was prepared almost entirely by Mr. Dennis and myself, with a final review of it by Mr. McKenney. It had also the approval of Mr. John W. Davis' office. When the petition was filed Mr. Davis himself was in London, and his name was added later.

The Supreme Court then sat in the Capitol. I remember very definitely during Mr. McKenney's fine argument when he reached the facts about Wan being kept under questioning all night in the house where the homicides had occurred, Mr. Justice Holmes leaned forward and asked if he had heard correctly. Mr. McKenney replied that he had and that it was after this that Wan had confessed. Mr. Justice Holmes then leaned back and said audibly, as if to himself, "Well, that's enough for me." These were the first judicial words of encouragement we had had for five years.

Mr. Dennis, who divided the argument for Wan with Mr. McKenney, was an exceptionally fine lawyer and person. Mr. Davis was willing to argue the case, but I thought this would be unwise because, notwithstanding his great qualifications as an advocate, I wanted the case argued by those who had become more thoroughly acquainted with it.

When Wan was re-tried after the reversal of his conviction by the Supreme Court, Mr. O'Shea was out of the case. Mr. Milton J. Lambert, a
prominent Washington lawyer, defended Wan at the second trial. I was in Santa Fe, and came back at Mr. Lambert's request to do what I could to help.

This second trial resulted in disagreement on the part of the jury. Wan was tried for the third time with the same result; that is, the jury could not agree. The government then realized they would never be able to convict him with the confession no longer available, and mile-pressed the case.

Father O'Callaghan, of St. Peter's Parish, visited the jail and became quite interested in Wan, who was not a Catholic though a Christian. Father was convinced Wan was innocent. I never was certain of this. I was convinced he should not be convicted on the basis of the confession and that he was entitled to a trial on the admissible evidence alone, which was largely circumstantial.

I saw and talked with Wan a number of times and he never gave the slightest indication or intimation of guilt, and if he was guilty he was a very, very consummate actor. Yet he did not seem to be acting. It was a strange case. Over the years I have heard from Wan from time to time. He finally returned to China and is there now. I had a letter from him there within recent years.

5. Departure for Santa Fe

In late winter or early spring of 1924 pulmonary tuberculosis, fortunately discovered in its early stage, brought about a definite change in the direction of my life.

Mother had come to Washington as a result of the following circumstances. My sister Hannah was here attending Trinity College. It was planned for my sister Agnes also to enter Trinity the following year. Leo was at Georgetown University and Joe and I were living here, and Will also at
times. In view of the family situation Mother decided to make a home in Washington for a time for us all. So, with Janie and Sarah, who were then with her in the old home in Rome, Mother came to Washington and we lived on 13th Street near Columbia Road. This was in 1921 if memory serves correctly. The following years, with so many of the family again in the same household -- Duke and Albert would stop off to and from Rome and New York -- were crowded ones in the life of the family, and somewhat physically crowded too in the modest city dwelling. For some it was a period of college education and kindred activities for the most part. I suppose this was perhaps the central phase of these years, though there were interesting other activities also for those not attending college. It would not be easy for me to recapture those years on paper in an adequate manner, if I could do so at all. Mother probably enjoyed this period on the whole. She liked the city, as the capitol and because of its parks and beauty, its scenery, and also its markets. And, of course, as always, she loved to make a home for the family and to do all she could to help and encourage the children in their diverse lives, with the never-ending problems to be met and adjustments to be made. As for the rest of us, opinions might differ about those years. They were not smooth ones for each of us in all respects, but they were on the whole years of continuing development, and, I should suppose, useful ones in the family life, by and large.

When the break came in my health Dr. Sterling Buffin, an eminent doctor, after a careful diagnosis, advised me to leave Washington and live for a while at Saranac or Asheville. In the meanwhile, and pending other plans, I was at Walter Reed Hospital for a week or so. Mr. Sullivan, my close associate and good friend, made arrangements with me about my practice, and
I went to Asheville, hoping to be able to return to Washington in six months or so. The ailment was fortunately in its early stage.

While in Asheville, Mr. Dennis, with whom I had worked so long on the Man case, suggested the advisability of my not returning to Washington but of taking advantage of an opportunity in Santa Fe, New Mexico. Santa Fe seemed very remote, I knew very little about it, but the result was that I became an associate of Mr. William J. Barker there. Mr. Barker was Mr. Dennis' brother-in-law, and a partner of Judge Laughlin, an elderly former jurist who had practiced in Santa Fe for many years and was most highly respected. Judge Laughlin had suffered a stroke and was in his last illness. Barker had written to Mr. Dennis to keep on the lookout for a younger lawyer who might be willing to join him in Santa Fe. Dennis, knowing my situation, suggested the opening to me. So in August, 1924, I came through Washington for a last visit with the family en route to Santa Fe, never expecting to return to Washington to live. The family had moved out to Inverness beyond the District line in Maryland, into a more attractive place than the 13th Street house. During this short visit on the way to my new home in Santa Fe I was pleased to be able to see Miss Agnes Lame who was to become my wife in 1929.

The Asheville months were pleasant and helpful. I made progress at the little Sanatorium there under the care of Dr. Minor and his associates. Many years later Agnes and I, driving from Washington to Rome, went by Asheville and I found the old "San" deserted, overgrown and run down. This was in 1950, as I recall the year, when we were driving down for the marriage of Albert and Lillian.
Santa Fe Years, 1924-1933

Santa Fe proved not only a health-restoring but a lovely place to live. Before long I began to work at the office part of each day. Gradually the work day became a normal one. I stayed at first, for about six weeks, at Sunmount Sanitarium, conducted by Dr. Frank Nora. I became friends with two other young men there, Keeler and McDowell, and the three of us soon rented a house in town where we kept house. I was never hospitalized after this although during my bachelor life I did live at St. Vincent's Sanatorium for a while in a non-patient status. The good Sisters had some rooms available for a few, in the building at the rear of the Cathedral. This proved a convenient and pleasant place indeed.

1. Santa Fe and Its Ways

Santa Fe was then a community of about 11,000 inhabitants, and as is well known is beautifully situated on a plateau some 6,900 feet above sea level, with small hills near and, farther northeast, the great Sangre de Cristo Range sloping against the sky upward to over 13,000 feet. Beyond are the still higher Truchas. To the northwest at a farther distance is the Jemez Range, a blue border on the horizon.

Santa Fe was the first capital in any part of what is now the United States. It had been an Indian capital and the capital of a Spanish Province before the founding of our original colonies in the East. In the famous expedition of Cabeza de Vaca the Spanish had reached this area early in the 16th century, crossing the southern part of the continent from Florida.

The climate is superior, the atmosphere usually clear, fairly free of moisture or dust except sometimes in the spring the winds do stir up a very fine dust. There are gorgeous nights and days — sunsets and sunrises.
The weather is cold in the winter and in the summer is cool in the evening. Usually snow comes early and remains all winter, with the mountains heavily laden. I have always remembered the beauty of my very first impressions, when Mr. and Mrs. Barker met me in the evening at Lamy, where the Santa Fe train paused. The air was the cool air of the nights of late August. As we climbed from the little town of Lamy up the winding road to the higher plateau the stars seemed brighter than I had ever seen; and as we drove on, atop the plateau, the dark hills about were like low scenery footing the great mountains toward which we drove, leaving them unreached, however, before the town itself was at hand, nestled there as it had been over the centuries.

The Sangre de Cristo mountains are so called because at sundown a beautiful red glow is often thrown back and spreads over them to the east and northeast of Santa Fe. This is particularly beautiful and vivid when snow lies on the mountains. As the first Spaniards came up from the south and reached the plateau this crimson glow led them to exclaim, "Sangre de Cristo" — blood of Christ.

There has been a successful effort over the years to preserve the unique architecture of the area, and the adobe construction. This is a variation of the Spanish. It became known as the Santa Fe style which, while basically Spanish, is simpler. The Cathedral, however, is not of this architecture. It was built by the famous Archbishop Jean Baptiste Lamy, who was a Frenchman, the hero of Willa Cather's Death Comes to the Archbishop.

When I was there the Archbishop was Albert Thomas Reiger, a Franciscan. The Franciscans, who have had a large part in the history of the
Southwest, came with the Spanish conquistadores and have remained. They are the priests at the Cathedral, which is the center of religious activity in Santa Fe.

Archbishop Daeger was a simple and beautiful spirit, known to his people as Father Albert. It was my honor to become one of his legal advisers; and after his death I had the responsibility of probating his will. I shall never forget him, and I feel that none who knew him, of whatever religion, shall ever forget him or think of him without thankfulness for his good example and inspiration as a true priest of God. Death came suddenly to him as he opened a wrong door from a sunlit street and fell into a downward stairway when he expected to find a floor at the level of the door.

The community retains a great deal of the old religious customs of Spain and Mexico. The feast of Corpus Christi is celebrated by a procession through the streets, with the Archbishop carrying the Eucharist. There are pauses at specially prepared shrines and altars along the route where the Archbishop blesses the people and they kneel in worship of the Real Presence. I shall not go on to describe other customs and celebrations because they have been the subject of better pens than mine, including those of our good friend Ruth Laughlin Alexander and of Paul Borgan.

2. The Practice of Law in New Mexico

Mr. Barker was the son-in-law of Judge Laughlin and had made his career in Judge Laughlin's office. He had gone into the Southwest on work of the United States Land Office, I believe, and though a native of Washington decided to make his life in New Mexico.

The people of course elect their public officials in New Mexico, in contrast with the District of Columbia. Barker liked political activity.
He became State Chairman of the Democratic Party. After Roosevelt's election and my return to Washington he was appointed United States Attorney and afterwards was elected judge of the First Judicial District which included Santa Fe County. He died only this last year (1953) after some years of bad health.

He was an excellent trial lawyer. We complemented each other, because I think I was a better office than trial lawyer. Our practice was interesting and varied, without specialization, which would have been difficult in a small community, although Santa Fe as the capital drew more legal work than otherwise would have been the case. Our practice included a good deal of title work, often involving suits to quiet title. We handled also some over early land grants made by the Kings and Queens of Spain, involving problems of encroachment and conflicts of title. We were attorneys for one large land grant owned by a New York family. This grant had gold on it but at the time I was there the gold could be recovered only by an expensive placer process which was unprofitable. Our practice also included some criminal cases, particularly several interesting homicide cases. There were also will and probate matters.

When I went to Santa Fe that part of the state was Republican. The Democratic Party kept putting up the best tickets available in state, county and municipal elections, and gradually became the majority party in Santa Fe County. Dave Chaves, the younger brother of Senator Dennis Chaves, was elected mayor of Santa Fe, and he and his council appointed me city attorney. I was called upon to advise the council about all sorts of questions, but the work was not particularly burdensome. I enjoyed this first governmental position in the ancient city of Santa Fe. There were
able men on the city council. One was a prominent doctor in the community, Dr. Robert O. Brown.

Santa Fe did not have public ownership of utilities but the city council was very much concerned with the utility rates. The electric power company, privately owned, was the principal utility. Water was supplied by a public enterprise -- from a reservoir fed by the Santa Fe River in the mountains.

Barker and I opened a branch law office in Taos. We placed Floyd Beutler in charge there. He was a young man who had come out for his health and with whom I had become well acquainted. He was a graduate of Marquette University. Barker or I, sometimes both, went there from time to time, particularly when there was a term of court. Later my younger brother Leo, after his graduation in law at Washington & Lee University, came to New Mexico and joined the office in Taos. Leo did not stay very long. Beutler, however, has remained. In time he severed his connection with us and went on his own. He has become a well known and fine citizen of the community and state.

There was a fair number of lawyers in Santa Fe, but the town was not overcrowded, considering that it was the county seat and State capital. There were about twenty-five lawyers there in those years. Some were very able. They worked hard at their profession notwithstanding the pleasant social life and the activities attributable to the country, with its Indian pueblos and their dances, and the old Spanish customs.

During my last year in Santa Fe I argued several interesting cases in the Supreme Court of the state. One was a fascinating case from a legal standpoint. After her husband had been convicted of second degree murder a
lady came to us one day to appeal the case to the Supreme Court of the State. The accused lived in a very remote part of Rio Arriba County at a high altitude. During a very cold day he had driven with a friend into a community some miles from his home, in the high country of the Truchas Mountains. Another man who lived in the same area had taken up with them and all started back homeward together, travelling the snow covered roads in a sleigh drawn by two horses.

As the story came out later the "other man" began to climb out of the rear of the sleigh and walk, and thus slowed up the homeward journey. Night was coming on. The accused became impatient and told him they were going to freeze to death if they didn't get on home and if he got off again they would just go off and leave him. It was bitterly cold and there was evidence at the later trial that when the survivors reached home they were partially frostbitten.

The next day the United States mailman travelling that route found the body of the other man in the snow, face down along the side of the road, dead. His tracks in the snow indicated he had walked about a mile before he fell down and apparently froze to death. The accused was convicted of second degree murder on the theory that he had abandoned the deceased and left him to die.

In the Supreme Court, I took the position that the trial court erred in failing to instruct the jury on manslaughter, although defense counsel had not requested the instruction. We also argued that in any event the evidence was so uncertain that the jury could not say beyond a reasonable doubt a crime had been committed rather than that death was due to the cold. There was no mortal wound of any sort. There was a little bruise on the
deceased's face, which might have been caused by his fall, and there were some abrasions on his shin which might have been due to his getting in and out of the back of the sleigh.

After the case was briefed in the Supreme Court, another case involving a similar question as to an instruction on manslaughter, originating in another part of the state, was decided by the Supreme Court adversely to our contention. I then communicated with counsel in the other case, explained the situation, and asked that if he filed a motion for rehearing would he mind if I helped him brief the question.

The court granted a rehearing in the other case, changed its views on the legal question, set aside the conviction, and remanded the case for a new trial. Then in our case the court decided that the evidence was insufficient to establish a crime and ordered the accused released on that ground. The court no doubt believed the deceased had frozen to death and was not killed by any act of our client. I have given the foregoing from recollection. Since doing so I have found the citations of the two cases. The "other case" is reported as State v. Diaz, 36 N. M. 284, 13 P. 2nd 883. "Our" case is reported as State v. Hart, 36 N. M. 319, 14 P. 2nd 434.

In the same court that year I presented the case involving the title to one of the big land grants, a contest which grew out of overlapping claims. It was a very complicated question peculiar to the country. The decision is reported as Jackson v. Guillory, 36 N. M. 211, 30 P. 2nd 179, on rehearing after my departure. I also argued and lost a case involving the constitutionality of a gasoline tax imposed by the city.

This appellate work was without the help of a junior.
I cannot say I found appellate work more interesting than trials, but I did find it easier. There's nothing quite as interesting as the trial of a case, which I consider more difficult for a lawyer than most appellate litigation. A good trial lawyer must possess some qualities over and above those needed by an appellate lawyer. He must project his position across the footlights, as it were, to a jury, which is different from presenting legal arguments to other lawyers who have become judges.

As matters turned out, although I engaged in a significant number of trials, I have done much more appellate work. In the appellate litigation I handled for the government I always had able assistants. The amount of original work varied with different cases and different staffs. Oral arguments became eventually perhaps the most interesting part of my contribution and this, whatever else might be said of it, was my own.

As to technique in oral argument, mine went through change. Usually I would not feel safe, and this included cases in lower courts, without first fully writing out the argument. I felt uneasy unless I formulated definitely what I ought to say. I kept to this method of preparation for a long time, but gradually abandoned it, as I gained more confidence through experience, and used notes instead. Another facet of preparation was a very deliberate concentration on "What is the heart of this case?" rather than, "What is this case?" in a general sense. Usually there is a turning point in a case, if one can call it that, a kind of essence. This is not always true, for some cases are too complicated to lend themselves to this appraisal. But quite often there is a core. Once it is found the position becomes clearer, not only the position the court should take but the method of presentation.
While oral argument should be consistent with the brief it should not duplicate it. There is little point to oral argument unless it makes a contribution beyond the brief. It should be a restatement of the case in different form and in a manner to add personal persuasion to that of the printed word. This is the challenge, I think, of oral argument. It affords an opportunity to point up the essence of the case and to remove doubts in the mind of the court. The spoken word becomes a vehicle for an interplay which is often an important part of argument, giving counsel an opportunity to help on matters which otherwise he might not know are troubling the court. For this to be done, however, the court itself must be an active participant, not merely a listener.

There is perhaps a difference in the relationship of an appellate lawyer to the court and that of a trial lawyer. But I would not say it is fundamental, because in a trial there is also the task of aiding the court. If the trial is before a jury the lawyer must aid the jury as well. There is this difference, too, in that appellate litigation creates precedents, whereas in a jury's verdict on the facts of a particular case, especially a criminal case, no precedent usually arises.

3. Indians and Their Problems

Mr. John Collier, who became the first Commissioner of Indian Affairs in the Roosevelt administrations, under Secretary of the Interior Harold L. Ickes, was well acquainted with Mr. Barker before I came to Santa Fe. Collier was the executive secretary of the American Indian Defense Association, devoted to promoting the welfare of the Indians. He was in Santa Fe from time to time, though his home was in California and he lived part of
the time in New York. I became one of his advisers on matters involving
the Indians, including legislation.

An important problem affecting the Pueblo Indians had developed before
I went to New Mexico, but had not yet run its course. These Pueblo Indians
are pretty much where they were when the first Europeans came into the
Southwest, along the Rio Grande and other waterways. They of course had
the first choice of places to live. The Pueblo Indian as the name signifi-
cies is one who lives in a village.

The Spaniards did not try to exterminate the Indians or to drive them
from their homes and adjacent lands. They did assume dominion and granted
areas to the Indians adjoining their Pueblos. These became known as the
Pueblo Land Grants. When Mexico became the sovereign after she reverted
from Spain the Indian situation was not changed. American sovereignty
followed our war with Mexico. Thereafter, Congress confirmed the old
Spanish Land Grants to the Pueblo Indians as community property belonging
to the Pueblos, thus following the Spanish pattern. The individual Indian
would have his own house for his family but the lands were owned by the
community.

Years passed. Individual Indians traded off plots of land. American
or Spanish or Mexican settlers began to stake into the old grants and take
possession of parts of them, often with color of title. This might have
come about by a trade of some sort, either with the Pueblo or with an In-
dian working a particular plot of land. The Spanish or the Mexican family,
or later some Americans, made these places their homes in good faith. They
thought the land was their own. As time went by this created both a legal
and an economic problem. The Indians needed for their own sustenance the
land included in the original grants. The transfers referred to were of questionable validity, so that the non-Indian settler, even if he had something to evidence his title and had been in possession for generations, did not have good title, because an Indian was not *sui juris*; he was a ward of the government and he could not convey away the land.

The situation was confused. Congress took a sensible step in the early '20s, by enacting the Pueblo Land Grant Law. The law created a Board and laid down standards for the Board to follow. Briefly, the law provided that if a settler who was in possession could show color of title and actual possession over a specified period, the Board should confirm his title, but the Indians should be compensated by the United States for the loss of this land. The United States took responsibility because it had not protected the land from encroachment, so the Government would pay the Pueblo the reasonable value of the land confirmed to the settler under the standards of the statute. If the claimant could not show possession and color of title under these standards the land came back to the Pueblo.

It was a sane method of trying to adjust a difficult situation. The Board investigated and held hearings -- a tremendous undertaking. There was a provision in the law that after the Board made its awards the matter should be taken into court as to each Pueblo and reviewed by the court. In substance the court would decree whether the standards of the act had been followed.

Mr. Barker and I were retained by some of the settlers claiming title under the statute. On the whole the decisions of the Board on title were pretty sound in our judgment, in accordance with available information from
old records and from testimony. But the compensatory awards the Board made to the Pueblos were inadequate.

In view of dissatisfaction, primarily in this latter regard, those interested in Indian welfare threatened to upset the whole program by not accepting the results and seeking judicially to overthrow on constitutional grounds all that the Board had done.

It was said that Congress could not take away Indian title even under this statute. Thus there arose a serious threat of protracted constitutional litigation. The whole problem would be thrown back into the unsatisfactory situation preceding the statute, or into a worse state. I did not think this should occur. I felt the program was sound. I felt that the Board, and Collier and his advisers felt this too, had made reasonably good decisions on titles under reasonable standards laid down by Congress. We agreed, however, that the awards were inadequate to recompense the Indians for their losses of land, especially in terms of their needs to replace economically the areas being confirmed forever in others. I suggested that a joint approach of Indians and settlers be made to Congress, to lay the whole matter before the proper committees, and say, "Now, the Board's decisions on title should be accepted. Litigation should be ended, but we can convince you that this Board has not awarded sufficient to compensate the Indians for their losses of land. Additional compensation should be made by Congressional appropriation."

Our Senators, Bronson Cutting and Sam G. Bratton, and Representative Chavez, thought this was sound. The matter was gone into very carefully by the appropriate committees, on the Senate side under the leadership of Senator Cutting and Senator Bratton. Hearings were held in New Mexico and
in Washington. Such an adjustment of the problem was reached; supplementary legislation was enacted; the litigation was ended; the decrees became final; the titles were settled. And Congress increased the amount to be paid to the Indians. Before a subcommittee of the Senate on Indian Affairs, I explained the situation as I saw it and made recommendations for a solution, at Taos, May 9, 1931. See Part 20, pp. 10058 et seq., Survey of Conditions of the Indians in the United States; Hearings, etc., 71st Cong., 2nd Sess., Pueblo Lands Board. I also testified in Washington on both the Senate and House sides. The latter appears, at least in part, at pp. 75 et seq. of Hearings, 72 Cong., 1st Sess., on H. R. 7071 - Document 597.

Former Judge E. H. Benna was the principal attorney for the Indians, a stalwart New Mexican of great stature.

During this period I saw Mr. Collier frequently. His friendship manifested itself in more ways than one. He has been at times a somewhat controversial personality, but he has been devoted to the Indians. I do not know the beginning of his interest in the Indians, whether it was travel and contact with them, when he saw their situation and wanted to help, or whether it was through some other association. He was the spirit behind the Association although there were others of course who also supported it.

At the time of which I speak the Indians though citizens did not enjoy all the rights of citizens. They were the wards of the government, which was responsible for their welfare. This was an enlightened and civilized policy, but many controversies arose over details.

The Indians had a great deal of autonomy within their pueblos. One source of controversy among friends of the Indians turned on whether the Indians should be subjected to the general law in greater measure, or per-
mitted to keep their own police power, as it were, in their pueblos, with their tribal form of government.

Collier promoted and perhaps initiated an all-pueblo council of all the pueblos, which would meet in some central place, usually at San Domingo, to discuss problems mutual to the pueblos, particularly legislative matters pending in Washington. When Collier planned to come to the State it was likely such a council meeting would be called. I often went with him to these meetings. Sometimes they were conducted in three languages. Some of the older Indians used their own language, which varied from pueblo to pueblo. This would be translated into Spanish, which was understood by all the Indians, and then into English. The meetings were very deliberative, with the Indians sitting around the room with their tobacco before them for their cigarettes or pipes. A secretary would keep notes. Sometimes resolutions were passed and given to Mr. Collier, who might be coming back to Washington, indicating how the Indians viewed pending matters.

I was talking just within a few weeks here in Washington to President Eisenhower's Commissioner of Indian Affairs, Mr. Glann L. Emmons of Gallup, New Mexico, on the edge of the Navajo country. Mr. Emmons is a close friend of Dan T. Kelly, a prominent citizen of Santa Fe and an old friend of ours. Dan and his wife had come East for the wedding of their son in New York and then had come to Washington to spend a few days with us. While here Dan got in touch with Mr. Emmons and we had a visit.

Although I have personally not been close to Indian affairs now for many years, I would say that the basic difference of opinion among those interested in them is whether the Indian should be protected in his own culture or whether he should be encouraged to abandon it and become assimilated
into the ordinary American life. This basic problem breaks down into many facets. Collier was of the school which thought there was a great deal to be preserved. But he strove also for their economic, health and educational development. I have myself sympathized generally with this point of view.

There is the important subject of religious development of the Indian. Most of the Pueblo Indians would say they were Catholics, having been converted in earlier years under the Spanish regimes. But with their Catholicism there has been, at least among a substantial number, a retention of a good deal of their own Indian religion. The Franciscan fathers seem not to have conditioned their acceptance of Catholicism upon changing all their customs and practices. They have retained many of their dances of which the corn dance at Santo Domingo is a notable example. I think it can truly be characterized as a prayer for rain which antedates the Christian era in New Mexico.

In eastern United States where the Indian was largely exterminated, we do not appreciate fully the wisdom of the Spanish policy towards the Indian where many still live in the same places their ancestors lived when the Spanish first came with the Conquistadors and the Fathers.

4. Economic Collapse and Political Change

The 1929 collapse affected Santa Fe but perhaps less than more thickly populated areas. There was a good deal of speculation about what should be done, what the government was and was not doing, and there were anxieties as to the future.

I recall no lines of hungry men in Santa Fe, but there were people not able to support themselves, poor people who, through unemployment or illness or old age, needed help. One of the active media of this was the St. Vin-
cent da Paul Society, which made the poor its special solicitude. Then there were the welfare agencies, and the Red Cross, of which I was President for a time, actively functioned. We received and distributed a good deal of "Red Cross Flour."

No doubt we were as well off, if not better off than most places; and we looked upon the situation as temporary. We did not fall far into the gloom, due to the rather simple economy of the area.

There was a growing feeling the administration was unable to do much, was not imaginative or furnishing needed leadership. There was dissatisfaction but a feeling the country would recover.

As to a demand for a change as the 1932 elections approached, of course being a Democrat I was ready for a change before the depression. I could not say accurately from recollection that we sensed in advance the strength of the feeling of need for change that the election of 1932 showed actually existed. As in the election of 1936 when the Republicans carried only Maine and Vermont, I suppose most people might have felt the President should be re-elected, but few sensed that so many felt the same way. This was probably true in 1932.

The bank holiday created inconvenience in Santa Fe but we managed to get groceries and keep things going. The bank was sound. The people were not seriously concerned about it. It closed only as part of the general closure, though a good many other banks in the state never reopened.

I could not say that the Democratic platform in 1932 foreshadowed to me the New Deal to come. I came into the Interior Department from New Mexico thinking of it in its traditional sense as concerned with public lands, oil, Indian affairs, geological survey, reclamation, etc., the De-
partment most concerned with the West and the Southwest. I did not come as a New Dealer in terms of later developments. I do not mean I came as a conservative; on the contrary, but initially my work was the kind one would have anticipated in the legal branch of Interior. Before long, however, I was engaged on quite different problems and never got back to the more traditional ones.

Some inkling of the details of the administration's program came from the campaign. There was a new, more imaginative and more vigorous approach, a more courageous and resourceful effort to solve the country's problems. From the campaign I had no particular conception of a program in terms of the Wagner Act or the Oil Code or the Industrial Recovery Act, for example. There was some forecast of Social Security, control of the stock market, perhaps legislation in connection with public utilities, and other specific matters. Economy also was stressed. But generally I look back upon the campaign as more a forecast of greater imaginative efforts to cope with whatever the problems were, an assumption of leadership rather than drifting and default.

Roosevelt came through New Mexico during the campaign. We went down to Lamy where his train was travelling east. He came out on the rear platform, looking very healthy and in fine spirits. It was the first time I had seen him since as an Assistant Secretary of the Navy he had walked across our airdrome in northern France in 1918, before his illness. Bronson Cutting, who lived in Santa Fe, was at Lamy. The President called to him to come up on the platform with him. Cutting was a Progressive Republican but supported Roosevelt during this campaign. There was a well-defined
rumor the President offered him the Secretaryship of the Interior, but that he preferred to remain in the Senate.

We heard the President over the radio on inauguration day. The reception was a little difficult but we could hear his strong voice, giving his stirring address.

I never expected to return to Washington to live. Collier stopped off on his way to Washington in the spring of 1933 and we talked about who should be Indian Commissioner, etc. There was mention of Iokes. Collier's own interest was unselfish and impersonal. He wanted a good Commissioner and seemed to prefer that some person other than himself be selected. I told him I thought he should make himself available, especially if someone who was not satisfactory seemed to gain strength.

The President appointed Iokes Secretary of the Interior instead of Indian Commissioner. Iokes knew Collier favorably in the Indian work, in which Mrs. Iokes had been active. Other good men were also considered, including James W. Young of Chicago, who I think was not available. Collier was appointed. Nathan Margold, of New York, who had been attorney there for the American Indian Defense Association, which I had helped in New Mexico, was made Solicitor. Harry Slattery, an old classmate and friend of earlier days in Washington, was also brought into the Department. Thus, there were Iokes, Collier, Margold and Slattery, with all of whom I had had some association, key men now in the new Interior Department. They sent word to me they would like me to come too, as First Assistant Solicitor, and I decided to do so.

It was not an easy decision. But it was an interesting prospect, as it seemed to me. And putting all things together, I thought I should
accept. I came on about May 1, 1933, not intending to stay indefinitely in Washington.

I am reluctant to leave Santa Fe among these notes without saying a good deal more. What has been said does so little justice to my feelings for the country, for the personalities associated with it, for its history, and for my friends there of those years and now.

My Mother with Agnes, my future wife, visited Santa Fe in the summer of 1925, a lovely occasion notwithstanding the illness then not entirely remedied. We had our meals at Mrs. Abbott's, whose husband, the Judge, still graced the little household. Mother remained a while longer than Agnes on this visit, and lived part of the time at St. Vincent's, where Sister Genevieve of blessed memory conducted the beautiful work of the institution. At times there came to the Abbott's household Eugene Manlove Rhodes and Paul Morgan.

Phil Stevenson, then my good and kindly friend, had many years ahead before our paths parted so definitely. Dick Riley and our land purchases and friendship are a part of my Santa Fe years, as well as the house for children enterprise in which I was associated with Miss Duggan.

The Barker, Laughlin and Kelly homes, as well as others, come vividly to mind in pleasant and grateful recollection; also, good Father Barnabas, Father Jerome and others at the Cathedral Rectory. Nor shall I likely forget the country ride to Parkview and the days there, studying the water rights case, in the home of the gentlemanly Francisco Lopez, nor the Miguel Chavez, Celestine Romero and Palmer cases.

My sister Sarah came too for a while, seeking to rid herself of sinus. As I have said Leo also came to Taos to start his legal career.
Agnes and I made our first home after our marriage, which was solemnized in Washington, June 28, 1939, on College Street in Santa Fe, in a house rented from Ruth Barker. Mr. and Mrs. Joe Sana were our good neighbors.

April 10, 1930, our first children Charles and Anne Marie were born at St. Vincents, and July 19, 1932, Sarah Agnes, also at St. Vincents. (Dr. Bolle and Dr. Ward. Miss Staples, the nurse.) My brother Joe, who came from Washington to Albuquerque to inspect the new veterans hospital, visited us in Santa Fe about the time of Sarah's birth. Each of the children born in Santa Fe was baptized in old St. Francis Cathedral which I loved, and hope to see again. Memory returns to Archbishop Langer on Confirmation day, speaking first in Spanish and then in English, with the Cathedral crowded with parents and babies, the latter filling the edifice with their voices.

Some good friends no longer live there, Nordfeldt for example, whom we have seen occasionally over the years and whose painting and etchings still adorn our home, together with the lithograph of Ken Adams, the African dunes by Cyril K. Scott, and old Santuario by Joe Bakos.

I add a word in tribute to Charlie Eckert and his work among the poor of Santa Fe.

Both Dick and Lewis Ellay have gone beyond. In contrast, we recently met Ian Kelly's infant granddaughter, Susan, at the airport here, on route to Maryland to visit Susan's grandmother.

I have not mentioned Senator Hatch, but I should. He always stood for me in the years ahead, and when I was leaving the Government in 1947 kindly spoke of me on the floor of the Senate.
I came on to Washington alone. Agnes came with the children some weeks later, not an easy trip. And here we have remained, though many memories carry us back to the time and the place we first made our home.

In Ames the Store had some bad times during the depression. Borrowing to the hilt was necessary; but with Duke and Albert at the helm, and with Mother's help and encouragement, the old store rode out the storm.

Department of the Interior, Washington

As First Assistant Solicitor in the Interior Department my duties included Indian affairs, questions arising in the General Land Office, the Reclamation Service, the Geological Survey, matters affecting mining locations, oil leases, and the like, and an occasional problem in the National Park Service. Soon, however, under the impact of the legislative program of the President, the traditional character of Interior changed. Secretary Ickes was put in charge of the public works program; but we of the Solicitor's staff had little to do with this, advising the Secretary only occasionally in the formative period of this program. Mr. Edward H. Foley, later Under Secretary of the Treasury, was general counsel for P. W. A. There were other activities, including new grazing legislation which became a significant development for the cattle country, and in a minor fashion, we helped somewhat Dr. Arthur Morgan and Mr. David Lilienthal in the planning stages of TVA.

I was not deeply involved in the opinion affecting Elk Hills, or Section 36, but reviewed the opinion before it was issued. It was prepared principally as I recall by Mr. Telford Taylor, with Solicitor Margold giving much personal attention to it. Review of orders withdrawing public land from entry, and those affecting reservations, might also be mentioned.
1. The Petroleum Administrative Board

The summer of 1933 was the most active period in the short life of the National Industrial Recovery Act, under which General Hugh Johnson was formulating codes with industry. One of the most important codes was that of the petroleum industry. The President selected Secretary Ickes to administer it. This was the only code for a large industry administered outside the Recovery Administration itself.

Secretary Ickes decided that a group in the Solicitor's office should be his right arm in administering the Code. He created the Petroleum Administrative Board, with Margold as Chairman, myself as Vice Chairman and Howard Marshall, Norman Myers, John W. Frey, and Nivard B. Swanson as members. Dr. Frey and Mr. Swanson were oil experts -- Swanson, of Interior, one of the country's foremost in production, and Dr. Frey, a like authority in marketing as well as in other branches of the industry. Marshall and Myers, although they had had little practical experience in the oil business, had made some special studies. I had no experience of any significance in the industry, and I believe neither had Margold.

In the formative period of the Code, during the summer of 1933, with some indication that perhaps it was to come to Interior, we had assisted the Recovery Administration, particularly with respect to the production control provisions. The Code which also contained detailed marketing and refining provisions, was an effort on the part of the industry, in collaboration with the government, to eliminate unfair and undesirable competitive practices. It was designed to stabilize the industry, then in a somewhat critical condition. This condition grew out of trade practices in part, but primarily was due to excessive production which flooded the
market with crude oil, particularly "hot" crude oil, principally from the east Texas oil field, where it was produced in violation of quotas prescribed by the Railroad Commission of Texas, the State regulatory body. This "hot oil" undermined the price of crude, with repercussions throughout the industry. The National Industrial Recovery Act contained a special provision, Section 9 (c), designed to give the federal government control over "hot" oil. It provided in substance that the President could prohibit the transportation in interstate commerce of oil produced in excess of the amount authorized by state regulatory laws. One of our problems, paralleling the administration of the Code, was to enforce this provision of the Act.

There was also some gradual improvement in general conditions, but I think the administration of Section 9(c) and of the Code, in collaboration with the Planning and Coordinating Committee of the industry helped materially.

Under the Recovery Act a violation of a Code provision was a criminal offense. In addition, there was administrative enforcement through the so-called "Blue Eagle," which I think played a significant part. But I cannot give a very fair appraisal of the "Blue Eagle." Perhaps it was not particularly important in the oil industry. I do remember that General Johnson and his administrators attributed a good deal of importance to it in general. There were parades in every town, and people became Blue Eagle conscious. It was a very unusual period. But it became unusual because conditions were so desperate.

Compliance and enforcement were also obtained by provisions in government contracts. And there was policing of Codes by industry, which was persuasive but without the sanction of penalties. Enforcement efforts were
also made at times in the courts, by suits in equity to restrain violations, and by criminal prosecutions. I believe I argued the first case to restrain a code violation, here in the Supreme Court of the District of Columbia, before Justice Adkins.

The "hot" oil problem was stubborn. It was difficult to devise a method of preventing its interstate shipment. We struggled and experimented. Finally we formulated the "Tender Plan," under which, in simple terms -- although administration was complicated -- the transportation could be prevented unless the oil was accompanied by a so-called tender, or permit, which had the approval of a tender board set up by the government in east Texas. This system actually became effective and "hot" oil was brought under control.

Parallel with these efforts litigation arose in east Texas and in the District of Columbia over the validity of Section 9(c). I defended the first case before Justice Cox here in the District of Columbia. It was under the Recovery Act, filed by the Panama Refining Company against the Secretary of Interior to enjoin the enforcement of his regulations under Section 9(c). Plaintiff contended this provision was an unconstitutional delegation of legislative power to the executive. Justice Cox denied the injunction, but as we shall see this was not a permanent victory.

Subsequently, the same and other companies instituted similar litigation in the United States District Court in east Texas, some of which eventually reached the Supreme Court. The Supreme Court declared Section 9(c) to be unconstitutional, with a dissent only by Justice Cardozo. The basis for the decision was lack of adequate standards prescribed by Congress to guide the executive, the legislation thus amounting to an unconstitu-
tional delegation of legislative power. *Panama Refining Co. v. Ryan*, 293 U. S. 386 (1935). I have always thought that the dissent was sound.

In the meantime, having worked out this tender board plan, which was successful, we now asked Congress for legislation to replace Section 9(c) of the Recovery Act. In response Congress passed the Connally Act, so called because sponsored by Senator Tom Connally. It was an adoption of the tender board system. It was enacted originally as temporary legislation, but I believe has become part of the permanent law of the United States.

Going back to the "cold" as distinct from "hot" oil, my own part took a turn. Margold concentrated more and more on the general legal work of the Department and I on oil Code and Connally Act problems. So it was decided I should become chairman of the board, and I was in that position and for some time had been devoting most of my time to oil, when the *Schecter* case was decided in 1935, ending all codes, 295 U. S. 495 (1935).

In the meantime I think it fairly should be said the oil industry reached a degree of stability. Certainly at the time of *Schecter* the industry was much better off than when the Code was adopted in 1933. It must be remembered that the purpose of the Code provisions of the National Recovery Act was to assist in rehabilitating industry, which was in great distress.

The period was one of great effort throughout Washington. Tremendous energy, without regard to personal comfort or hours of work, was expended by government personnel, and also by industry. The pace of Interior was stepped up appreciably because of new responsibilities and the effort to
improve economic conditions. There was unsparing use of time and ability, with ready access to the Secretary and, when the occasion required, to the President.

I remember well one conference with the President which Mr. Idaho recently published Secret Diary, Vol. 1, p. , mentions very accurately according to my own recollection. The fixing of a minimum price for crude oil was being seriously considered. The matter was discussed with the President when he was about to leave town for some purpose. The conference was a satisfactory one. The President gave us his approval if we thought price-fixing both necessary and legal.

In his consideration of a complex problem like this the President made a deep impression on me. I marveled at his grasp of our particular problem, knowing how many others he was coping with at the time. He was not hurried or harassed. Everywhere in Washington there was hurry then, except at the President's offices. There one seemed to move into a different atmosphere, quieter and with better organization. One felt an assurance the President was equal to his task, willing and able to make decisions, using available help but not failing to assume responsibility, creating confidence in his ability to manage the great office.

I do not remember that the President commented on the Supreme Court after the Panama decision, as he did after Schechter. He was probably not troubled about the Court, for Section 9 was only a segment of the Recovery Act, and no doubt we were able — although I do not remember this particularly — to reassure him, if he was concerned, that the situation could be remedied, as it was by the Connally Act.
There was some relationship between our Board and Donald Richberg, Blackwell Smith and others in the legal section of NRA, but it was limited after the President approved the Code and Secretary Ickes became its Administrator.

It was inevitable that the validity of the codes would be tested in court. We felt that the Petroleum Code was the most favorable vehicle for this test. Primarily the authority of Congress to authorize the codes rested upon its commerce power. The petroleum industry as a whole and in its parts was to a great extent an interstate industry with a tremendous interstate flow of oil and its products. The Smith case, in east Texas, involved a violation of the production provisions of the Code. It had been decided by the District Court there in 1934, as I recall, and could have gone directly to the Supreme Court, as we thought, under the criminal appeals statute. We recommended to Attorney General Homer Cummings that he use the case for testing the constitutional questions of the Recovery Act. He called a conference in the old Department of Justice on Vermont Avenue.

Present were Senator Robert Wagner, the legislative author of the Recovery Act, Mr. Jerome Frank, who was then, I believe, general counsel of the AAA, General Johnson, Mr. Richberg, Mr. Harold Stephens, who was then head of the Anti-trust Division of the Department of Justice, Solicitor General Biggs, Roosevelt's first Solicitor General, and Wargold, Marshall, Myers and myself from Interior. Maybe Mr. Blackwell Smith was there, and I may have overlooked someone.

We discussed litigation policy, and our recommendation was not followed. The Attorney General was very thoughtful and considerate of our views, but did not agree. General Johnson himself, as I recall, made no
definite suggestions, preferring to leave the matter to the lawyers. Senator Wagner took pretty much the same position. The general feeling was that it was better to let the codes operate longer and gain more public acceptance before carrying to the Supreme Court the constitutional litigation. I thought this was a wrong decision.

When the Schechter case came on we felt that our views obtained some verification. The delay put the control of the litigation in hands other than the government's. The case reached the Supreme Court under unfavorable litigation circumstances, notwithstanding the government had prevailed in the Circuit Court. I must add, however, that the same result might have come about in any event. One cannot say that in the end the litigation policy we preferred would have been successful, or would have benefited the country more than eventuated.

After Schechter the work of the oil administration was largely a clean-up and recording task, and a continuation of the control of "hot" oil in east Texas, which was not affected by Schechter.

The Amason case, as well as the Panama case under Section 9(e), reached the Supreme Court before Schechter. Amason arose in east Texas under the production provisions of the Code and came to the Supreme Court from the Circuit Court of Appeals for the Fifth Circuit. But in the Supreme Court, in contrast with the course of events in the Circuit Court, where the government had succeeded, the case was not decided on constitutional grounds but on the ground that there had been an amendment to the Code relating to production which omitted a provision in the original Code deemed essential to judicial enforcement of the production controls. Panama Refining Co. v. Ryan, Amason Petroleum v. Ryan, 293 U. S. 388 (p. 260).
I think I should say that we in Interior, who were responsible for the drafting defect involved, thought the case was not properly presented. It was our view that as a matter of statutory construction the so-called "missing" paragraph was not missing at all but remained a part of the Code in the amending process, as reflected in the copies of the Code in use. We felt that, along with full disclosure to the Court of the accurate facts about the matter when awareness of the problem arose, the case should have been strongly presented on the theory that the enforcement provision had not been omitted or repealed by the so-called "omission." I thought that our research, the benefit of which we gave the Department of Justice in a memorandum, warranted this position. But again our views were not accepted by the Department of Justice. The establishment of the Federal Register largely grew out of this incident, and Honorable Harold H. Stephens, later Chief Judge of the United States Court of Appeals for the District of Columbia Circuit, is entitled to great credit for that excellent development.

After Schecter there was consideration of amending the Recovery Act to provide better tools with which to police the problems it sought to solve. There were conferences at the White House, which included us, about a new statute, drafts of which were prepared by the Recovery Administration.

I think it is fair to say in appraisal of the legal questions of the period that thoughtful lawyers were troubled about the ramifications of the codes, and doubted that all of their provisions could be sustained under the Commerce Clause. There was also questioning, though perhaps less, about whether the statute set up sufficient standards to guide the executive in formulating codes. There was a belief that if some details of the statute and codes could not be sustained the statute as a whole need not be condemned.
The real reason for the details in the Petroleum Code was not primarily that the government wished to go so far, but that industry wished to do so. Even if many of the condemned practices could not validly be prohibited by law, the industry wished these details as guides to fair practices.

The code effort -- this is likely to be forgotten with the passage of time and all that has occurred since -- was in good part one of industry itself (with exemptions from the antitrust laws and assistance from government) to rehabilitate itself and to eliminate practices it wished to be rid of. As conditions improved, industry became more self-confident, and more conscious of possible disadvantages of close collaboration with government. Industry became fearful this would lead to more control than was desirable. It began to draw back. At the time of Schechter I suppose it is fair to say that instead of the codes having obtained greater public acceptance, as was hoped for at the litigation conference with the Attorney General, they had become less popular with industry and the country as a whole. With improved conditions, industry was more willing to stand again on its own feet.


The collective bargaining provision of the codes, Section 7(a), should be mentioned as of lasting significance. Coming after the experience gained during the First World War and under the Railway Labor Act, this provision had permanent influence. After Schechter, Congress passed Joint Resolution No. 44 as a "holding" provision to protect collective bargaining and employee self-organization. And on July 5, 1935, the Wagner Act itself became law.

I think Section 7(a) was reasonably effective in the petroleum industry. A separate auxiliary board in the Petroleum Administration administered this provision, under Dr. William Leisserson, an eminent man in the field of
labor relations who later became a member of the National Labor Relations Board. He had gained prominence in railroad labor work, and also as impartial arbiter of the garment industry.

I am not very definite in my recollection about the oil industry's attitude towards Section 7(a). I believe the industry was relatively friendly to it and that collective bargaining gradually increased among the oil companies. Later, however, some very trying labor situations arose in segments of the industry.

3. Harold L. Ickes

Mr. Ickes gave great responsibility to the group of which I was a member, trusted us, and looked to us for assistance and advice. We responded and there grew up a fine relationship. We could see him whenever we wished. From time to time there were rough spots in the Department. The Secretary had rehabilitated Mr. Louis Glavis, as is well known, and had brought him into the Department, where he became a sort of supersleuth. We thought at times the Secretary was giving him too much authority. But the problem worked itself out in time, and I only mention it in passing.

Ickes, as is well known, was a tremendous worker, unsparring of himself. He was devoted to the President — notwithstanding some comments in his diary which, considered alone and taken out of full context, are critical. I am sure he had a true fondness for the President, who placed so much responsibility on him.

Ickes had a common touch and was acutely outspoken at times. One could not well agree with everything he did or said. But I admired and liked him, and left the Department with regret and with gratitude for having been able to work with him. Some years later he recommended me to the
President for appointment to the Supreme Court when it seemed that Mr. Justine Murphy might resign. I never knew about this until I read his diary published many years later, "The Lowering Clouds," p. 541. I wrote him then and had a very friendly response.

Ickes was very anxious to have Agriculture, as well as Interior, reorganized. He wanted things to be in Interior which were in Agriculture. This was a source of conflict. And he was a showman, reflecting perhaps his newspaper background. I think this influenced his methods in controversy. But I would not say he was undisciplined. I think he knew what he was doing and was deliberate about it. He was a great defender of the Department and its personnel. At times this caused battles with others -- for example, his defense of E. K. Burlew. One gets an inkling of that in the diary, but we knew it at the time. Since our oil administration was never under serious attack there was no particular occasion for him to defend us in the same sense. But we knew he would do so in case of need. He was proud of his organization and stood by it. Of course he demanded loyalty, but not more than he should; he was, too, "Honest Harold." He had oil, and billions of dollars for public works to spend, and he was determined there would be no scandal.

Once our oil group went to him in protest that Olavis was tapping our telephone wires. Our offices were located then in the old Lemon Building across the street from the main Interior building. We wanted him to stop the nonsense, as we saw it. But Ickes said that Olavis tapped his wires, and as long as he permitted this he did not think we ought to object. He would not give us any satisfaction. Later on, though, he realized there was too much of that sort of thing and put a stop to it.
I found him a friendly person, but with strong feelings about people and things. He was sometimes unpredictable. He would be asked, for example, as Administrator of the oil code to give an address at some important meeting in the oil industry. He was liable to do exactly the opposite of what one might expect. He was extremely independent and individualistic, yet an excellent administrator, devoted to his responsibilities and determined to see that he got the work done as well as he possibly could. He was certainly not careless even if unpredictable at times.

After I had left Interior Secretary Ickes asked me about my old friend John J. (Jack) Dempsey, as a possible Under Secretary. I gave him a good recommendation. I am sure my own favorable comments were not controlling as Dempsey stood well on his own feet but the Secretary did wish my opinion.

Notwithstanding I saw a great deal of him I never knew the Secretary was keeping such a voluminous diary as later was published, though I probably knew he was keeping memoranda.

I saw Mr. Ickes at Georgetown Hospital not long before he died. Though in his last illness he was very alert and mentally energetic. Mrs. Ickes had called me. There was a current matter he wished to talk over with me. I gathered an intimation then of his diary, by a remark he made that a certain matter was not mentioned in it. I am glad to have had this last visit with my old friend. Very soon death removed him from the scene where he had played a very individualistic and helpful part — a strong and courageous American when strength and courage were needed.

Nathan Margold remained some years as Solicitor. He was an able lawyer and a fine person. Not relishing a return to private practice he hoped for
judicial appointment, in which ambition Secretary Ickes supported him. After some years Margold was nominated by President Roosevelt for a United States District Judgeship in the District of Columbia, but his nomination was not reported out by the Senate Judiciary Committee before Congress adjourned and was not sent down again. He later accepted appointment, for which he was confirmed, to the Municipal Court here. I strongly supported him before the Senate subcommittee for the District judgeship. He was well qualified for high judicial office but labored under the handicap of some misunderstanding of his personality, due to individual characteristics which had no relation to his honesty, ability, integrity or high moral character. He died some years ago, still a young man.

I have not seen Collier much in recent years, I regret to say. He remained as Indian Commissioner for some time but has more recently devoted himself to ethnic activities of a broader scope, though I am sure, still alert to the welfare of the Indian. Perhaps it was he more than any other one person who was responsible for my joining the legal staff of Interior in the Spring of 1933.

Published opinions of the Department of the Interior, July 1, 1932 – September 30, 1934, are in Vol. 54, Decisions of the Department of the Interior, published in 1935.

My wife came to Washington with Charles, Anne and Sarah about two months later than I, in early summer, 1933. We first took a furnished home on Oxford Street in Chevy Chase. This was sold during our occupancy and we moved into the Valley Vista Apartments, thence to Courtland Place, and after that, in 1935, to Military Road, since which time we have lived in Blessed Sacrament Parish. About 1937 we bought 3700 Northampton Street, and in
1947 our present home, 5500 Chevy Chase Parkway. Our youngest child, Mary Agnes, was born in Washington in 1938. Our four children, Charles, Anne Marie, Sarah Agnes and Mary Agnes, had their entire primary and grammar school education with the Holy Cross Sisters at the school of the Blessed Sacrament Parish. Monsignor Smyth was Pastor until his death in May, 1951. We became good friends and I was devoted to him. Upon his death we formed a Committee to raise a parish memorial fund in his honor. The bronze plaque in the rear of the Church, and the fine bronze bust of Monsignor in the school, are the result. In addition, we gave about $7,000 to the Archbishop for the library at the new Archbishop Carroll High School. Monsignor Smyth was a remarkable man. He loved God, was a builder, a true priest and our untiring and faithful Pastor.

My work took me out of town now and then during the early period in Interior, to Tyler, Texas, or Houston, on a case in court, or on some phase of "hot" oil. In Washington itself the hours of work were long and I was not able to have dinner regularly with Agnes and the children. Nor was Saturday a free day then. In the summer we began to go to the beach, once near Wildwood, once or twice to Bethany, more often to Rehoboth Beach. Agnes, the children and I liked this very much. At Rehoboth the children had their young friends visit with us at times. We had a cottage, usually for a month. Those were happy days vacationing together.

My brother Joe and his family were in Washington, Joe in the construction engineering branch of the Veterans Administration; and Leo and his family were here then too. And Agnes' mother and father were still living and her sisters and brother were in Washington.
My mother died February 10, 1934, at the old home in Rome in the 74th year of her life. She died peacefully while sitting in her rocking chair in her lovely room on the second floor, one window facing east and another south, high above the ground with a soft, beautiful view. Mother had visited us a few months before, when we were at Valley Vista Apartments. She made the rounds, as it were, of her children away from home, and then went home to go from there to her reward. In her later years she had seen her children settle into their own lives. Her anxieties accordingly lessened, though they never completely disappeared I am sure. She had constantly kept in touch with us all, by faithful letters and occasional visits. The tranquility and beauty of her elder age were enhanced by her surroundings in Rome, where Duke, Janie, Albert and Sarah, to mention only her children there, evidenced their devotion to her, and she continued to receive the love and its outward evidences from all of us who were away, though in my case not enough. She remained active and in very good health until the last. As her cares decreased there seemed a noticeable ability to turn more fully toward God and eternity. Here was a beautiful Faith manifested in a beautiful life. She assumed so well the burdens of a good mother to a large family, and took the lively interests of a good citizen in the life of the community and nation. She was devoted to my Agnes and Agnes to her. I know she was a happy mother when Agnes became my wife. Her own life is recorded in imperishable language among the immortals of very, very special quality, and in the memories and hearts of her children and countless others who knew and loved her.
NATIONAL LABOR RELATIONS BOARD

1. Appointment as General Counsel

In late August 1935, as I recall the time, Calvert Magruder, with Thomas Emerson, came to see me at the Petroleum Board and asked me to consider becoming general counsel of the National Labor Relations Board under the new Wagner Act, which had been approved by the President July 5th. I had not before met Magruder personally. He had been general counsel of the Labor Board set up under Joint Resolution No. 44. The Board had been composed of Francis Biddle, Lloyd Garrison, Harry Mullis, and others. Magruder wished to return to his teaching at Harvard, and was undertaking to obtain a general counsel for the Wagner Act Board then being organized. Paul Hersko, who had been with us on the Solicitor's staff in Interior as a dollar-a-year-man from law school, I learned had recommended me to Magruder. Hersko later became chairman of the New York State Labor Relations Board and, later still, chairman of the National Labor Relations Board itself. I have some idea too that Charles Wyssanaki, then Solicitor of the Department of Labor, now an eminent Judge of the United States District Court in Boston, also recommended me, but I am not certain.

This interested me and I took the matter up with the Secretary. He said that if I wanted to go, all right, but I felt he would like me to remain. I conferred with the Board, and met them for the first time J. Warren Madden, who had come on to Washington to be its chairman. The other members were John M. Carmody, who did not remain very long, and Edwin S. Smith. I took the position in September 1935. Magruder, a good friend over the years, was himself called back to public service a few years later to ini-
tiate the administration of the Fair Labor Standards Act, as general counsel. Afterwards he was appointed to the Circuit Court of Appeals for the First Circuit, of which he is now, and has been for some years, the distinguished Chief Judge.

The Wagner Act put into effect very salutary legislation for the country as a whole, though it was built primarily around the protection of certain fundamental rights of the working people. I was gratified in studying the Act to find how well drafted it was.

Senator Wagner had been its principal legislative sponsor, with Congressman William Connery of Massachusetts. Wagrader had helped in the drafting, as had Leon Keyserling, then on the staff of Senator Wagner and years later President Truman's economic adviser. A young lawyer, Phil Levy, also then with Senator Wagner, had materially assisted. The reports of the committees of both the House and Senate which accompanied the bill onto the floor contained explanatory data helpful in understanding the statute and its underlying constitutional basis.

When I was approached to become general counsel the Board had not begun to function. There was a holdover staff from the pre-Wagner Act boards, including administrative and legal personnel, of whom Emerson was one.

2. Rules and Regulations of Procedure

The members of the old staff were anxious to work out with me rules and regulations to afford the Board the best possible chance of success in the forthcoming judicial tests of our methods of procedure. The Board held no hearings until these procedures were adopted and put into effect. Notwithstanding the history of the Act and of the Board, which must be de-
scribed as one of tumultuous opposition, our rules of procedure were found to need little improvement as time went on.

The legal staff worked in close touch with the Board. Chairman Madden, who was himself an able lawyer, was especially anxious to know what was going on in the whole organization, and to be closely advised and consulted as to steps leading to the beginning of active operations.

We had to think out as best we could the kind of material to be put in evidence to support the constitutional application of the Act in particular cases. After the Schechter decision, and the general trend of Supreme Court decisions, we knew we had an uphill fight to sustain the application of the Act to industry generally. But we felt that Congress had intended it to apply wherever substantial interstate commerce was involved. And so we must try to build records which would convince the courts factually of the impact of the unfair labor practice on interstate commerce in the particular case.

There was also the due process issue; but I felt the evidence on this issue was largely susceptible of judicial notice, including statistics of strikes and their causes and the history of self-organization and collective bargaining.

One of our earlier problems also was to devise types of orders to afford proper relief, for example in a company union case, or in case of a discriminatory discharge, with or without a strike. We were not bumbling, because predecessor boards had made progress in this direction, and we had the old landmark case of the railway clerks under the Railway Labor Act, in which Chief Justice Hughes wrote the majority opinion of the Supreme Court, see 281 U. S. 584.
3. Hearing and Injunction Litigation

The Board did not drift. It was alert and alive. When we had our procedures outlined, and our methods of conducting hearings formulated, the Board called its first hearing in Pittsburgh. The Board conducted the case itself, rather than by a trial examiner. This was the Pennsylvania Greyhound case. It furnished a good test for the application of the Act in the field of interstate transportation. As a matter of fact, however, the case got badly bogged down, largely because after the Board decision we took it into the Circuit Court of Appeals for the Third Circuit for enforcement, and that Court unduly delayed its decision, so that the constitutional tests had to move forward in other cases.

Through regional offices, each having a regional director, a regional attorney, and investigators, hearings began to be called on Board complaints issued after investigation of charges filed by unions or employees. Then the injunction litigation against the Board and its agents moved into action. It spread all over the country. Employer respondents to Board proceedings would go into the district courts of the United States to enjoin the hearings, claiming the statute was unconstitutional and that since the proceedings would cause irreparable injury through disrupting labor relations, causing inconvenience and expense, etc. etc. we should be enjoined.

We adopted a consistent policy of fighting each case, rather than carrying through a few test injunction suits with a suspension of operations pending their outcome. We went into the district courts wherever a suit was filed and met it by filing a motion to dismiss, if that seemed appropriate, or by answering the rule to show cause if one had been issued. We appeared and undertook to convince the district judges in each instance that we
should not be enjoined. Congress by the statute had provided a completely adequate administrative procedure, with judicial review of Board action in the circuit court of appeals after the Board had decided the case on the record made before it. So we contended that constitutional questions should not be fought out through disruptive injunction litigation, but under the procedure provided by the Congress.

The result was successful. Most of the district courts throughout the country, on the basis of careful legal arguments, denied injunctions and permitted Board hearings to proceed. If we lost in a district court—which was not often—we pursued an appeal to the circuit court of appeals. The total number of injunction cases finally disposed of was about one hundred. With perhaps one ambiguous exception in the eighth circuit, I believe all eventually were disposed of favorably to the Board, most of them before the Supreme Court had sustained the constitutionality of the Act itself.

We moved along toward the Supreme Court with certain cases decided by the Board on records made at hearings under our procedures. While this was going on, the Supreme Court consistently stayed clear, by denying certiorari, of the injunction litigation. This was the position we urged, so as to reach the Supreme Court for our constitutional tests under the statutory procedure. The Solicitor General, Robert H. Jackson, adhered to this litigation policy of the Board. We thought it was due the statute and Congress that the constitutional questions should be decided in the manner the statute outlined, on the record made before the Board, not through abortive injunction litigation.

During all this period we were faced with a strong legal attack, sustained in part by a brief of fifty prominent members of the American bar.
They circulated a careful and lengthy brief, contending that the Act was unconstitutional. This brief became available against us throughout the country. I have always considered this particular campaign against the statute, in the form of a brief not filed in a case, of very questionable professional propriety. Yet the brief was signed by men of the highest standing at the bar. I make no general criticism of these lawyers. This was a particular aberration, as I saw it, of special and limited character.

4. The Constitutional Tests

A case arose in the Jones & Laughlin Steel plant in Pennsylvania, a huge interstate operation. It received ore and raw materials from out of state in huge quantities and shipped its products all over the United States. The case would furnish a fair testing of the application of the statute to manufacturing on a large scale, where the industry itself had national ramifications. We moved it on as well as we could toward the Supreme Court. Another case arose in Ohio, at the plant of the Frenhauf Trailer Company, also a large manufacturing operation but not as huge as Jones & Laughlin. There was a third manufacturing case, Friedman-Harry Marks, a clothing manufacturer in Virginia, sometimes referred to as "a little manufacturer," but employing about eight hundred people. It, like Frenhauf and Jones & Laughlin, drew its raw materials from across state lines into the plant in Virginia and shipped its products extensively in interstate commerce. These three cases became the vehicles for the constitutional tests of the application of the Act to manufacturing.

The well known Associated Press case, growing out of the discharge of an employee named Morris Watson because of alleged activity in the News-
paper Guild, was to test the application of the Act to a large interstate communication enterprise, with news gathered from all over the world and disseminated to like extent. This left transportation. We had hoped the Pennsylvania Greyhound case would move along, but, as stated, it was left undecided in the third circuit. In the meantime another was available involving a bus line out of Washington into Virginia, a smaller operation than Greyhound, but it became our transportation test case. Thus, we furnished the Supreme Court the opportunity for a broad review of the constitutional applications of the statute.

I might interpolate here a little incident about the Pennsylvania Greyhound case. Mr. Robert Watts, associate general counsel of the Board, a very able lawyer, particularly competent — although not so limited — in trial work, presented the evidence before the Board in support of the complaint. When the Board had made its order requiring certain affirmative action to be taken by the company, including reinstatement of some employees, the record was filed with the Circuit Court of Appeals for the Third Circuit for enforcement, Mr. Watts and I in due course went up to Philadelphia to argue the case. The court was composed of Presiding Judge Joseph Buffington, Judge Victor Woolsey, and Judge J. Warren Davis. Judge Buffington was then I think in his eightieth year, and was somewhat hard of hearing. In any event, when I stood up in the fine old courtroom to begin the argument, the following, substantially, occurred. I said that the case arose through legislation enacted under the commerce clause of the Constitution. Judge Buffington interrupted me and, leaning a bit forward across the bench, said, "What's that?"
I said the case arose under the commerce clause of the Constitution. He said, "Do you have it?"

I said no, I did not have a copy of the Constitution with me, but I referred to its position in the Constitution. He said, "Where is it?"

I repeated, "Article I, Section VIII, clause 3."

He then said, "Well I have it."

Thereupon, he took from the bench or from his pocket -- I'm not sure which -- a nice little booklet containing the text of the Constitution, sub-divided rather plainly into its different articles and sections. And he handed it to me across the bench and asked me to point out the clause. I took the little book and found the commerce clause and handed it back to him pointing to the clause, and said, "There it is."

He then leaned back and somewhat audibly read the commerce clause: "To regulate commerce with the foreign nations, and among the several states and with the Indian tribes." Then he said, "Are there any foreign nations involved?"

I said no.

He said, "Are there any Indian tribes involved?"

I said no.

He said, "It must be commerce among the several states."

I said that was correct. He then asked what this law had to do with commerce among the states. I then proceeded with my argument without interruption and with apparently very close attention.

I was never quite sure why Judge Huffman went through that little performance with me. One might speculate about it.
The Associated Press case came up through the Second Circuit, and Jones \& Laughlin through the Fifth. Normally it would have been taken to the Third Circuit but the company did business in New Orleans, and because of the delay we were experiencing in Pennsylvania Greyhound we did not go there. Freuhauf was in the Sixth Circuit, and Friedman-Barry Marks in the Second. This company did business in New York. Although normally the case against it would have gone to the Fourth Circuit, we had a choice and wished to have a manufacturing case before the Second Circuit.

Hearings were held and decisions made by the Board in many other cases notwithstanding the injunction litigation.

The principal arguments against the constitutionality of the statute were twofold. First, it was said Congress attempted to cover too much and had exceeded the commerce power even if a statute of more limited application would have been valid. A more difficult question, as it seemed to me, was whether the relationship of the condemned unfair labor practices to the protection of interstate commerce was too indirect or remote. The argument that it was gained support from Schechter, recently decided. Under our dual system of government, federal and state, the courts must keep the balance between what is local and what is national, what is interstate and what is interstate. It was contended that the regulation of unfair labor practices, having to do with an employer's immediate relations with his employees, whether he could discharge them, for example, for union activity, was in the local area. Even if the chain of events might eventually have interstate repercussions it was said this was indirect and too remote to come within the federal commerce power.
The feeling varied within the Board organization as to whether we had a good chance to sustain the statute in its application to manufacturing, mining, and the like, which was essential if the statute was to have a broad area of operation. I was fairly confident in situations where the manufacturing concern, as is generally true, either drew its supplies or shipped its products from or in interstate commerce. But due to the recent decisions in Schechter, Saffey, and Railroad Retirement this was by no means the dominant view of our lawyers.

I thought Schechter dealt with a different problem. There was no strike there actually interrupting interstate commerce. Saffey was closer to our situation. But we took hope from the fact that Chief Justice Hughes did not join in the majority opinion in Saffey. The difference between his views and those expressed in the Sutherland prevailing opinion was, I felt, indicative of the difference the Chief Justice might feel between the Coal Act and the National Labor Relations Act. I also had some hope that Justice Van Devanter might be with us, because of his earlier decisions, particularly in the employers' liability cases. During a good part of his tenure on the Court he had taken a broad view of the commerce power. I won't speculate further about members of the Court, but I did feel confident of our constitutional argument. I thought our position would be accepted as a logical consequence of the better precedents, including the Coronado Coal and Bedford Stone Cutters cases, read with some of the views expressed in Stafford v. Wallace and Chicago Board of Trade v. Olsen, though I did not expect to win on the so-called "stream of commerce" theory of Stafford v. Wallace. But some of the statements of the opinion in that case as to the
federal power to control local activities were applicable to our situation; that is, it is not decisive that the matter regulated is local if its impact is interstate.

Mr. Stanley Reed was Solicitor General, with an able staff, including Mr. Charles A. Forsky and Mr. Henry W. Hart. Mr. A. H. Feller was borrowed from the Antitrust division of the Department of Justice and Mr. Charles Wyzanski from the Department of Labor. We had an able group too, some of whom I will refer to later. And our economists gave valuable help, as they had in earlier stages of our hearings and litigation, under Dr. David A. Sapsis.

The Supreme Court granted certiorari in the five cases I have mentioned. In the manufacturing cases, Jones & Laughlin, Friedman-Harry Marks and Frankhauf, a difference of opinion arose between the Solicitor General's staff and ourselves as to the briefing of the cases. One school of thought was of the view we should strive to win Jones & Laughlin, thereby gaining the application of the Act to very large manufacturing enterprises, but that if we pressed strongly for Friedman-Harry Marks the Supreme Court might well accept the argument of our opponents that, as the Government interpreted the law, the Congress had overreached its commerce power. Frankhauf lay somewhere in between.

We would not accept this view, believing it to be inconsistent with the Congressional intent. I thought also that it did not make good legal sense, believing that if the statute applied to Jones & Laughlin it applied to Friedman-Harry Marks. I had little faith in the "stream of commerce" theory, under which it was thought the Court might accept the statute's application to Jones & Laughlin but not to Friedman-Harry Marks.
We were told the Solicitor General had accepted the more limited view of his staff, but I replied he could not do so without listening to us. So a joint conference with the Solicitor General was arranged. The conference was to determine how to approach the Supreme Court with the best chance of sustaining the application of the statute somewhere beyond interstate transportation and communication. Mr. Magruder was called back. Mr. Thomas Reed Powell, I believe then the principal teacher of constitutional law at Harvard, was also called in. The Board group included Madden. We argued it out before the Solicitor General. He decided with the Board. He said our position was a lawyer-like and reasonable one, and if we wished the cases argued on a broad basis the Government should do so. When the decision as to scope of presentation was made there was no reticence or lack of skill on the part of his staff in briefing the cases in the best possible manner. We continued to work closely with them.

The oral arguments of the cases took place in February 1937, shortly after the presentation by the President of his plan for reorganization of the judiciary. It might well be that the President's plan weakened something in the Court which contributed to the favorable result. I cannot say. I felt we should win on the strictly legal basis on constitutional law as it had developed, and had been reasonably confident, though by no means sure. The basic constitutionality of the statute, and its application to interstate commerce itself, such as transportation and communication, had been sustained by Circuit Courts. The great problem in the Supreme Court, and therefore for the country, was whether its application to manufacturing and mining would also be held to be within the federal commerce power.
While I had no part in the President's plan and taken by surprise, I had a point of view. I believed the Supreme Court had been making wrong constitutional decisions. I simply did not agree as a lawyer with the course it had been pursuing. And Chief Justice Hughes had dissented in several critical cases, for example, in the Railway Retirement case; and he would not go as far as the majority in Saffy. Further, he had vigorously sought to have the Court sustain minimum wage laws. If the Supreme Court had followed Chief Justice Hughes; I think the President's dissatisfaction would not have reached the degree that led to a frontal attack upon the Court. The course of decisions was so extreme in disabling efforts by Congress to meet the problems of the country that a strongly reasoned challenge was in order. The Court was repeatedly striking down statutes, both state and federal, by very questionable constitutional decisions, with highly respected minority opinions vigorously protesting within the ranks of the Court itself. The subject is well handled by Robert H. Jackson's book, The Struggle for Judicial Supremacy, 1941. I touched much less adequately upon the same subject in the Georgetown Law Review, Fall Edition of 1949, in a too hastily prepared article.

I did not like the particular plan the President proposed, which electrified Washington and the country.

The Labor Board arguments case on in a dramatic atmosphere, emphasized by the currency of several large strikes, including sit-down strikes. It seemed rather odd to question legally what everyone then knew factually, that interstate commerce was being paralyzed all over the place by strikes due to the kind of thing the Wagner Act was designed to prevent. I think the sit-down developments, bad as they were, must have had a part in convincing
the court of the real effect on interstate commerce of practices the Act prohibited. The Panasol sit-down strike, for example, grew out of unfair labor practices. These did not justify such an illegal strike, but the practices which led to this interruption to interstate commerce were those the Act sought to remove.

The five cases were argued in succession. For the Board the time was divided between Solicitor General Reed, Mr. Madden, Mr. Wysanski and myself.

In his preparation for the Supreme Court arguments Mr. Reed had gone with me into the Sixth Circuit to share the argument of the firm of the breach of the case there. His old circuit court gave him a difficult time, but he made a strong argument. It was almost impossible then to convince any circuit court that the statute could apply to manufacturing. Those courts took the view that if our cases were to be distinguished from Cuffey, for example, this should be done by the Supreme Court which had decided Cuffey.

The Solicitor General, Madden and Wysanski made excellent arguments in the Supreme Court. I was not able in the division of points to present thoroughly my commerce theories, but Mr. Reed covered them.

Mr. John V. Davis argued for the Associated Press. As is well known he is an accomplished advocate. Mr. Reed of Pittsburgh argued for Jones & Laughlin and Mr. William J. Hughes of Washington for the Dus Company. I think all the cases were well presented on briefs and arguments. The Court was very quiet, with few questions during the many hours of presentation.

The arguments are printed in Senate Document No. 51, 75th Congress, together with those made in the Railway Labor Act cases.

After the passage of a few weeks we went down on opinion days awaiting the decisions. Chairman Madden and I were there sitting side by side when the opinions did come down April 12, 1937. They are reported in 301 U. S., beginning at page 1.
5. Subsequent ELMB Litigation

The Board was obliged to expand its staff. The work took on enormous proportions. And there was a steady volume of litigation reaching the Supreme Court. In the Term beginning in October, 1937, we had five or six cases there. The Solicitor General assigned them to me for argument if I wished, and I or Mr. Watts, Associate General Counsel, would present them. He argued the well known case of

**Kreps v. Bethlehem Shipbuilding Corp.**, 303 U. S. 41 (1939), and its companion *Newport News Co. v. Schaufler*, 303 U. S. 54. These ended the injunction litigation, as are leading cases on the relationship of the courts to administrative agencies. Watts, by the way, had played a great role in the injunction litigation. At the same 1937 term I argued *Santa Cruz*, 303 U. S. 483, another constitutional case, and the *Pacific* and *Pennsylvania Greyhound* cases, 303 U. S. 272, 303 U. S. 261.

The litigation continued over a broad field. The work spread and gained in volume. We were in all of the circuit courts of the United States at one time or another, and in some of them often. This meant additional cases constantly knocking at the door of the Supreme Court. The Court was generous in taking cases, to aid in clarifying the Board's jurisdiction and in passing upon the types of relief permitted to the Board. A great variety of questions arose. I will append a list of the Supreme Court cases, with citations to the reports. The result was a very broad grant to the Board of jurisdiction and remedial authority. The Supreme Court fully recognized the importance of the statute and of the part the Court itself was called upon to play in its application and administration. Chief Justice Hughes was presiding during this period.
I shall mention Board v. Fainblatt, 305 U. S. 601, in which the constitutional argument took a little different form. The company did not itself ship its goods in interstate commerce, but sold them F.O.B. the plant. The interstate shipment was made by Fainblatt's customer. Nevertheless the Court sustained the application of the Act in this factual situation. For it was not a question of title to the commerce but of the commerce itself. Mr. Justice McReynolds sought during my argument to draw out how far the Board intended to go; he asked something to the effect that if a pants presser in New York sent a pair of pants across the state line into New Jersey would the Board have jurisdiction? I said I thought not, because I supposed the doctrine de minimis, applicable in law generally, would apply to the commerce power. Mr. Justice Stone, who wrote the opinion, said that the de minimis rule did not apply to the quantity involved. I believe this is the first reference by the Court to the de minimis rule in a constitutional case.

The origin of the type of order the Board used in a company-dominated union case antedated the Board, and can be traced back to the railway clerks case I have mentioned, Texas & New Orleans Railway Co. v. Brotherhood of Railway Clerks, 291 U. S. 545, originally decided by Judge Joseph C. Hutcheson, now and for many years on the Fifth Circuit, then a district judge in Texas. The "disestablishment" order which there had its origin was adopted by the Board in Section 8(2) cases and was sustained by the Supreme Court in the Pacific Greyhound Company case already referred to. Other orders of the Board were important in making the Act effective by remedying conditions brought about by unfair labor practices, including the reinstatement of employees with back pay, which was expressly authorized by the statute.
There were also problems of administrative law in terms of fair procedures. One critical period grew out of the *Manman* case, 298 U. S. 468, which came up through the Department of Agriculture in 1937-1938. The Supreme Court ruled that a decision of the Secretary of Agriculture, under the Packers and Stockyards Act, was invalid because he had not sufficiently considered the record, or afforded the parties adequate opportunity to obtain his consideration before he made the final decision. The case took on tremendous importance to the Board and other agencies. A large part of the bar and much of the press considered it a serious blow, particularly to the Labor Board, which was under severest attack.

The possible impact of the decision grew out of the fact that in some cases, as in *Pennsylvania Greyhound*, the Board itself heard the evidence and made its own findings and decision without an intermediate report of a trial examiner, while in other cases a trial examiner presided and would make his findings and recommendations as to the order he thought proper. The parties could then file objections before the Board and argue them orally or on briefs, after which the Board, with the assistance of the review division of the Board's legal staff, made its decision. Another method was for the Board to decide the case with the assistance of the review division if it wished, which was usual, after the trial examiner had taken the testimony. In these cases the parties were not furnished findings or recommendations of the trial examiner or proposed findings or conclusions of the Board before final Board decision. The Board's petition for enforcement of its order in *Republic Steel*, had been filed in the third Circuit. There had been a lengthy hearing before a trial examiner, but the Board had decided the case without a trial examiner's report, and without issuing tentative findings.
of its own. Another important case in the same procedural situation, essentially, was Ford Motor, pending in the Sixth Circuit.

Under the statute, a circuit court of appeals did not obtain jurisdiction until the Board record was filed with the court. This had not been done in Republic Steel when Morgan was decided. The Board asked me to advise whether, in the light of Morgan, the procedure the Board had followed in Republic Steel and Ford would be sustained. I advised that in my opinion the procedure was adequate, in contrast with that the Supreme Court had repudiated in Morgan, but that in view of Morgan it was unwise to risk the cases in their present posture. I counseled that the Board reconsider them, issue tentative findings, give permission to the parties to file objections thereto, and then redicide the cases. The Board accepted this advice and imposed upon us the task of getting Republic Steel back from the Third Circuit. We filed a motion to that end, advising the court fully and frankly of our plans to set aside the order of the Board, to issue tentative conclusions and findings, etc., and to redicide the case. The company opposed, apparently not wishing more due process than it had obtained. It hoped no doubt to beat the Board over the head by reason of Morgan. The circuit court refused our request and directed the Board to file the record, which would have vested the court with jurisdiction. We took the matter up with Solicitor General Jackson, and told him that if we failed, as we now expected, in the Third Circuit, to regain control of the proceedings, we wished him on behalf of the Board to file an original petition in the Supreme Court for a writ directed to the judges of the Third Circuit to require them to release such jurisdiction as they claimed they had and permit
the Board to do what in good faith it was trying to do. Mr. Jackson said that he would be delighted to do so.

We went back to Philadelphia for reargument of our motion for reconsideration, if I remember the exact pleading. Our arrangement with the Solicitor General's office was that if our motion were denied -- as we anticipated -- the papers which were ready for an original application to the Supreme Court would be filed that afternoon, a Friday. The Third Circuit adhered to its position and Solicitor General Jackson, on behalf of the Board, filed the petition in the Clerk's office of the Supreme Court the same afternoon. No doubt the papers were circulated to the members of the Court for their conference on Saturday. On Monday, when Solicitor General Jackson presented the petition in open court Chief Justice Hughes said that leave to file would be granted, a rule to show cause would be issued calling upon the judges of the Third Circuit to show cause on Monday next, at noon, why the relief sought should not be granted, at which time the Court would hear argument. I planned to make the argument for the Board but in the intervening week went to Savannah to give a talk at the Forum there on the work of the Board, expecting to stay only one night. After the talk I came down with an acute attack of appendicitis and was operated on at St. Joseph's Hospital the following day. Mr. Watts argued the matter for the Board the following Monday with his usual fine ability. Mr. Joseph W. Henderson, another able lawyer and man of character, who became president of the American Bar Association, then one of the attorneys for the Republic Steel Company, presented the matter on behalf of the judges of the court. Mr. Luther Day, no less eminent, son of former Justice Day, and also counsel for the Company, I believe also argued for the judges. On the following Monday the Court
came down with its opinion, written by Justice Roberts, sustaining the position of the Board. *In re National Labor Relations Board, 304 U. S. 486 (1938).*

We had a more pleasant initial experience in the *Ford* case. Although we had filed the record and the court accordingly had jurisdiction, we applied to the Sixth Circuit to remand the case to the Board, so that further procedure could be had. The Court did so. *Ford* petitioned the Supreme Court for a writ of certiorari, which was granted. I argued the case on behalf of the Board. The Supreme Court sustained the Sixth Circuit in one of the Chief Justice's finest decisions on administrative law, particularly on the relationship between the judicial and the administrative functions. *Ford Motor Co. v. National Labor Relations Board, 306 U. S. 354 (1939).*

In the *Hackney Radio and Telegraph Company* case, 304 U. S. 333, which came to the Court later, there had also been no trial examiner's report or tentative Board findings. The Court nevertheless sustained this procedure as consistent with due process. In other words, the procedure of the Board involved in the *Republic Steel* and *Ford* cases was valid notwithstanding the *Morgan* decision. But I never regretted the course we adopted. It is my recollection that, although not required by Constitution or statute, whenever the Board thereafter made a decision without a trial examiner's report, it issued tentative findings of its own before final decision.

6. Continued Opposition to the Board

The opposition now adopted new methods. Those opposed to the Act no doubt had expected to be rid of it in large part through judicial decisions. This failing they sought both to amend the Act and publicly to discredit
the work of the Board. As a matter of fact, however, notwithstanding investigations and hearings, before the special Smith Committee, the Senate Committee on Education and Labor and the House Labor Committee, no amendments of any consequence were enacted until 1947, when the Taft-Hartley Act was passed. But the Board during all of this period never had such peace or quiet. Powerful elements in the country opposed the Act due to an unwillingness to permit the enlargement of the influence of unions and of the rights of employees protected by the Act. This is understandable, for seldom does one willingly give up power one thinks rightly to belong to one. Most of the opposition was on the part of those who not only thought the statute to be unconstitutional, but, when that was settled, felt that in any event it represented bad policy. As the years have passed this sentiment has gradually changed.

After the constitutional tests our litigation was conducted during a sustained attack upon the administrative process generally, due essentially to the growth of agencies under the Roosevelt legislative program. These agencies were given initial responsibility for the regulation of industry in many respects not known before, in areas not only of labor relations but of marketing of securities, rates of utilities, agriculture, marketing, communications, wages and hours, etc. The new statutes and administrative operations touched private industry and individuals in a regulatory manner more extensively than ever before.

None of the agencies was subjected -- and I think perhaps none in the whole history of the country -- to such attacks as the Labor Board endured. Nevertheless, the fact is that under decision after decision of the courts, including the Supreme Court, the Labor Board administration and its proced-
ures were sustained as consistent with fundamental fairness. The opposition, in my opinion, did not rest so much on defective administration as on deep-rooted opposition to the Act itself. The Act gave legal protection to the right of the individual worker to choose his own representative, and as a means of doing so to join a union of his own choice, and through majority representation, uninfluenced by company domination, to sit at the same table bargaining with the employer. This was at the roots of the opposition to the Board, then at the center of opposition to administrative agencies generally.

The situation was made more difficult when the Congress of Industrial Organizations was formed splitting the labor movement itself. Often the Board was in the center also of this controversy, which was not simply between employees and employers, but between the American Federation of Labor and the CIO. The Board was attacked by each as being partial to the other. The usual attack, however, was that the Board favored the CIO. The CIO was new and received unsympathetic welcome from the American Federation of Labor. Whenever the Board in the normal administration of the Act would protect the rights of men to join the CIO as the union of their choice, or would hold elections in which the CIO was selected as the representative, the charge of favoritism was likely to arise, usually without justification.

The Board tried very hard to be fair in this matter, particularly in the respect which touched the American Federation of Labor more closely, namely, the preservation of the craft unions. The CIO was attempting to organize the unorganized, but was threatening the crafts, in steel and automobile plants for example. The Board worked out a formula known as the Globe doctrine, which I suppose is as fair as could have been devised con-
sistantly with the provisions of the Act. It gave freedom in self-
organization designed to protect the craft if the majority of the craft
wished to retain it as their bargaining unit. I think it fair to say that
if there had not been the division within labor itself, their fighting
across the board in fighting each other, attacks from sources more antagon-
istic to the Act might have been less effective than they were.

We made plenty of mistakes ourselves, of course. The work spread very
rapidly after the Act was sustained, and the staff had to be enlarged ex-
tensively. We were required to use some inexperienced men who must gain
experience through actual operations under the Act. Otherwise we never
could have created a staff to meet our responsibilities. There was some
bad administration. Some hearings were excessively long. Some conduct of
officials was not all it should have been. But it should also be said that
some mistakes of Board personnel were reactions to the bitterness of the
opposition displayed by those who refused to cooperate in the administra-
tion of the Act. Some lawyers were contemptuous of Board hearings, con-
temptuous of trial examiners, obstructive, and made all the difficulties
they could. Some employers of course were the same. I do not suggest this
was an excuse for Federal employees to do likewise, but it is an explanation
of some of our difficulties.

Going back to the administrative process, it was complained that the
functions of prosecution and judging were combined, that Board personnel
investigated, presented the evidence before the Board, and then the Board
decided the case. This was constitutional. The matter was thoroughly gone
over and decided in the original cases in the Supreme Court, reported in
301 U. S. pp. 1 et seq., and again in Myers v. Bethlehem Shipbuilding Co.
303 U. S. 41. The procedure in this respect followed the pattern long es-

tablished in administrative agencies, including the Federal Trade Commission.

But the attack gained momentum nevertheless because of the growth of adminis-

trative law, its impact on a larger number of people, and the extension of 

regulatory legislation. The result has been that Congress as a matter of 

policy has changed the procedural structures of some statutes, with more 

separation of functions. This was done with respect to the Labor Act when 

the Taft-Hartley Act was passed in 1947 and the general counsel’s office was 

separated and made more independent of the Board.

7. Amendments and Congressional Relations

The efforts to amend the Act continued for years. Extensive hearings 

were held before the Labor Committee of the House, first under the chairman-

ship of Miss Mary Norton of New Jersey, and before the Senate Committee on 

Education and Labor under the equally able chairmanship of Senator Elbert 

Thomas of Utah. The Senate hearings were followed rather closely by Senator 

Robert Taft, a member of the Senate Committee, who showed an intelligent in-

terest in the Act although I believe he was then just beginning to take hold 

of its problems. We were constantly before the standing committees of 

Congress and the special Smith Committee. The latter was an investigating 

committee and proved a most trying experience for us.

The numerous committee hearings caused a tremendous amount of work for 

the legal staff: three hearings before committees often were under way at 

the same time, in addition to our administrative and litigation responsibili-

ties all over the country. But the Board had an able staff, and Chairman 

Madden was a remarkable man of great ability and devotion to his work, of
staunch integrity and steadiness. The staff also was uniformly devoted to its responsibilities, felt the tasks were worthwhile and that the Board was succeeding.

As labor unions began to grow in size the Act gained in acceptance; the right of collective bargaining as such became non-controversial; the work of the Board met gratifying approval in the courts; and so there came about in the end a change of climate as to the basic principles involved and as to the Board itself. Those who engaged in the work were proud of it, and this sustained them, notwithstanding disagreeable features.

3. Board Politics and Appointments

Some time in 1939 I was advised that Attorney General Jackson wished me to become Assistant Solicitor General, to fill the vacancy caused by Mr. Golden Bell leaving for work in the Philippines. I was then in the midst of the Smith investigation, which had not progressed sufficiently toward a conclusion for me to feel free to leave. Except for this I was receptive to the change, not that I considered the office more important than that of General Counsel of the Board, but I was ending four years with the Board. Also, I had a great admiration for Jackson. Jackson left the office vacant for some time — I hesitate to say exactly how long from recollection — until I felt that, although the Smith investigation was not concluded, it was so near an end I could in good grace make the change. In October 1940, after five years as General Counsel of the Board, I resigned on appointment by the President as Assistant Solicitor General.

Chairman Madden had then ended his term of five years, and there was question of his reappointment. I urged the President by letter to reappoint
Madden and hoped that he would do so. Madden had done extraordinarily outstanding work as chairman. But he was not reappointed. Some members of the staff left the Board as a sort of protest. I did not approve this because I did not feel that the President necessarily should reappoint Madden. I did feel that he should not be repudiated by the President, and he was not. He was given an appointment for which he was eminently qualified -- indeed, he was qualified for even more eminent judicial position -- on the United States Court of Claims. I felt that notwithstanding his outstanding work as chairman there were other considerations which might properly motivate the President in wishing a new chairman. The President might from the best of motives and on reasonable grounds feel justified in such a change.

* * *

The following is a reference to some of the long-continued Congressional hearings, in which Madden and I bore the principal burden as spokesmen on behalf of the Board: Hearings before the Committee on Education and Labor, United States Senate, 76th Cong., 1st Sess., in some 20-odd parts or separate volumes. I think my first statement is in Part 2 in April 1939; again in Parts 12, 15 and 23, in reply or rebuttal after other witnesses had testified. Hearings before the Committee on Labor, House of Representatives, on proposed amendment to the National Labor Relations Act, in 8 parts or volumes, printed in 1939. I believe Madden's and my first statements are in Volume 2. There was also a rather brief hearing before the Senate Judiciary Committee on the question whether the Committee should make a special investigation, which it decided not to do.
In the hearings before the special Smith Committee I undertook to defend the Board and its personnel. The Committee consisted of Congressman Howard Smith of Virginia as Chairman, Congressman Charles Halleck of Indiana, Congressman Reuton of Ohio, Congressman Abe Murdock of Utah, and Congressman Arthur Halsey of Massachusetts. The majority filed a report critical of the Board and recommended certain amendments. The minority consisting of Murdock and Halsey filed a most comprehensive report in defense of the work of the Board as a whole. They recommended enlargement of the Board to five members, and grant of the right to employers to petition for elections.

Congressman Howard Smith is still in Congress in 1934; Congressman Reuton has died; and Congressman Halleck is now Majority Leader of the House. Congressman Halsey was appointed District Judge of the United States District Court in Massachusetts and died while in that office. Mr. Murdock became a Senator and later a member of the Board itself. The minority report referred to is found in House Report No. 1902, Part 2, 76th Cong., 3d Sess.

I do not have at the moment a reference to the majority report but will attempt to supply this. None of the amendments recommended by the majority was adopted as a consequence of this investigation.

Even this rather brief account of the work of the Board would be too incomplete without some general reference to the over-all effect of this development in our national life and without also an additional reference to some of the Board personnel.

Among the personnel Hadden stands out. My association with him then, and later when we worked and lived together in Berlin in 1948-49, has always been accompanied by appreciation of him as a man of the highest...
character as well as of like ability. He also has a fine family whom we have enjoyed as friends.

I cannot well refer to many associates at the Board, but wish to mention Alvin Rockwell, at first a trial examiner, who became General Counsel. He was also associated with me during my days as Solicitor General and in Berlin in 1945-46, where he later succeeded Madden as Legal Adviser after Madden had succeeded me. Rockwell still later became a partner in the fine Phleger law firm in San Francisco, where he is now. He met Mr. Phleger in Berlin. We continue to see each other over the years, and we shall meet him again in these pages. Interestingly, too, Mr. Phleger is now the Legal Adviser of the State Department, a position I occupied for about fifteen months after returning from Germany. My good friend David A. Morse, among other positions, became General Counsel of the Board, Under Secretary of Labor, and is now Director General of the International Labor Office.

Thomas I. Emerson was also a strong element in the legal work of the Board. He had been with the pre-Wagner Act board and became Assistant General Counsel in charge of the Review Division. After I went over to Justice in 1940 Emerson shortly came with me there for a few months but then left to go with the Price Administration. Later he joined the faculty of the Yale Law School, and is there now. I have previously mentioned Robert D. Watts, who succeeded me as General Counsel. Phil Levy did extraordinarily fine work on the legal staff, of which he was already a member when I became General Counsel. In later years he and I became associated in private practice in Washington when we left the Government in 1947. The association was headed by former Senator John A. Danaher, and included Rufus C. Poole whom I had first known in the early days at Interior. In the passage of time Senator
Danaher and I have become members of the same Court, where we now sit and work together again. Ernest A. Gross, my immediate successor some years later as Legal Adviser of the State Department and after that an important representative of the United States to the United Nations, was also on our legal staff at the Board and did excellent work. And so, too, did Laurence A. Knapp, Henry I. Ingraham, who later joined my staff when I was Solicitor General, Al Somers, Alexander Hawes, Malcolm Halliday, and Marcel Wallat-Prevost, to mention a few. I must mention also my excellent secretary Miss Florence Wranz, succeeded by Miss Mildred Janobust. Miss Janobust stayed with me until I went to Germany in July, 1945. For her devoted and competent help I am most grateful.

Nathan Witt was on the legal staff when I went with the Board, and later became its Secretary. In after years he has come under a cloud by invoking the Fifth Amendment before Committees of Congress in connection with testimony regarding possible Communist associations, etc. As a lawyer at the Board he did good work and seemed to me to want the Act to be well administered so as to succeed in its purposes.

Evidence in later years gave some indication that there might have been a Communist "cell" of some sort among the personnel, including a few lawyers. If so, it was carefully hidden. Witt was the more vigorous personality among those who were later mentioned in this connection. He was sympathetic, as was quite understandable, to the CIO in its promotion of the industrial type of organization and in its efforts to organize the unorganized. I am sure he never engaged in any action of a subversive character.
There are of course many others who should be mentioned, not a few of whom have remained with the Board as the years have passed, gaining in stature and useful public work, for example Mr. Guy Farmer, who though he left the staff, later returned as Chairman, and Mr. Gerard Van Arkel, who became General Counsel.

The Wagner Act and its administration was an outstanding development of modern times. Board lawyers as a whole faithfully and diligently performed their difficult tasks, playing a skillful and worthy part in the success of the statute. This emphasizes the sadness one feels about a few who later cast a shadow upon the Board by seeming, I cannot be certain, to have been victims of Communism, at least for a time. So much was being done under the Act by open and constitutional processes to better the status of the working man that it is unfortunate that any engaged in its administration should have felt the need of Communism or Marxism. I think it would be difficult to single out any part of the great legislative program of that period more in line with the social encyclicals of the Pope. It seemed to me not only consistent with them but in furtherance of the principles laid down in those great documents.

The children began to enter school at Blessed Sacrament, first Charles followed later by Mary Agnes and Anne together, Sarah the following year. The little home at 5700 Northampton Street was a pleasant one, the first we owned in Washington. The neighborhood was also pleasant for us all. It was fortunately situated, not only because the school was conveniently near but also because of companions close by of like ages of the children. Our side yard became a sort of playground. And Agnes liked being within easy walking distance of the
Church. There were pleasant gatherings now and then of Joe's and Leo's families, and of friends, old and new. The familiar family toast was continued at Christmas, at one or the other home, joined with others at home or wherever they might be. Ambrose and his family were with us at these and other times. One Christmas our good friends the Kellys from Santa Fe were at 3700, and they or Beth Barker (Alexander) were with us other times. Duke and Albert stopped on their New York trips, and now and then there was a visit with Janie, Sarah, or Agnes S., here, in Rome or in New York. And of course until his death we would see Agnes' father, Mr. Lane, and her sisters Margaret and Bertha, and her brother Tom. Dr. O'Donnell, the husband of Bertha, took good care of the children, and at times of me. I was very fond of Mr. Lane, one of the finest characters I have known, a truly good man. Mrs. Lane, Agnes' mother, had predeceased him in 1937, a lovely person, worthy exemplar of the fine Irish families so many of whom had lived in St. Aloysius Parish. At the time of her death the family home for some time had been on Malorana Road.

I mention too the close bond which developed between Joe and me during these years. His brotherly companionship meant a great deal to me.

OFFICE OF THE ASSISTANT SOLICITOR GENERAL

1. Opinions of the Attorney General

My recollection is that I was first approached by Tom Corcoran on be-half of Jackson about becoming Assistant Solicitor General. Mr. Francis Biddle was Solicitor General.
The office was created during the Attorney Generalship of Homer Cum-
nings. Until then the Solicitor General had had a great deal of respon-
sibility for drafting and reviewing opinions to be rendered by the Attorney
General. The opinions were delayed because the Solicitor General gave pre-
cedence to his special responsibility for the conduct of the government's
litigation in the Supreme Court. In order to free him more fully for this
and at the same time to expedite the opinions of the Attorney General, the
office of Assistant Solicitor General was created to take over the opinion
work. When the Solicitor General was away or if there was a vacancy, the
Assistant Solicitor General became acting Solicitor General. Aside from
this, his work was really that of an Assistant Attorney General.

In addition to drafting opinions for the Attorney General and reviewing
for him those which originated elsewhere in the Department, the office
passed upon executive orders prepared for the President. It also reviewed
settlements of civil litigation requiring the approval by the Attorney
General.

The opinions of the Attorney General for the President and heads of
Departments were extensive during this period because of increased activity
of various departments of government. Many were formal and in writing. The
Attorney General would decide which should be published, usually on recom-
mandation of the Assistant Solicitor General. Much informal legal advice
was also given by the Attorney General, not infrequently through the office
of the Assistant Solicitor General. The published opinions during my tenure
as Assistant Solicitor General I believe are in Vol. 40 of the Opinions of
the Attorney General.
The office was composed only of seven or eight lawyers altogether. The ranking staff member was then F. A. Townsend, an experienced man of good judgment, a dependable and valuable public servant. There was Mr. Burtner, an expert in drafting Presidential orders. Almost invariably, when any department — or the White House — wished an executive order to be approved by the Attorney General, it would go through Mr. Burtner's hands at some stage, and then through the Assistant Solicitor General to the Attorney General. The draft would be accompanied with a memorandum or letter, to be signed by the Attorney General, addressed to the President, and explaining the order, with the recommendation of the Attorney General. There was usually consultation with the particular Department concerned, with the White House, or the Bureau of the Budget. Mr. Fowler, who has since died, was also a valued member of the office. Like Mr. Burtner, he was a career man, at least I so considered him. And there was Mr. Benny, who later has become a member of the staff of the Solicitor General. He specialized in reviewing settlements of certain types of civil litigation. There were others in and out of the office from time to time, but the nucleus of the office over the long pull — during my acquaintance with it — is as I've described it.

I would have to look back over some of the published opinions to give better illustrations of the range of work, because, unless recaptured by some refreshing of recollection, it is hard for me to remember the details.

We had requests from the War Department for advice, in view of the conflict in Europe, as to what material could be loaned to friendly nations without violating acts of Congress. Once, before responding I had a talk with General Marshall about a particular factual situation. This was the
first time I came into personal contact with him. Seven years later he took me in his plane to New York when as Secretary of State he signed the United Nations Headquarters Agreement on behalf of the United States, in the negotiations of which I had represented the United States.

The office had requests from departments as to the status of men coming into the government from private occupations, what arrangements were consistent with the "conflict of interest" statutes. There were also questions arising under the Hatch Act, questions regarding the activities of the Political Action Committee of the CIO, which became quite controversial at one time, questions between the Department of Agriculture and the Department of the Interior over jurisdiction. There were international questions, one involving treaties prescribing the load lines of ships. Then there were regulations under the Selective Service and Training Act, and detailed and complicated regulations growing out of the Nationality Act of 1940.

Some questions arose as to the taking over of ships of countries like Denmark which had been overrun by the Nazis. I don't remember the details.

Again I do not carry in mind now the details, but Jackson also requested my opinion on the subject of wire tapping. We wrote a very elaborate review of what we thought could or could not be done inside the Government. My recollection is that he agreed with the memorandum's conclusions, and used it as the basis on which he handled the problem with other departments. I have not seen that memorandum since it was prepared approximately fourteen years ago, but, as I recall, it permitted wire tapping in a very limited area. Generally, under the law as it was at that time, we could not give it legal approval. But there was some possible use of it as I recall. We made a careful study of the situation.
Special preparations were made in the Department of Justice in anticipation of the possibility the United States would become a belligerent. A War Division was created eventually, under the directorship -- although he was not initially an Assistant Attorney General -- of Mr. L. M. C. (Sam) Smith, of Philadelphia. Assisting him was a policy committee created by the Attorney General as a sort of clearing house when the division needed broader consultation or cooperation in the department. Mr. Francis M. Shes, Assistant Attorney General in charge of the Claims Division, Mr. Wendell Borde, also an Assistant Attorney General, Mr. Edward Saxe, one of Mr. J. Edgar Hoover's right hand men and later a Federal District Judge here, and Mr. Edward J. Hanis, who at first was Mr. Smith's assistant, and myself as Chairman comprised the committee. One of our responsibilities was the formulation of plans for the control of enemy aliens in the event of war. This involved a classification by persons, under Mr. Smith's supervision and our general direction, in terms of the likelihood or not of their being dangerous, and therefore subject to detention under the Alien Enemy Act. This called for a review of many F. B. I. files.

There's no doubt the government and certainly the Department of Justice were seeking to be ready in case of our entry into the war. This -- I speak particularly now of the alien enemy problem -- helped our later program succeed with a minimum of injury to the innocent. Much suffering was avoided. I exclude the mass evacuation of persons of Japanese ancestry on the West Coast, which was not planned before the war but came about as a result of the attack at Pearl Harbor. At least, no pre-war plans for such an evacuation were made within the Department of Justice.
The Office of Assistant Solicitor General had a significant number of legal questions with respect to regulations of Treasury, especially those which required the approval of the President or of other departments in addition to Treasury. We were involved to a degree in the problems of economic warfare, and the legislation which was enacted on price control was discussed with us. Many departments came to us about a particular matter they were handling, or preparing to handle, for advice as to what could validly be done, if need be, consistently with due process of law or other phases of the law.

As to the relationship of the Executive branch of the government with Congress during this period, there was real leadership in the former. Thought and imagination were used to meet the problems of the times. But I never for a moment considered the relationship one of dictation by the President. The Congress was an intelligent Congress, with able men. When a meritorious matter was presented to the Congress it was not rejected because the Executive had taken the initiative. There was cooperation and leadership on the part of both. That of the Executive was in no sense an abuse of power. Under President Roosevelt the Executive did take initiative in preparations for conflict and in suggesting legislation, but legislation could not be imposed — there was always an intelligent decision about it. Considerable improvements at times were made by the Congress on proposals of the Executive. The Executive might be said to have taken leadership in many matters because primarily, though not entirely, the problems were international in character, in which event the Executive had special responsibility. This period differed from the earlier years of the Roosevelt administration, when the outstanding leadership of Senator Wagner in the Senate
resulted in much of the New Deal program, usually, however, with the hearty approval of the Executive; as examples, the Wagner Act, the Social Security Act, the National Industry Recovery Act, and the first Housing Act.

Problems were becoming so enormous, so far-reaching, that the Cabinet system itself broke down somewhat, and lost a good deal of its deliberative character. My own experience with the Cabinet as such came later when I was Solicitor General and attended its meetings when Attorney General Biddle was not able to do so — either because out of town or ill. Under President Roosevelt my opinion is that the Cabinet was a means for rather general discussions and exchange of information, rather than a place of decision, though sometimes of course decisions were made; for example, if the President himself brought up a subject and wanted the views of his Cabinet, and the general sentiment accorded with what he was willing to decide, the decision, not in a formal but in a practical sense, would then be made.

The members of the Cabinet themselves, however, although they laid a good many matters on the table, often took their more serious problems to the President directly, or went to him with other members involved in a special problem. The Cabinet meetings did afford the President an opportunity to bring the heads of the Departments and others up to date on many subjects, and it gave each an opportunity to inform the others as a group, as well as the President, of their own thinking and departmental work. But as a place of decision on important issues the Cabinet was not often used, in my experience.

Most matters of course are ironed out between Departments without reaching the President, often below Cabinet level. The men who make these adjustments are usually capable and devoted public servants, little known to the public.
One problem we had with the War Department involved the so-called "exclusion" orders issued by the military against alien individuals in areas within the United States designated by the War Department as sensitive. We had disagreed over the handling of those orders. We did not settle the matter satisfactorily until it reached Secretary Stimson himself, but it never went to the President. Numerous discussions had been carried on at a lower level, so that the issue was narrowed down -- only the essence, the ultimate difference, needed to be discussed with the Secretary.

2. London Negotiations for British Bases

Secretary Hull had exchanged notes with Lord Letham on behalf of the United Kingdom, September 3, 1940, whereby we exchanged fifty average destroyers for the right to acquire military and air bases in British colonies and possessions in the western Atlantic. The exchange was authorized by the President on the basis of an opinion of Attorney General Jackson given shortly before I went into the Department. In due course -- and rather rapidly, as I recall -- the destroyers were actually transferred to the possession of England. The exchange of notes was to be followed by the negotiation of detailed arrangements under which we could lease areas for these bases for ninety-nine years. Until these details were agreed upon and we could take possession and begin construction, the United States, one might say, only had a paper right.

France had fallen. Across the Atlantic England was then alone in the war on the Allied side. And England was suffering the blights. The President had hoped England would send a mission to this country to complete the agreements. But due to the difficulties in which the United Kingdom found
herself the necessary personnel could not well be spared. When I learned later the number and character of the participants in the negotiations I could understand this more easily. The United Kingdom requested the United States to send a mission to London. The President was extremely anxious that the arrangements be concluded. England had our destroyers, we did not actually have the bases, and time was running. So in January 1941, the State Department asked the Attorney General through the Assistant Solicitor General’s office to designate someone who would be available to go to London with representatives of the Army and Navy. The Attorney General looked to me to decide who should go. It seemed that it should be either Townsend or I. I felt I should go and not ask Mr. Townsend to do so.

The negotiations were to be carried on under the supervision of the State Department. Commander Harold Bisselmeier, a lawyer but also a line Naval officer, was designated by Navy, and Colonel — later General — Harry Malanby by Army.

I did not particularly like the idea of going to London at that time and leaving my wife and young children — this really bothered me. The stories of the route from Lisbon to England, and of the bombing of London, were not pleasant. I was not easy in my mind.

Agnes went with me to New York for the take-off. Duke and Hannah were also there, as well as my sister Agnes who lives in New York.

The Newfoundland delegation met us at LaGuardia — Mr. Henderson, their Attorney General, and Mr. Pearson, financial representative of the United Kingdom in Newfoundland. We took the old Pan American Clipper, leaving January 17 and stopping first at Bermuda where we were held up a few days on account of bad weather. While there we heard very imperfectly
a part of President Roosevelt's inaugural address on January 20, 1941. Agnes was at the White House for luncheon that day and later saw the parade with the Maddens from the Court of Claims building.

We were supposed to land next at the Azores but the weather did not subside enough to enable the flying boat safely to come down on the water there; so the Clipper unloaded a quantity of mail, took on more fuel, and flew straight overnight from Bermuda to Lisbon, where we put down on the river. It was a very rough trip through a storm which the Clipper seemed unable to rise above; but I acquired a great respect for its competence and sturdiness that night.

American air transportation could not then go into England. From Lisbon, after a little while at La Biscolit, we flew to Bristol. The plane was an American twin-engine Douglas which had belonged to a Dutch line. It had been flown over to England as Hitler was overrunning Holland. After an unhappy start early one dawn — it was more than a start, we were out over the water for about three hours on the way to England when we turned back to land — we went off again early the next morning and reached Bristol, landing on a rain soaked airstream after a "blind" flight the last few hours. We traveled by train to London where we were met very courteously at the railroad station by British officials. Our Embassy had reserved rooms for us at the Claridge Hotel, and we were soon settled down and began work under the auspices of our Embassy but with a good deal of independence by reason of the nature of our assignment. There was no ambassador in London when we arrived, for Ambassador Kennedy had resigned and Mr. Winant had not yet been appointed. He came while we were in London. In the meantime Mr. Harry Hopkins was there as a sort of representative of the President. Mr.
Herschel Johnson, the counselor of the Embassy, was the ranking officer in the Embassy hierarchy. Mr. Ben Cohen came later with Mr. Winant for a while.

The negotiations were under the chairmanship of Sir Alan Burns of the Colonial Office. The British were widely represented. There were men of the air force, army, navy, the legal advisor of the Colonial Office, the post office, representatives of the colonies and dominions who came from Newfoundland, Bermuda, Jamaica, Trinidad, and St. Lucia. Canada was not a party but was invited to attend.

All kinds of problems developed but we finally worked them out, I think in a reasonably satisfactory manner. We had been told the negotiations would probably consume two weeks, a substantial underestimate. Some of the difficulties which consumed time may be mentioned: which sovereign should have jurisdiction of criminal trials in various factual situations with respect to citizenship, locale of the alleged offense, and nature of the offense? If an American was to be tried by the United States, where would the trial take place? Perhaps the most fundamental problem -- which was being watched very closely as it might evidence itself in some auxiliary respect -- involved the question of sovereignty. The British and their colonies were sensitive about this. This manifested itself, for example, in connection with the post office. What stamp would be used on a base? The stamp of the colony or an American stamp? If the latter, would this imply a surrender of sovereignty? What ships could come into the waters surrounding a base after we took possession? What, if any, right of access was to be afforded British or other shipping to the waters adjacent to the base? In what terms were the powers and authorities we needed to build and
defend the bases to be expressed, vis-a-vis retention of sovereignty by the British? In this connection we were obliged to negotiate one question directly with Mr. Churchill. We wanted the right, after taking possession of a particular base, to defend the whole colony, on or off the base, in case of attack. This was essential from a military standpoint. We couldn't be restricted to a small part of an island, for example, if the enemy were approaching. One must have the whole area available for maneuvers and tactics. The British would agree to this if we in turn would agree that when they were at war they might use the base. They urged that if we wanted what we were asking we should give up the same thing when they were at war, which was then the situation. But we said no, notwithstanding the seeming plausibility of their position. I think we were quite right, for this reason: these places had never been defended, that is, no military base had ever been built there of any consequence. The places were in the western Atlantic. If attacked the attack would be on the security of the United States and we would have to bear the burden. We were to build the bases and should have responsibility as part of the defense of America. It was unrealistic for the British to seek the kind of reciprocity they suggested, which did not accord with the realities of the situation. We were to make large expenditures on these outposts and would defend them and the whole area.

The matter finally went to Mr. Churchill. We met with him, some members of his cabinet, and his principal military men in the Cabinet room at 10 Downing Street. He listened to both sides, presiding as if he were an impartial judge. He did not try to argue us down as Prime Minister of England, or to support his own people because they were his own. He sought
a sensible judgment on the merits, but one which, as he said, he must defend in Parliament. Occasionally, he would get up and walk behind his chair saying to himself he must defend in Parliament what was agreed. He sort of wondered out loud about the hypothetical possibilities of attack in the western Atlantic — who could make the attack — and then would say, "If that occurs, it’s the United States who must defend. It would really be an attack on the United States." That was the thesis I had expounded. It was like the Monroe Doctrine. If these areas were attacked we must bear the prime responsibility of defense. He agreed and asked his officials to subside. Mr. Churchill obviously was anxious to reach agreement in good faith, to face our needs, and grant what we ought to have. He commented that we had done so much for them. As to this, I thought they were doing so much for us, too, in the defense against Hitler. He also remarked that the enemy would mock England. But if they did it was not for long.

The negotiations resulted in an underlying agreement applicable to all the bases, with separate ninety-nine year leases for each base. The agreement was part of each lease by reference, and vice versa. The principal reason for separate leases was the need for each lease to be executed by the different authorities of the particular area involved. The basic agreement was executed by Mr. Churchill on behalf of His Majesty’s Government.

The blitz was on during the negotiations. It was not as bad as it had been, for example in the preceding fall or perhaps in December when the great fire occurred, or as it was in May after we left, when from all accounts there was a bad time. But the night bombing was fairly constant while we were in London.
We worked steadily. The British devoted themselves faithfully to the negotiations. But it took more time than we had anticipated. There was difficulty in agreeing on exact terms. I think this was understandable when the nature of the problem is fully understood. We were assisted by the Embassy staff in London, particularly by Mr. Theodore Achilles. He took us under his wing and was invaluable. Achilles is a career man in the State Department. I think he is now in Paris with the rank of Minister. Although the State Department from day to day gave us a good deal of latitude we were careful not to make final commitments without clearing with home. We teletyped directly into the State Department in Washington after each meeting, explaining the current situation, giving the text of proposed paragraphs discussed that day, and our suggestions as to their acceptance or not. If we had no fixed ideas, we simply asked what comments the Department had to a British suggestion. The Department did an excellent job of organizing a group at the Washington and -- including War and Navy personnel and sometimes, I think, representatives of other departments, such as the post office. They were available to cope with questions we were submitting and to give us assistance. The negotiations were carried on constantly with this interchange of views between ourselves and Washington. Mr. Hickerson, at the State Department, worked closely with us under the general supervision of Mr. James Dunn.

In the end, the full text required over-all final approval. At that point not only the State Department but the Attorney General and the President were personally consulted, perhaps at times before. My recollection is that Attorney General Jackson actually was with the President on a cruiser on one of the President’s trips out of Washington when we sent in
for final approval. We were then given official authorization to sign on behalf of the United States. The agreements were signed by Mr. Winant, General Macen, Commander Kiehmezoff and myself for the United States, and by Mr. Churchill, and Lord Cranborne, Lord Moyne, and Vincent Massey, L. W. Murray, L. H. Pearson, all of Canada, for Great Britain. We signed the agreements in the Cabinet room, at 10 Downing Street, the twenty-seventh of March, 1941.

Mr. Winant came to London as Ambassador while we were there. He came very simply, without fanfare, and went about his work. He seemed to be well received by the British, who liked his simplicity and of course his great devotion to the cause of England and his opposition to the kind of thing Hitler represented. He took a great interest in our work. He met with the three of us quite often in the evening and dined with us.

When the negotiations were over we parted with the British in true cordiality and friendship, notwithstanding the stiff negotiations. I had a tremendous respect for the British. During that period when, except for their own commonwealth countries far away, they alone were fighting Hitler, they were magnificent. Their cities were subjected to constant bombing. Occasionally, even in daytime, our work, in the War Office, would be interrupted by the warning siren, but we would go on. The first time this occurred Sir Alan Burns said that there were bomb shelters available and we could interrupt the negotiations until "all clear" if we wished. We inquired as to their wishes and they said, well, they usually carried on, unless they got a warning from the particular building they were in. We said we'd do the same, and never had to interrupt the negotiations. Once Burns seemed a bit irritable and tired. I learned that the night before he had
been up all night doing his tour of duty on the roofs of his block. After the big fire in December London was very thoroughly organized to prevent a recurrence of conflagration. Watchers were posted on the roofs on the alert for fire boats, with sand bags and other paraphernalia. Sir Alan Burns was a man along in years -- but he was doing his tour of duty.

As to living conditions, our little group was well cared for. Claridge's was an exceptionally fine hotel, and we had adequate food. The hotels I think were better supplied with food than the residents generally. I had but little opportunity to experience the food situation of the mass of the people in London -- but I know it was somewhat stringent. There was a lack of fruit -- that was true even at Claridge's -- and of eggs, which was not entirely true at Claridge's -- a shortage also of meat, which was partly substituted for by fowl and fish. There was a good deal of fish, including delicious smoked mackerel. There was not much beef, but occasionally one could get it. If one went to Simpson's, for example, and were there in the fore part of the line when the dinner-door opened, one might get roast beef, but there was not enough to supply everyone who came.

London was dark. The blackout was incredibly black. It was very difficult to find the way around. Yet there was not a total blackness -- there was some little light which came down through the bottom of the street lamp globes, but quite dim. Getting around at night was for me a pretty desperate business. Not much of it was attempted, although it was fascinating how the cabs could find their way around. Achilles introduced us to a good restaurant some little distance away from the hotel, and some evenings we took a cab and went there, coming back in the gloom. Often we would
dine, perhaps with Mr. Winant and Mr. Cohen after they arrived, at the
Connaught Hotel not far from the Embassy.

Down around the wharfs the housing had been badly bombed. There were
bad spots all over London, but not such destruction as I saw later in Berlin
and Nuremberg—except for the results of the fire in the old city in De-
cember 1940. The subways were a sad sight at night, used by thousands of
people as bomb shelters, but people took their ordeals in wonderful spirit.

I do not remember any particular problem about clothing. As a matter
of fact, now that I think about it, I suppose we had to skimp by, since we
had not intended to be away so long. The heavy underwear Agnes had advised
came in handy. As for soap, hot water, and laundry there was for us no
hardship. We were in one of the most favorable places, a well managed and
well appointed hotel. I am sure we fared better than most. There was a
bomb shelter available in the basement, but during the raids I preferred my
room, which was somewhat centrally located in the hotel, both longitudinally
and latitudinally. The entrance to the hotel was heavily sandbagged, with
high walls of bags angled so that no light could emerge from within. A
great hole was in the street nearby where a bomb had exploded; but none
seemed to fall very close while I was there, though from the noise of the
planes they seemed to be right overhead at times; and the batteries in Hyde
Park put up a great racket.

The old captive balloons over London were a strange sight, ordinarily
grey to the eye, but at times turned a beautiful rose or pink as the rays
of a declining sun colored them high over the city. They kept the raiders
at a greater height than otherwise they might have come.
I had been in a night raid of the Germans over Paris in 1918, at a time when Big Bertha was also shelling Paris; but the bombing of London during World War II, and of Coventry, Bristol, and other English cities, was far more extensive. Later in the war our bombing of German cities even exceeded this in destructiveness.

The Kaiser in the First World War lost his "Kingdom" and Hitler in the Second seems to have taken his own life in a scorched and seared Germany as the Russians were coming victoriousally into Berlin, and we had come a long way and were near. The incredible suffering that had been wrought! Let us hope no one initiates even greater destruction by thinking he can succeed with the Atomic or Hydrogen bomb. He who takes up the sword shall perish by the sword.

I was in Berlin during the Potsdam Conference in the summer of 1945 to meet Justice Jackson for a conference with the Secretary of State on the status of the war crimes negotiations then in progress in London. Jackson was the American representative and the allied leader in the negotiations. He had sent word requesting that General Betts and I, then near Frankfurt, join him for the conference in Berlin. The day after our arrival we went down into the Hitler bunker near the Reich Chancellery. The whole area was in ruins. A few nondescript Russian soldiers were on guard in a rather loose fashion. (At Potsdam itself, however, the Soviet personnel were alert and well groomed.) We wandered about among the ruins of the queer man's days of seeming greatness, a segment of the huge devastation in the Berlin area.

Going back to 1941 and London, we came home by air. We left London by train for Bristol the afternoon of the signing, after a happy day with our British friends. Mr. Churchill had arranged a pleasant ceremony and gave
each of us a special fountain pen used in the signing. There were champagne
toasts after the photographers and newsmen had left the Cabinet room.

From Bristol we sent a telegraphic farewell to Sir Alan. Our air
flight to Lisbon was similar to the one that brought us into England two
months or so earlier. At Lisbon we were to take the Clipper home. There
were several days of waiting, but these were not unpleasant in the unwar-
like atmosphere of Portugal, away from the death and destruction of war, un-
shadowed by a blackout, plentiful with fruits, delicacies and sunshine.
England, the heroic of those days, was also the deprived. And France was
over-clouded and temporarily enslaved. (On my return I spoke to the Harvard
Law Review of my impressions on the trip, and might leave with these notes
a copy of these remarks, as well as those made by me in London on behalf of
the United States at the first plenary session, presided over by Sir An-
thony Eden.)

When our Clipper arrived we flew from Lisbon to Balboa in Portuguese
West Africa, where PAN had recently established a station along its new re-
turn route to the United States. The flight down from Lisbon was overnight.
In the early morning we passed beyond Dakar en route to Balboa. On landing
there we spent the day, a hot one, in this small, quaint community, where
the Negro population was my first contact with the native Africans in their
own land. Now a few Americans were also there to manage the Air Station.
When night approached we flew across the South Atlantic to land in one of
the mouths of the Amazon off the shore of Balen, Brazil. We came down on
the water before dawn, along a string of lights to guide the pilot. We
breakfasted on a boat on the river, from which we could see in the distance
not only Balen but the river boats with tall pink sails against the heavy
forest green along the banks. During the day we came on to Trinidad.

After a few hours there we were off for Bermuda, where, as on the Amazon, we arrived before dawn and came down onto the water into a necklace of lights which from afar had seemed to cover so small a space. Before another day had passed we beat a rainstorm into New York, landing on the waters at LaGuardia Airport. Agnes was there and we were soon reunited with our children in Washington. Agnes had had a Mass said for me each day, and I know others of the family prayed for me.

The President promptly transmitted to Congress the documents for which he had taken responsibility. He did not ask for their ratification by the Senate as a treaty, or by the two Houses, but promptly sent them down to keep the Congress informed. The instruments were treated as Executive Agreements, within the power of the President to make, and I think have never been questioned. On the contrary, Congress in numerous ways gave its approval by legislating on various subjects related to the bases. The President's transmission to Congress is reproduced in House of Representatives Document No. 158, 77th Congress, 1st Sess. (Union Calendar No. 98), Government Printing Office, 1941.

In one of the War Offices in London there was a very fine oil portrait of President Washington. Sir Alan noticed our interest and told us the story, which he later had typed for us, as follows:

**PORTRAIT OF GEORGE WASHINGTON**

This is a replica of a painting by C. W. Peale (1741-1827) in the Senate Chamber at Washington. It was brought to Europe in 1780 by Colonel Henry Laurens, who had been appointed United States Minister to the Netherlands. The ship in which Laurens travelled was captured off Newfoundland by a British frigate in command of Captain Keppel, who claimed the portrait as his personal prize, and presented it to his uncle Admiral Lord Keppel.
The painting thus found its place in the gallery at Quidenham Park, the seat of the Earl of Albermarle. For some time it was at 10 Downing Street, and was transferred here in or before 1929. A similar replica was presented to the Court of France and is at Versailles.

My brother Will died in March at our old home in Rome while I was in London. He was sixty years of age, the oldest of eleven brothers and sisters who had lived to mature age, and his death was the first among us since Paul died a little child some forty or more years before. Will's death was a beautiful one, with his devoted brothers and sisters in Rome beside him, and with the Church’s Sacrament accompanying him. He, and his wife, the former Emily Stude of Houston, are buried in the family lot in Myrtle Hill Cemetery in Rome. Will was a lovable person, with a very fine mind, and became an accomplished man in his field of advertising.

The President and Secretary Hull seemed gratified over the negotiations in London. We received letters, etc., appended. On our part we owed a very great deal, as I have said, to Achilles in London, and to Hickerson and others at the Washington end of the telegraph, and those who, under the general supervision of Mr. James Dunn, kept us advised and on the right track. Judge Townsend, of my own office, and Green Hackworth, of State, who was close to the original exchange of notes, also materially assisted I am sure. I should mention also the helpful consultations with Ben Cohen in London after he arrived with Mr. Winant, as well as Ben’s companionship. I acquired a great respect, too, for Mr. Herschel Johnson whose career in the Department of State has been a distinguished one. As the years passed he, Cohen, Achilles and Hickerson and I were in one way or another associated in the State Department or in tasks for the United States in connection with the United Nations.
The Commander, now Rear Admiral Bissmeier, retired, not long ago sent me a copy of his "Family Saga", containing a very interesting account of the London negotiations. General Malony actively participated in the Second World War with distinction and is now also retired but relatively young and in good health. Sir Alan Barnes became the British representative on the Trusteeship Council of the United Nations. Sir Grattan Bushe, who was Legal Advisor for the colonies and very active in the negotiations, as well as in drafting, became Governor of one of the possessions in the Western Atlantic. Sir William Malkin, Legal Advisor of the Foreign Office, who participated at times, came with the British to the San Francisco Conference in 1945 and was lost when the plane in which he was flying home to England disappeared. He was a very able and lovable person. He made one of his clubs in London available to Malony, Bissmeier and me. Indeed, the British were most courteous to us in every way, notwithstanding the stress of the times and the difficulties of the negotiations. Mr. Churchill had us to dinner one Sunday at Chequers, with Mrs. Churchill, a daughter, Mr. Vianant, and Mr. Tree. A rather large official luncheon occurred earlier, with Sir Anthony Eden as host. Later we returned the courtesy with a similar affair at Claridge's. (Sir Anthony talked of his Maryland forebears.)
Lady Astor included us in a very delightful weekend at Cliveden. General and Mrs. McNaughton of Canada, Lord Cranborne and Lord Halley were among the guests. Mrs. McNaughton is a Catholic and Lady Astor arranged for her and me to be driven to Mass Sunday at the military hospital not so far away.
3. Supreme Court Arguments

At the October 1940 Term of the Supreme Court I presented four cases. One was 

*being Company v. National Labor Relations Board*, 311 U. S. 314, involving 
an order of the Board requiring an employer to reduce to writing and sign an 
agreement reached by collective bargaining. It was ably presented on behalf of the Company by Mr. Earl Reed, a prominent member of the Pittsburgh bar who had argued the *Jones & Laughlin* case on behalf of the company. The Supreme Court sustained the order of the Board as a reasonable one to effectuate the policies of the statute in encouraging the settling of industrial disputes through collective bargaining. The case was something of a judicial landmark in the development of collective bargaining and its incidents. At first blush it might seem to have presented a difficult question in that the Board was requiring a written, signed contract; but this was almost an inevitable development of good faith collective bargaining. I felt fairly confident the Court would not disturb the judgment of the Board and take a backward step, inconsistent with the policy of the Act.

Another of the four cases argued at that Term was *Oklahoma ex rel. Phillips, Governor v. Our F. Atkinson Co., et al.*, 313 U. S. 508, which tested the validity of an act of Congress authorizing the construction by the United States of a dam and power plant across the Red River in Oklahoma. The commerce power was relied upon, particularly the authority it gives the federal government over the navigable streams of the United States. The interesting feature about this particular exercise of the power was that the dam was in part a power plant. Lands in the State would be inundated by the reservoir resulting from the dam, and it was contended there was not
truly an exercise of power over navigable waters but the generating of elec-
tric power, which was a matter for the state. The Supreme Court, however,
held that the primary purpose must be considered to be flood control, which
is within the control of navigable waters under the federal commerce power.
The multiple purpose of the dam, it was held, did not destroy this federal
authority.

The case came up to the office of the Solicitor General through the
Claims Division of the Department of Justice. Mr. Denny was the attorney
who worked with me principally in the preparation of the oral presentation
in the Supreme Court, and was of great assistance to me. When I later be-
came Solicitor General I offered him a position on my staff, but he had
been offered -- or was about to be offered -- the position of Assistant
General Counsel or General Counsel of the Federal Communications Commission.
He went with the Commission and became its General Counsel and later a mem-
ber of the Commission itself.

I have no special recollection of difficulty on the Court over the
question of the purpose of the dam, but Chief Justice Hughes was very in-
terested, and asked questions for the purpose of clarification of the
government's position, though he did not indicate serious doubts about the
validity of its position.

I do remember, however, difficulty of a personal character in thorough-
ly understanding the case. Once understood, I was confident. The Attorney
General of the State of Oklahoma made a fine argument on behalf of the State.

Then came the case of Dolezal v. United States, 312 U. S. 205, in which
the opinion by Justice Reed says -- I now have it before me -- in the first
sentence, "The appeal brings here the correctness of the ruling by the
Court of Claims, which allows interest on a claim against the appellant, the United States. It was an interesting case. It sounds less so than it was. Actually the Mississippi River and the boats which plied it, and the circumstances that lay behind the interest money, made an interesting story. It was a new kind of case for me, as was Red River. So, too, was Reconstruction Finance Corporation, et al. v. The Prudential Securities Advisory Group, et al., 313 U. S. 579. The question was a very technical one from my point of view, having to do with the timeliness of an appeal to the Circuit Court from an order of a bankruptcy court at the district court level, and also the question whether the appeal was of right or must be allowed by the circuit court of appeals. The court below had decided against the jurisdiction of the circuit court to entertain the appeal, a defeat for the Reconstruction Finance Corporation on whose behalf the Solicitor General had petitioned the Supreme Court for review. The Supreme Court reversed in an opinion by Justice Douglas, holding the appeal should have been entertained. The defect in the method by which the appeal had been taken was held not to have ousted the Circuit Court of jurisdiction. The case went back for disposition on the merits. The Reconstruction Finance Corporation, I now assume, had an interest in the case because it had a stake in the assets of the company involved, no doubt through a loan. We were in contact with its general counsel in preparing the case, but I'm not clear that we consulted the Securities and Exchange Commission. Later on there were cases in which we did; for example, the Cheesery Corporation case, but that came along later when I was Solicitor General.

We were very busy during this period. One had to keep steadily at work under the pressures of the times. I think usually there is time to do
what falls to one but the work did involve long hours. I was taken out of
the office entirely during the London negotiations, else perhaps I would
have argued one or two other cases. Another one had been assigned to me be-
fore I went away, but the Solicitor General himself took it over. It in-
volved an order of the Federal Trade Commission and became an important
precedent.

I had known Mr. Biddle, the Solicitor General, although I had never
previously worked with him. He had been a member — Chairman — of the
Labor Board which preceded the Wagner Act Board. I became much better ac-
quainted with him during this period, and also with his staff, which was an
excellent one. Warner Gardner I believe was his senior staff member.
Arnold Raum was in the office — he is now a member of the Tax Court of the
United States. I always thought Arnold one of the most learned men in the
tax field in the country. Fortunately, he remained in the office during my
period as Solicitor General. Tom Harris was there with Biddle and I be-
lieve Charles Korsky, although I'm not sure whether he then remained. I
know he was there with Reed. Marvin Smith had been on the staff for some
years and continued during my period. He was a specialist in criminal pro-
cedure.

OFFICE OF THE SOLICITOR GENERAL

1. Appointment and Confirmation

In June of 1941 vacancies occurred in the Supreme Court which resulted
in the appointment of Justices Byrnes and Jackson. Jackson immediately
withdrew from active work as Attorney General, pending confirmation. Soli-
C. M. Biddle became Acting Attorney General, and I Acting Solicitor General. Mr. Biddle was nominated as Attorney General in August 1941, and took office upon confirmation. I was nominated as Solicitor General in October and took office in November, 1941.

The delay in my case was due to a problem confronting the President about others who desired or were considered for the position. I did not talk personally with the President, but had good reason to believe he was favorably considering me and probably would appoint me. Mr. Biddle frankly advised me there were two men he preferred because of closer personal relationship or other reasons of his own. He told me who they were. But he also told me that he nevertheless had advised the President that I was qualified for the office.

It seemed likely the President would appoint me unless he turned to Mr. Dean Acheson. The President sent word to me through Attorney General Biddle indicating that I could have a choice of being Solicitor General or Assistant Secretary of State, the position then held by Mr. Acheson, and in event I chose the latter the inference was he would appoint Mr. Acheson as Solicitor General. I wrote a note to the President, which I gave to the Attorney General, saying I thought my experience better qualified me to be Solicitor General than Assistant Secretary of State, for which reason I preferred the former, but that I would gladly accede to his wishes and deeply appreciated the opportunity of expressing myself. Along about that time Mr. Acheson and I lunched together. He knew the trend of the President's thinking — or that attributed to the President — and told me he thought the logical step was for the President to appoint me Solicitor General. I told him I knew of no one who would make a better Solicitor
General than himself, and that I certainly would understand the President's choice of him.

The Senate Judiciary Committee appointed a subcommittee with Senator Hatch as chairman and a day for a hearing on my nomination was set. Mr. Madden, my old friend, former chairman of the Labor Board, was present. Sitting across the room was Mr. John Connolly, of Des Moines, with whom I had roomed as a young man in Washington many years before. I had not seen him in years. After the session I asked how he happened to be there, and told him how glad I was to see him. He said when he got off the train that morning in Washington he saw a notice in the paper that there was to be a hearing that morning on my nomination. He thought he would come down and see if there was anything he could do.

No one came to oppose and there was no opposition on the floor of the Senate.

2. The Nature of the Office

The office, created in the 1870's, grew out of a desire to have someone specially responsible for the litigation of the United States. By custom and tradition the Solicitor General became responsible under the Attorney General for this litigation in the Supreme Court. He has other responsibilities, but this has been his special function. Until recently he was the second man in the Department and became Acting Attorney General in the absence or disability of the Attorney General. Until 1933 he was also responsible for reviewing the proposed opinions of the Attorney General, as I have explained in discussing the work of the Assistant Solicitor General.
Since he was potentially Acting Attorney General the Solicitor General was consulted a good deal by the Attorney General in connection with departmental problems; but ordinarily he had no general administrative duties. During my tenure the White House requested me, in the absence of the Attorney General, to attend meetings of the Cabinet.

The office is not quite the same now as before, having been reduced from second to third position in the Department. But the relationship of the office to cases in the Supreme Court has not changed, and this chiefly gives the office its character. I felt highly honored, personally as well as from the standpoint of my family, and was grateful to the President for selecting me. The President was kindly disposed. Sometimes I think perhaps he expected me to be greater help to him than I was. I do not know. I know I wanted to help him and was devoted to him.

The staff of the office is small -- around seven, eight, or nine -- but it must put in final form the briefs, petitions and memoranda filed with the Supreme Court on behalf of the government. These include petitions for certiorari and oppositions or memoranda in regard to petitions filed by others. It is possible to make out with a small staff because of the availability of help of other staffs in the Department and in other Departments and agencies of government. If, for example, an antitrust case reaches the Supreme Court it will have been handled during most of its history by the antitrust division in the Department. Drafts of briefs for the Supreme Court will be prepared by the appellate section of that division.

So, too, with the independent agencies. If a Securities and Exchange Commission or a Labor Board case is in the Supreme Court it is quite probable the original draft of brief will have been prepared in those agencies. So,
too, with respect to other Departments, such as the Labor Department, in a case arising under the wages and hours law. The office of the Solicitor General, however, exercises ultimate authority over the presentations in the Supreme Court.

The staff must be good and traditionally it is. Its members must not only be legally competent but rigidly honest. The office has gained a fine reputation with the Court for the integrity of its work, that is, the accuracy with which it presents the facts and the reliability of its legal scholarship.

The Solicitor General should not be over-zealous. He should be conscious that he represents the United States as a nation in the final judicial tribunal. This means that he must not press a position beyond the best interests of the country as a whole. When litigating the United States is still the United States and not something less. What is good for the country is not always the sure winning of a case. This raises problems which are more acute than in private practice, or perhaps even in the United States Attorney's offices. The Solicitor General sometimes is called upon to confess error; that is, to take the position in the Supreme Court that the government's success in a lower court is due to a mistake, and should not be solidified into a decision of the Court of last resort. The approach to this responsibility must be circumspect. A "confession of error" puts the Solicitor General somewhat in the position not of an advocate, but of a judge, and he is not a judge — he's still an advocate — and the judges must decide. Yet, by reason of his representation of the whole people, he does quite properly I think take the position I have indicated when convinced. The Supreme Court is not bound to accept his views. When I was Solicitor General the practice of the Court was to make up its own mind notwithstanding a "confession of error."
The nature of his position also affects sometimes the manner of presentation. Where he feels that the government must present a case for the court's decision but nevertheless he is not clear as to the correctness of the government's previous position, he may adapt his method of presentation to the situation. To illustrate from my experience: The Korematsu and Endo cases were argued one after the other. Both grew out of the evacuation from the West Coast of persons of Japanese ancestry. Korematsu involved the original mass evacuation itself. I fought very hard to sustain this as constitutional, based on the military judgment at the time the action was taken. This was my duty as I saw it. In the Endo case which immediately followed, the problem was different. Miss Endo was a young American citizen of Japanese descent who, after the evacuation, had been sent to one of the relocation centers and there had been cleared individually from a loyalty standpoint. But she was still held under some restraint of her freedom. Before and during the mass evacuations there had not been time for such individual clearances, but time had gone by and she had been cleared. I thought the executive branch of the government should abolish the regulations involved in her case which continued to hold her under some supervision. Contrary to my recommendations and judgment it was felt that public acceptance of abolition of the regulations would require a Supreme Court decision. Because of the nature and importance of the case, however, it seemed to me that I should present the position of the United States. But when Endo came on immediately after Korematsu I told the Court I could not argue it with the same conviction as the other. I explained that the case grew out of the mass evacuations program and I wished to present the matter as fairly and fully as I could from the standpoint of the government.
All of which leads me to another comment. While I have said that the Solicitor General has a somewhat different responsibility than a private attorney I would not wish it thought that the United States should not press its cases vigorously and forcefully, unless there is some very strong reason to the contrary, as in Ex parte. Indeed, I think it will be found that the government's cases are generally argued as strongly as any, and quite properly so.

3. The Office in Wartime

During the period immediately preceding and after Pearl Harbor the Solicitor General was given more than the usual administrative responsibilities. Until the Department could be reorganized to absorb its new work in a more regular manner Mr. Biddle asked me to head up what became known as the War Division. Later a new assistant attorney generalship was created for this Division.

The Attorney General was out of the city the Sunday afternoon of Pearl Harbor. Arnold Bahr was in his office and answered the telephone ringing in my office nearby. Admiral Stark was on the phone calling the Department of Justice to advise that the United States had been attacked by Japan at Pearl Harbor. Bahr called me at home, and I came down, after calling Francis W. Shea, Miss Fanebust, my secretary, and arranging for others, including Townsend, Smith and Mannis, as I recall, to gather immediately at the Department. One of our first responsibilities was to lay before the President the proclamation bringing the enemy control act into operation. A draft proclamation was ready as part of our pre-war preparations. We made some final revisions and Mr. Shea and I took it to the President him-
self. This was in the late afternoon or early evening. We saw the President in his room on the second floor. Mrs. Roosevelt and their son James and lovable and able "Pa" Watson were there. The President was sitting up in bed with a rather large pad and pencil working on a composition of his own, which I assume was his message to Congress asking for the declaration of a state of war. I had talked with the President on the telephone earlier in the afternoon. The White House had called my home while I was on the way to the Department and also had called the Department before I arrived. When I reached the office and talked with the President he spoke of the immediate steps Justice should take. The President told me generally what the situation was at Pearl Harbor. He was self-possessed and alert. He had himself well in hand notwithstanding the tremendous problems he faced.

The President read and signed the proclamation. As indicative of his attentiveness as well as his detailed knowledge of government he said, "We must not forget to have the Secretary of State put the great seal on this," which in fact I might have forgotten. He then asked me to come to the Cabinet meeting at eight o'clock. But when I arrived at the White House to do so Mr. Biddle had returned and was able to attend himself.

It was necessary to take into custody, under the authority of the proclamation, those who might be dangerous. Our Policy Committee had not completed its classifications hearing on this problem. Mr. Hoover asked me as Acting Attorney General to advise whether he should immediately take into custody only those who had been classified in the category which called for detention or whether he should go beyond and detain some who had not been classified. I thought that in view of the situation as a whole the F.B.I. should use its own judgment and authorized the F.B.I. to take into custody
any whom they thought were sufficiently dangerous, whether or not our pro-
cessing had reached the particular case. By acting promptly over the next
few days possible hysteria was prevented and any basis for vigilante
activity was removed. A feeling was created that the situation was well in
hand. No significant fear arose to lead to untoward concern on the part of
the people. The mass evacuation from the West Coast, however, was a special
problem which should be viewed separately from the nation-wide enemy alien
program under the Department of Justice.

Of course some alien enemies were taken into custody mistakenly. But
procedures were instituted to afford all detainees an opportunity to demon-
strate error, and these procedures were put into effect promptly; the pro-
gram became well organized and I think functioned well. Within the next
day or two I initiated the formation of review boards throughout the country.
I called the senior circuit judges of several circuit courts of appeals --
I was not able to reach all of them -- to recommend persons qualified for
these boards. That was the beginning. The persons so recommended formed
the nucleus from which boards were established throughout the country.

The work of the government in the Supreme Court became for the time
being less important in comparison with the survival of the nation. I was
rather glad, at least temporarily, that I could help more directly in con-
nection with the war. I was very conscious at the same time of the place
of the judiciary, and that we could not neglect the usual processes of the
law, except as the war necessitated some change or variation, such as these
boards to handle the alien enemy problem. Everyone during that period --
as during other periods of emergency -- was willing to take on more than
the ordinary responsibilities, and I do not think there was any neglect, to
any significant degree, in the work of the Solicitor General in relation to
the Supreme Court. The cases which would grow out of the war itself were
mostly some distance away, so that the work before the Court consisted
largely of peace-time cases until later when important "war cases" knocked
at the door of the Court.

4. The Staff

When I first took office Warner Gardner -- an able lawyer -- was the
ranking man on the staff of the Solicitor General. He did not remain long,
very soon becoming Solicitor of the Department of Labor, and later Solicitor
of the Department of the Interior. The next ranking man was Arnold Baum,
now a judge of the Tax Court of the United States and an authority on tax
law, though his talents were by no means limited to the one field. Some-
what later, Paul Freund, who had been with Solicitor General Reed but who
was then teaching at Harvard, returned to the staff for the duration. Mr.
Freund, like Gardner and Baum, is an exceptionally able lawyer, and I was
fortunate to have his help, as was the Court. Philip Kixman came to the
staff from clerkships with Judge Calvert Nemes and Mr. Justice Frankfur-
ter. He has remained to become an unusually good advocate. Walter Cummings
of Chicago also joined the staff. He concentrated a good deal on the cases
under the Interstate Commerce Commission Act, in which we worked closely
with the general counsel of the Commission. Stanley Silverberg and Dick
Salant were other members, as was Chester Lane, who had been general coun-
sel for the Securities and Exchange Commission. Marvin Smith remained dur-
ing my tenure but has since died, as has Stanley Silverberg, who after my
time went with the Judge Rosenman firm in New York, as previously had Dick Salant.

Alvin Rockwell was in the Tax Division of the Department of Justice when I became Solicitor General, having come over from the National Labor Relations Board. At my request he joined the Solicitor General's staff, thus beginning another of the pleasant associations I have had with him. While on the staff he was offered the general counselship of the Labor Board and returned to the Board in that capacity.

Robert Stern also joined the staff. He had been in the Antitrust Division. I had become acquainted with him when he first came into the government in the Interior Department when I was there. He has remained in the office of the Solicitor General ever since, and for considerable periods has been Acting Solicitor General. He is leaving within a matter of weeks, after some twenty-one years of fine public service, and more than ten years on the staff of the Solicitor General. I am to speak at a farewell luncheon for him.

Ralph Fuchs, who later joined the faculty of the Indiana University Law School, was also a very valuable addition to the staff during my tenure, and my good friend H. I. Ingraham gave us for a while the benefit of his fine talents, as did Leonard Meeker, later to come with me in the State Department, where he has remained. And I must not fail to mention the exceptionallly fine work of Richard H. Denmuth until he, like Ingraham and Meeker, left for the war.

My valuable secretary continued to be Miss Mildred Faneburn, who has helped me more than I can say.
Occasionally the Solicitor General's office would brief a case from the ground up, but quite generally, as previously explained, it had the benefit of a draft brief prepared by either a division of the Department of Justice or the legal staff of the independent agency or other department through which the case arose. Notwithstanding this assistance we were responsible for the final formulation of the government's position in the Supreme Court, and gave the last, and sometimes quite extensive, review and presentation of that position.

The Solicitor General is responsible for the oral arguments to the Supreme Court on behalf of the Government. He presents certain cases personally and assigns others. He might assign an antitrust case, for example, to the assistant attorney general in charge of that division, or to someone on its staff selected in consultation with the assistant attorney general. In other cases he designates members of his own staff. Cases arising through other departments or agencies of government not infrequently are assigned for argument to the solicitor or general counsel of the department or agency, or to a member of its staff. Occasionally the Attorney General will desire to present a case personally. Attorney General Biddle argued the Insurance Cases during my tenure.

The Solicitor General also decides when the United States should appeal to a circuit court of appeals after losing in the district court. It is thought that at this stage he should give direction to litigation which might or should reach the Supreme Court. The division of the department or the agency responsible submits the matter to the office of the Solicitor General on a memorandum which usually includes a recommendation. The file in the case, with this memorandum, is distributed on some rational basis.
among various members of the Solicitor General's staff, who in turn make a recommendation to the Solicitor General, who takes final action.

One of the most difficult problems is to decide when petitions for certiorari to the Supreme Court should be filed by the government when it has been unsuccessful in the lower court. The Solicitor General gives a good deal of personal attention to this. A request that a petition be filed comes in most instances from the departmental division or the agency which had handled the case below, usually with a recommendation. The file is assigned first to a member of the staff.

The division of work within the staff was made on the basis as far as possible of special qualifications, with regard also, however, to a desire to train new members in certain directions. If the case were a tax case it would go ordinarily to Baun, and also to Gardner if it were a governmental immunity tax case. If it were in the general area of SEC, including the Public Utility Holding Company Act, or even some matters involving the Power Commission, it would probably go first to Chester Lane when he was on the staff. If it were a criminal case of a more or less ordinary run, with no special or "security" problem, it would probably go first to Marvin Smith. If it were a civil liberties case primarily, the assignment would vary. Elman, as the years went on, would no doubt get a look at it. If a Power Commission case Dick Demuth would carry the heavy load, and in other respects too. If it were an Interstate commerce case, then it probably would go to Walter Cummings. There are a lot of cases not mentioned above that cannot be classified. Rockwell would most likely get a look at a Labor Board case, unless he was involved in something else, but his talents were not so confined.
In any event before the brief, or other document, came to me it would often clear through Warner Gardner, or Baum, or later Paul Freund. If it were a petition for certiorari by the government I would have been in on it at an early stage.

No doubt Solicitor Generals vary in the amount of personal review they give documents to be filed with the Supreme Court. Almost invariably I studied each.

5. Treason Cases


In 316 U. S. 8, there is a short entry of April 5, 1943, showing denial of certiorari in the case of *Stephen v. United States*, a treason case. Stephan was a resident of Detroit of German sympathies. A German aviator who had been captured and sent to Canada for detention escaped and reached Detroit. He found his way somehow to Stephan, so far as I know without pre-arrangement. Stephan over a period of a day or so helped him in several ways, including the obtaining of transportation beyond Detroit. The escaped German aviator reached Mexico. We were at war. Stephan was a citizen, and he had given aid and comfort in this manner to the enemy, a member of the German Armed forces.

Stephan was indicted, tried and convicted of treason, and was sentenced to death by hanging. The Circuit Court of Appeals affirmed. 133 F. 2d 87. He petitioned the Supreme Court for a writ of certiorari, and thus the case came to the office of the Solicitor General through the criminal division of the Department of Justice. The question was whether we should concur in
the petition for certiorari, take a neutral position, or oppose certiorari. We decided on the latter course.

Arnold Baun prepared a very careful analysis of the case, to demonstrate to the Supreme Court that, although the case was important, Stephan had been fairly convicted, and no errors of law were involved. On this basis, we represented to the Supreme Court that there was no occasion for it to review the case. The Supreme Court denied certiorari. This left the conviction and sentence of death in effect. If certiorari had been granted, it would have been the first treason case in the history of the United States to reach the Supreme Court for decision on the merits.

I thought the death sentence was not appropriate. Denial of certiorari by the Supreme Court, which I sought, in no way indicated that I or the Court thought the sentence itself was correct. The treason statute, first enacted by the first Congress after adoption of the Constitution, permits great latitude to the trial judge in imposing sentence, ranging from a few years to death. This demonstrated that the Congress considered that the crime might arise in varied circumstances of seriousness, that not all treason should carry the severest punishment.

The Department of Justice did not feel justified in recommending to the President commutation of sentence. I asked and obtained permission from the Attorney General to present my views directly to the President, which I did in the form of a single-spaced memorandum about a page and a half in length. Mr. Wendell Berge, Assistant Attorney General in charge of the Criminal Division, and others I shall not now mention, agreed with my views.
The memorandum was sent over to the White House the day before Stephan was to be hanged at sundown in Detroit, as I recall the chronology. My recollection may be somewhat inaccurate. The President, on the morning of the proposed execution, called me on the telephone, said he had read the memorandum, was impressed by the latitude which the statute gave the sentencing judge, indicating Congress had considered treason to be of different degrees, and that he agreed this treason was not a plot against the government, or otherwise the kind of treason which should carry the most severe sentence. He said he had decided to commute the sentence to life imprisonment as I had recommended. He said he wished to issue a statement explaining his action, because it might be misunderstood. He said he would dictate a statement to Miss Tully, his secretary, and ask her to read it to me on the 'phone; that he would welcome suggestions. In a very few minutes Miss Tully read the statement to me, which I thought was excellent. I made only one slight suggestion, that when he referred to degrees of treason it might be a little better to say qualities rather than degrees. Although there is latitude in the sentence for treason there is no difference in degree in the same sense as in homicide cases. The suggestion was perhaps unimportant, but the President accepted it and issued the statement with the announcement of the commutation.

When he told me what he had decided to do, he had asked me, "Now, what do I do to make this effective?" I told him I would have the proper papers sent to him. Mr. Carmi was of great help at this point. When the papers were duly signed by the President, I think it was Mr. Carmi on behalf of the Attorney General who called the appropriate official, the Marshal in charge of the preparations in Detroit, and advised him the President had
commuted Stephan's sentence to life imprisonment. As I remember the story, the Marshal as a precaution asked his communicant to hang up, and said he would call Mr. Carmel at the Department of Justice for verification, which was done.

The reaction to the commutation was favorable. The metropolitan press in the East, including the New York Times and the Washington papers, complimented the President's action.


While on the question of treason, I might move on to the Cramer case. Cramer was a citizen, living in New York, who had known one of the German saboteurs. The saboteur had returned to Germany and after the war began returned to the United States on a submarine, landing on the Maine coast. The F.B.I. got on his trail. Before his arrest the saboteur got in touch with Cramer. Cramer had some association with him over a day or two, including taking money to keep for him until he might need it. Cramer was seen by two F.B.I. men eating and conversing with the saboteur in a restaurant, although the conversation was not overheard.

When it was thought the time had come Cramer was arrested, and was indicted, tried and convicted of treason. His sentence, as I recall, was forty or sixty years, I'm not now sure. On appointment by the court Harold Medina, a New York lawyer, now a member of the United States Circuit Court of Appeals for the Second Circuit, represented Cramer. His conviction was affirmed by the United States Court of Appeals for the Second Circuit. On November 8, 1943, the Supreme Court granted Cramer's petition for certiorari.
The case came on for argument on the 22nd of May, 1944, by Mr. Sedina on behalf of Cramer, and by myself on behalf of the United States.

There were a number of questions in the case, but the turning point was whether or not certain of the overt acts set forth in the indictment, and of which Cramer was convicted, were adequately established by the testimony of two witnesses within the meaning of the constitutional provision in that regard.

Some aspects of the Aaron Burr trial had reached the Supreme Court but the merits of the treason case itself had not. No other had ever gotten to the Supreme Court in any form, except the denial of certiorari in the "Stephen case." The Court therefore was faced with the problem of deciding for the first time the meaning of the two witness rule in its relationship to an overt act of treason. The Court rose at the end of the term without having decided the case and set it over for reargument at the October 1944 term. In its order doing so it requested other briefs and argument on stated aspects of the case.

Since the summer was to intervene before reargument, I decided, in view of the nature of the further briefing desired, the fact that the case was the first one of its kind in the Supreme Court, and of the importance of the position the United States should take, that it would be well to make an objective and thorough study of the history of treason and of the two witness rule, antedating even our own Constitution, and to give the Supreme Court the benefit of such a study, with a brief setting forth our views as to the application of the proper principles to the case at bar. For this purpose we were fortunate in obtaining the help of Mr. Willard Hurst, who is now I believe the Dean of the University of Wisconsin Law
School, and who during the war was a lawyer in government service at the
Pentagon. He was loaned to us and devoted months to the task. As a result
we filed with the Supreme Court what became known as "Appendices to Briefs
for the United States on Reargument," a document of some four hundred pages.
I think perhaps the most comprehensive study of the subject ever made.
This study of course was made available to Mr. Medina. He made a study of
his own and devoted himself very intelligently to the task.

We then filed our brief on reargument, endeavoring to convince the
Court that within the meaning of the treason clause the overt acts had been
proved by two witnesses, and that the conviction should be sustained. The
case was reargued on November 6, 1944, by Mr. Medina and myself, and the
Supreme Court reversed the decision, in an opinion by Mr. Justice Jackson
of April 23, 1945, with a dissent by Mr. Justice Douglas, joined by Chief
Justice Stone, Mr. Justice Black, and Mr. Justice Reed, supporting the posi-
tion of the government.

During the course of the argument Mr. Justice Roberts was concerned
about an aspect of the case which went to the fairness of the conduct of
the trial, as distinct from the constitutional questions. The United States
Attorney, Mr. Correa, who had prosecuted the case I thought extremely well,
introduced in evidence a mass of paraphernalia which had been recovered
from the saboteurs, which indicated their preparations. The trial court,
over objections that this was prejudicial and inflammatory, permitted the
evidence to be received. Justice Roberts was concerned about this. He
questioned me as to how I justified the government's putting all this ma-
terial in evidence. I replied that the paraphernalia, in the normal course
of preparation for the trial, had come into the possession of the United
States Attorney and I assumed he offered it in evidence because he felt he should not take the responsibility for not placing it before the court.

The attitude of Mr. Justice Roberts was typical of his general alertness about the fairness of trials, particularly where there was some indication the government itself might be resorting to unfair tactics.

During the first argument I knew the Court was troubled by whether the overt acts were proved within the meaning of the two witness rule. I was not by any means certain about the outcome, but I did think the government might prevail. The final division was a close and a very interesting one.

I still think the verdict of the jury was justified so far as the two witnesses rule was concerned; in other words, I agree with the dissenting opinion. Some in the Solicitor General's office who handled the later 

Haupt case would perhaps argue that the Supreme Court somewhat receded from the 

Gramer doctrine. But I think perhaps Haupt was easier for the Court on the application of the two witness rule to the overt acts. While I can understand the majority opinion in 

Gramer it has never completely convinced me.

There is no treason for thinking. We can have no crime, really, for thinking; the accused must take some action. He must give aid and comfort to the enemy with treasonable intent. What he does with that intent must be witnessed by two people. It becomes a very subtle and complicated ques-


tion in a case like Gramer's. For example, the conversation in the restaur-

ant observed by two witnesses -- was the conversation an overt act? Was 

it giving of aid and comfort to the enemy? If it was, it was witnessed by 

two witnesses who testified to it. But since they did not hear the conver-

nration, there was the troublesome question whether it was an overt act of aid and comfort with treasonable intent.

Cramer was seen walking down the street with the saboteur, the enemy, after a meal in the restaurant just before he was picked up, and there were two witnesses to that walk.

The money which Cramer was keeping for the saboteur was recovered, but there were not two witnesses to his having received it from the saboteur, or ever having returned any to him. However, Cramer did not deny that he had done so. Was the two witness rule necessary in such a case?

I do not attempt to judge Cramer as an individual. I don't know whether in his heart he was guilty. I could not say that he was. What I mean when I say I think the verdict was justified is that I think on the record, as it was made, he was convicted within the constitutional meaning of treason.

The Constitution, as our founders intended, makes it difficult to convict a person of treason, because in England, at certain periods, accusations of treason were used as political weapons. Men were convicted and executed because they came into bad favor with the dominant government. With accurate and scholarly knowledge of the history of treason in England our founders by the Constitution itself deliberately narrowed the definition of the crime, and also made it necessary to have two witnesses to the same overt act. The Constitution says that "treason against the United States shall consist only in levying war against them, or adhering to their enemies, giving them aid and comfort."

The framers desired to get away from the attribution of treason to one who was thinking against the king, one who had a treasonable attitude but
did no overt act. They sought also to guard against the use of perjury in convictions of treason. If one reads the appendices which we filed with the Court, one will see that long ago in the history of England, too, the two witness rule grew up, as well as the necessity for the overt act. Indeed, the two-witness rule goes back to the Bible.


*Wickard v. Filburn* was a fascinating case. I am not sure I can give an accurate picture of it from recollection. I had the skillful assistance of Mr. Kimball and Mr. Wilson of the antitrust division, and of Mr. Robert Stern of my own staff. Mr. Yost and Mr. Hunter of the Department of Agriculture also helped me greatly. The case arose under the Agricultural Adjustment Act of 1938, the successor to the Agricultural Adjustment Act which had been declared unconstitutional in the famous AAA case. The question was whether in the effort to control the price of wheat it was within the power of Congress under the Commerce Clause to control the consumption of wheat on a farm. The particular control which Mr. Filburn sought to have enjoined was over the consumption of wheat as feed for stock or chickens, and the like, on his premises. The regulations were extended thus far in the belief that this was necessary in order to regulate the flow of wheat into the market.

I do not know whether Mr. Filburn was a man of means; I wouldn't be surprised to learn that he was assisted on the way to the Supreme Court by others similarly situated, who wished to have the constitutional question tested. I am reminded of one of the early injunction suits filed against the National Labor Relations Board in the District of Columbia. It was
filed by a single woman employee of a Georgia mill. She appeared in court represented by one of the biggest and finest law firms in the country with its principal office in New York.

The government lost the idburn case below and it came to the Supreme Court under the provisions of the Act of August 24, 1937, which gave a right of direct appeal to the Court when a three-judge district court had set aside an act of Congress as unconstitutional.

The case was argued first in the late Spring of 1942 and, like Gramer, the Court rose at the end of the term without deciding it. It was set over for reargument in the Fall. Then the Court, in an opinion by Mr. Justice Jackson, sustained the government's position in an extraordinarily fine opinion. The beauty of the opinion was not simply in its analysis of the particular case but in its reappraisal and restatement of the power of Congress under the Commerce Clause. It was learned, lucid and persuasive. It restates the reasons why a decision under the commerce power cannot turn on whether the particular incidence of regulation is local when separately considered, but on whether the local impact has sufficient effect, either economic or physical, upon interstate commerce. It is the reasoning which had been used by Chief Justice Hughes in the Shreveport and Minnesota Rate Cases and later very clearly expounded by him in the Labor Board cases.

The theme of my argument was that the subject actually regulated was a great interstate flow of wheat, not a local but a national affair. If in fact Congress, with adequate basis, found that it was necessary, in the regulation of this great interstate and national activity, to take hold also of this local aspect of it then to do so was within the national power.
I think Mr. Milburn had an arguable case, because of the very local character of his immediate conduct. The decision was an extension of the commerce power, and the Court apparently had some trouble with it because it was not decided until argued twice, but in the end the decision was unanimous.


I remember very vividly Justice Black's active participation during oral argument of this case, but not the reference made to the case by Mr. John P. Frank in his biography of the Justice. His questioning was more vigorous than in any case I experienced in the Supreme Court during my appearances, which extended over a period of about ten years. Justice Black is very moderate and discerning in interrupting argument, but in this case he was excessive in his effort to tear down the government's position. I had the feeling that he thought the government had brought to court a matter for the Congress to solve.

The case had a very long history, too complicated for me to recall in accurate detail. It grew out of the fact that the government, through the Maritime Commission -- or the old Shipping Board, as it was known, entered into an arrangement with the Bethlehem Shipbuilding Corporation and associated companies for building ships deemed necessary in the prosecution of the first World War. The end result, as far as the beginning of litigation was concerned, was that, when the ships were built and the bills paid, the responsible officials in the government decided the cost was not only excessive but so exorbitant that the United States had cause to recoup a part, which it undertook to do. There began long, drawn out proceedings with
references to and reports of special masters — at one point Owen J. Roberts was special master. He never made a report because he never finished. The case dragged on interminably, and ended with a decision of the district court adverse to the government. The district court's decision was sustained by the third circuit. Francis Biddle, when Solicitor General, petitioned the Supreme Court for writ of certiorari, which was granted, and the case came on for argument in the Supreme Court after I had become Solicitor General. I inherited it, as it were, and argued it for the government; Mr. Frederick Wood, of the Gravelle firm, represented the Bethlehem group.

I had had two interesting experiences with Mr. Wood in Labor Board injunction cases — but he was not in the Wagner Act test cases which reached the Supreme Court. We opposed one another in the old Supreme Court of the District of Columbia, and then in the Court of Appeals of the District of Columbia. But Bethlehem was the first time in which we appeared on opposite sides in the Supreme Court. He was an extremely able advocate and I acquired an admiration and respect for him.

During the course of the argument, one of the Justices — I think Justice Black — asked me a question of fact. I did not have the answer ready, and was fumbling. Mr. Wood knew the answer and quietly gave it to me — which was a very courteous thing — instead of enjoying my embarrassment. It was a very large record, but I do not excuse not having the answer. It was one of the arguments I made in the Supreme Court which I never felt happy about.

Mr. Wood argued very ably, vigorously and with a strong voice. He was careful in his preparation and knew his cases.
I met him in the lobby of the Mayflower Hotel after we had argued once or twice against each other in Labor Board cases, and after he had made a reputation in anti-New Deal litigation. The Labor Act had then been sustained by the Supreme Court. I said I had been disappointed he was not in those cases. He smiled and said he had been in the Schechter case and had won by a vote of eight to one; that he had then been active in the AAA case, although I do not think he made the argument in that case — I attribute that to George Wharton Pepper, at least principally — which had been won by a vote of six to three; that he had then argued the Guffey Coal Act case and had won by a vote of five to four. He concluded by saying with a laugh that in the Labor Board case he thought maybe the vote would cross over the line.

The problem in the Anthracite case was that, notwithstanding the assumption of inordinate profits, the government had gone into the matter with its eyes open and had no contractual right to recoupment of profits or amounts paid. The Court in general, I think, just seemed to think it wasn't for them to protect the government from excessive profits paid without violation of any statutes, and, as the Court seemed to think, without violation of any clear contractual obligation. Of course, the government argued to the contrary, that there was a contractual violation, and also, independently, that the amounts taken as profits were so unconscionable that the government should obtain relief, especially in the light of its exigencies during the war and near helplessness in entering into arrangements with private industry to fulfill its war needs. The case was argued, strangely enough, the second day after the attack at Pearl Harbor, as we were entering the Second World War, during which the Reevaluation Acts and other legis-
tion no doubt supplied the legislation needed to avoid the evils the government thought inhered in the Bethlehem transactions.


At the October 1941 Term, William Schneiderman petitioned the Supreme Court for writ of certiorari to review a decision of the Circuit Court of Appeals for the Ninth Circuit, which had sustained a decision of the district court denaturalizing him. 119 F. 2d 500. As Acting Solicitor General I had opposed grant of the writ. The case was argued twice, the second time March 12, 1943.

Schneiderman was a Communist, admittedly so at all times material to the case. The United States instituted proceedings to revoke his citizenship, on the ground that when he was naturalized he swore falsely that he would bear true faith and allegiance to the United States and that for the requisite period he had been attached to the principles of the Constitution. The position of the government was that Schneiderman had secured his citizenship illegally, and that the applicable statute authorized revocation.

I think the denaturalization aspect of the case was in the criminal division of the Department of Justice, though the case was a civil one. Despite the nomenclature of the dominant character of its work, the division was given responsibility in some related fields. This case was handled by the United States Attorney's office in San Francisco, in charge then of Mr. Hennessy. In my own office Mr. Chester Lane devoted considerable time to the case, as I did also. I studied it carefully in preparation of the brief and afterwards of my oral arguments. I read the exhibits and became pretty thoroughly acquainted with Communist teaching as thus evidenced -- the
manifestos and writings of the relevant period. Schneiderman was not being unjustly treated in being labeled a Communist or by having attributed to him attitudes which were not in fact his own.

The district court, on the basis of an elaborate record as to the Communist Party as it was then known -- its beliefs, doctrines, and methods, and Schneiderman's own activity in the party -- found that he had obtained his citizenship illegally. As the case developed in the appellate proceedings the critical point was that Schneiderman was not attached to the principles of the Constitution and therefore had obtained his citizenship illegally when he swore he was so attached.

The case came to the Supreme Court at a bad time, if I may say so. We were in the war -- as a matter of fact the first argument was almost "in the midst" of the battle of Stalingrad. There was tremendous good will then in the country for Russia, and a great admiration of its fight against the common enemy Nazi Germany. I wanted the case put over. I was a bit uneasy about the advisability of the government, at that particular moment, saying in our highest tribunal all the things that needed to be said about Soviet Russia, and yet I did not want to pull any punches in presenting the case. I was not able to obtain a delay. Mr. Wendell Willkie, one of Schneiderman's counsel, would not agree, and the Chief Justice was not willing to postpone the argument unless both sides consented. Before taking the matter up with the Chief Justice I had spoken to Mr. Welles, Under Secretary of State, about the situation. He thought some delay was desirable. But the argument I also advised the President about the case, simply to let him know of its character and posture. He was not disturbed by it and thought the
case should be strongly presented and "let the chips fall," though the expression was not his own.

Mr. Willkie's first argument I thought was not especially good — I do not mean it was bad. It was a sincere argument but I did not think it was particularly effective or well rounded out. His second argument, however, I thought was excellent. In the time between the two arguments he had devoted himself to more careful preparation.

My own relations with Mr. Willkie were pleasant. He kindly sent word to me through Mr. W. B. Lawrence, of the New York Times, that if I wished he would be glad to recommend me to the President for the then existing vacancy on the Supreme Court. I deeply appreciated this of course but thought I should not ask him to do as he suggested, and so told Lawrence.

I do not remember particularly any comment in the Solicitor General's office about Mr. Willkie's enlistment in aid of the defense. I rather admired him for taking the case, in the sense that a great service is performed by men of standing, prestige, and ability, in taking up unpopular causes when convinced some lawful liberty of an individual is in danger. My qualification is that I disagreed with him about this case. I had a quarrel in my own mind, if one may so phrase it, about his seeming to become convinced he was right about this case. But it is hardly for me to press that position, when he had the Supreme Court with him in the end. My disagreement is more with the Court.

When the case was first argued there was a vacancy on the Court which was filled by the appointment of Mr. Justice Rutledge, I believe during the recess and before reargument. Mr. Justice Jackson disqualified, because of some connection with the proceedings when he had been Attorney General.
I hoped a new vote might be helpful to us. I had definite hopes of prevailing, although from the reception my first argument received from some of the Justices I realized there was a seriously divided Court, even though the questions asked were of the sort one welcomes. Justice Black asked about the right of revolution, with a reference to our own history. I referred to what Lincoln had said, and the action of our forefathers — where government has failed of its function there is such a right, but it is not a right of the citizens which is recognized by the law of the government affected. It is a basic right of the human being to revolt against tyranny under certain circumstances, but not a right which a government in existence recognizes in the citizen. Schneiderman could not claim that the United States must recognize a legal right on his part to revolt against the United States.

There had been some weakness in the pleadings, which I will not attempt to analyze, which disabled us a good deal in the Supreme Court from arguing on the basis of lack of true faith and allegiance; that is, false swearing in that respect. The strength of our case was his lack of attachment to the principles of the Constitution. The Court's opinion as I now recall its substance says two things: that the evidence did not establish convincingly enough (1) that Schneiderman personally believed in the overthrow of the government by force or violence, and therefore, on that phase of the case, it could not be said he was not attached to the principles of the Constitution; (2) that absent force and violence one had the right to seek peaceful change, our traditions and law encouraged freedom of thought and peaceful change could be advocated.
I do not think this met the government's case because there are certain basic principles -- though recognizing of course that we may change the Constitution -- which are principles of the Constitution. The statute is drained of meaning by saying, "You are not required to be attached to anything because you are permitted to advocate change of everything." As Chief Justice Stone pointed out in his dissent, there are some principles of the Constitution to which one must give attachment in order validly to become a naturalized citizen.

I knew the temper of the times was against the government when the case reached the Supreme Court for argument, and I knew after the grant of certiorari that there was doubt of gaining a majority but I thought in the end the Court would agree that in applying law to the facts the government should prevail in this case.

The dissenting opinion was written by Chief Justice Stone, with Justices Roberts and Frankfurter concurring. The majority opinion was written by Mr. Justice Murphy, joined by Justices Black, Douglas, Reed, and Butzledege. Mr. Justice Jackson, as I have said, did not participate, giving his reasons.

There was no question in the Schneiderman case of guilt by association or imputation; it was a question of proof beyond all significant doubt of actual membership, and actual, convinced, willing, and knowing participation in the Communist doctrine and Party. As the opinion of Chief Justice Stone points out, Schneiderman was aware of and aided in promoting doctrines which demonstrated lack of attachment to the principles of the Constitution.

It is difficult to answer the question whether I thought this was a civil liberties case, considering how it was decided. In a sense it was,
because it involved how far a person may go, without restraint, in belief and advocacy. There was the statute which authorized the government to seek denaturalization upon adequate proof. It had been used in prior cases, long before the Communist issue arose, as a vehicle for denaturalization, and had been sustained by the Supreme Court. Conceding as I willingly do that the evidence must be strong and convincing to justify findings adequate for denaturalization under the terms of the statute, I am of the opinion the evidence in this case was sufficiently strong and convincing.
9. Wartime Japanese Evacuation Cases

Our preparations had not contemplated a mass evacuation of persons of Japanese ancestry residing on the West Coast. This program originated in the War Department after Pearl Harbor. General De Witt, in immediate military charge on the West Coast, recommended the evacuation. He wanted freedom of action without having "to look over his shoulder" to see if the security of his forces and of the area was endangered by persons sympathetic to Japan. In ordering the evacuation he acted under the authority of the combined powers of the President, as Commander-in-Chief, and the war powers of Congress. On February 19, 1942, the President promulgated an executive order which recited that the successful prosecution of the war required every possible protection against espionage and sabotage to national defense material, premises, utilities, et cetera. Congress had granted to the President,

the power to authorize and direct the Secretary of War and the military commanders designated by him, when he or they deem it necessary or desirable, to prescribe military areas in such places and of such extent as he or the appropriate military commander may determine, from which any and all persons may be excluded, and with respect to which the right of any person to enter, remain in, or leave, is subject to whatever restrictions the Secretary of War or the appropriate military commander may impose at his discretion.

This was followed by act of Congress of March 21, 1942, making one who violated an order guilty of a misdemeanor,

if it appears that he knew, or should have known, of the existence and extent of the restrictions or order, and if his act was in violation thereof, shall be guilty of a misdemeanor.

On March 27, 1942, the General prescribed certain military areas and zones, within which, as a matter of military necessity, there were required
to be established certain regulations pertaining to all enemy aliens and all persons of Japanese ancestry, and further, after March 27, 1942, "all alien Japanese, all alien Germans, all alien Italians, and all persons of Japanese ancestry residing or being within the geographical limits of the designated military area shall be in their place of residence at a certain hour." This was the curfew, with the general evacuation order to follow.

There was no public hearing, except before Congressional committees, on these questions. My recollection is that the military authorities, including the civilians in the military establishment, asked Congress for these powers. I cannot say Congress was unaware of what was likely to be done, but there were no hearings or administrative findings in the executive branch of the government.

General De Witt's recommendation of the evacuation was supported by the Secretary of War, Mr. Stimson, and the President did not veto it. Though the Department of Justice was consulted I had nothing to do with the matter until at its later stage I was asked my informal opinion as to the constitutionality of the project. The Attorney General, with James Rowe as his principal adviser, had been handling the matter so far as Justice was concerned. My recollection is Rowe was quite opposed to the evacuation. I do not believe the Department could have prevented it even if the Attorney General advised that it would be unconstitutional. But, that aside, when asked I expressed the view that while history would probably demonstrate that the program was unnecessary it would be constitutional if the military deemed it a matter of military necessity at the time. I believe Mr. J. Edgar Hoover thought he could handle the security problem on
the West Coast without the evacuation; so the decision to carry it forward was that of the military, with authorizing legislation.

Three cases reached the Supreme Court testing the constitutionality of the program. *Hirabayashi v. United States*, 320 U. S. 81 (1943), decided June 21, 1943, upheld the curfew. The opinion was written by Chief Justice Stone, with no dissent, but with separate concurring opinions by Mr. Justice Douglas, Mr. Justice Murphy, and Mr. Justice Rutledge.

The most critical case was *Korematsu v. United States*, 328 U. S. 214 (1946), which reached the Court for argument with *Ex Parte Endo*, 328 U. S. 334 (1946). *Korematsu* involved the validity of the general evacuation itself, and *Endo*, the validity of retaining some regulatory authority over Miss Endo in the relocation center or if she should be permitted to leave it, although subsequent to her evacuation and relocation she had been personally cleared under the applicable regulations as loyal to the United States. Mr. Milton Eisenhower I believe had become the Director of the War Relocation Authority when this case reached the Court.

The Supreme Court on January 18, 1944, sustained the constitutionality of the evacuation in *Korematsu*. The opinion, by Mr. Justice Black, was handed down January 18, 1944, with Mr. Justice Murphy and Mr. Justice Jackson dissenting, separately. In *Endo*, argued with *Korematsu*, the Court struck down as unconstitutional the regulations sought to be continued as to one in her situation.

I argued the three cases.

I have no definite recollection of any cleavage in my own staff as to the curfew case, *Hirabayashi*, but there was a strong sentiment in some quarters in the Department that the government was wrong in *Korematsu*. My
own feeling was that however undesirable I might think the mass evacuation had been, and however unnecessary I might have thought it to be from a military standpoint, the authority exercised through Congress, the President, the Secretary of War, and the responsible military commanders was a constitutional authority at the time it was exercised. I considered it to be my unequivocal obligation to seek to sustain their action with all the ability I could muster.

There was consultation with the War Department about the briefs. The Department was greatly interested in the cases, particularly Korematsu, and helped us. But just how this was worked out I do not now remember. We retained control over the cases but War was by no means excluded from consultation and cooperation.

Korematsu was obviously an important case, but I do not remember that the Court harassed counsel particularly at its presentation, though a good many appropriate questions were asked. In Edo, however, Chief Justice Stone immediately indicated grave uncertainty, to put it mildly, about the government keeping any restraints on Miss Edo, a citizen who had been cleared from a loyalty standpoint. He showed a very clear and quick feeling against the government's position and, of course, went after me about it. I thought to myself, "Well, I wish you could get after some of those whom I've been trying to get to clear this matter up without even bothering you about it." Returning to Korematsu, I remember the Chief Justice's great interest in clarifying the possible statutory basis for the action. I emphasized the use of the combined war powers of the government in the military situation which existed when the action was taken, pointing out that the victory at Midway had not occurred. I described the situation as
vividly as I could, including the close call at Midway and the thin heroic line which turned back the enemy, without which we might have had to defend much farther East, perhaps even in California.

One might ask why, when action of this sort was taken by someone designated by the President as a military matter, and the President had a statutory basis for action, the courts took jurisdiction. It is a part of our constitutional system that the military outside the area of actual combat are subject to civil authority, including the judicial authority. Within the boundaries of the continental United States, where war was not actually being conducted in the field, and where martial law had not been declared -- although that itself might not have made a difference -- the citizen or the alien resident was entitled to judicial protection of his constitutional rights.

Mr. Justice Jackson was troubled on constitutional grounds by the Court's sanctioning of military decisions. He seemed to think that where the questions had to do with the carrying out of the war power, the courts, instead of upholding under the constitution the deprivation of liberty, should keep hands off entirely and let the military go unchecked. I do not agree. Should the court uphold the constitutionality of the authority exercised and therefore refuse to check the military, by assuming jurisdiction the Court assumes authority also to check the military if its conduct should be unconstitutional.

Was there any indication of racism on the part of the people of California? What I say as to this is with uncertainty. Some part of the pressure on General De Witt I think was other than military, due to the situation in California, particularly in southern California. For reasons
unrelated to the conduct of war some people were anxious that the war power be used to solve what they considered a generally undesirable situation. But one has to accede to the President and to men like Mr. Stimson a conviction that there was adequate military basis. And the people of California as a whole cannot by any means be accused of ulterior motives. There probably were exceptions. And there was also a belief in some quarters that trouble would arise in California between the races. But that would not have justified the evacuation.

I discussed the Hira and Korematsu cases with the President before arguing them. I wanted him to know how I felt about the cases and what might occur. He had an intelligent grasp of the situation, but made no suggestion as to their presentation. He spoke of plans for the evacuees that he hoped would work out for the general good of all. He wanted the evacuees to find congenial homes in different parts of the country and showed a thoughtful and sympathetic interest in the problem. The whole enterprise was an unfortunate consequence of the war.

There was a group of cases which never reached the Supreme Court in which the Department of Justice was at odds with the War Department. These involved individual exclusion orders where, under executive orders the commanders in certain zones — both in the East and in the West — were permitted to order an individual Italian, for example, to leave his home and move into the interior. If he refused the Department of Justice was requested to prosecute him, the statute making a violation of an order a criminal offense.

The Attorney General refused to prosecute criminally any of these individuals. He took the position the orders were of such doubtful validity and, in some cases, so lacking in evidential support as to necessity for
exclusion, that the criminal law would not be invoked by the Attorney General. The Department of Justice, however, did undertake to the best of its ability to defend the orders should the individual affected file a civil action for an injunction.

This position of Mr. Biddle, in which I fully supported him, caused a good deal of discussion between the Attorney General, myself, and the War Department, including Under Secretary Patterson, and finally Secretary Stimson.

I had pleasant personal relations with Judge Patterson. During the discussions over the exclusion orders he said to me, "When you were General Counsel of the Labor Board and the Labor Board made a decision on an administrative record, you insisted that the courts leave alone what the Board did. Now the War Department makes a decision and you will not take it into court to enforce it."

When he was Under Secretary of War he somewhat forgot to be a lawyer or judge and seemed to me to think his duty almost invariably was to support the military. I did not have the same impression about Mr. Stimson. He did not cause us much trouble when we finally went to him. He said, "Well, you're in a reasonable position, and I'll think about it," and we just weren't pressed any more. The Attorney General took the position funda-
mentally that neither the Secretary of War nor the Under Secretary of War was chief law officer of the United States; that the Attorney General was; it was for him to decide which cases should be initiated in the courts. The Attorney General and I went over the whole situation with Mr. Stimson. After that the pressure on the Attorney General relaxed, and we continued to defend as best we could the equity suits but never initiated a
criminal prosecution. No individual exclusion case reached the Supreme Court.


The **Bridges** case, in one of its important aspects, came to the office of the Solicitor General at the October 1944 term. Bridges petitioned the Supreme Court to review, on writ of certiorari, a decision of the Circuit Court of Appeals for the Ninth Circuit which had sustained a decision of the district court in California denying a writ of habeas corpus. Bridges had sought this remedy to prevent his deportation as an alien found by the Attorney General, after applicable administrative procedures and hearings, to have been a Communist or affiliated with Communists subsequent to his entry into the United States. The administrative phases of the case were quite elaborate. Judge Sears, a former state judge in New York, had conducted the basic administrative hearing and had decided adversely to Bridges. Judge Sears' decision had been reviewed by the Board of Immigration Appeals, which decided in favor of Mr. Bridges. The Attorney General, however, made the final decision, in substance sustaining Judge Sears, followed by the court proceedings. The District and Circuit Courts found no basis for holding, on this collateral attack, that the decision of the Attorney General should be set aside.

The Supreme Court, however, reversed, in effect invalidating the deportation order. The reason given, as I recall without now rereading the decision, rendered some nine or ten years ago, was that due process of law had not been accorded in the administrative proceedings because of reliance
in part upon certain evidence of a hearsay type which the Court deemed too uncertain a basis for deportation.

The argument, and the division of the Court, turned primarily upon the principle advocated by the government but found not applicable by the Court, that the finding of the Attorney General was supported by substantial evidence and therefore was conclusive on the court on a collateral attack.

The only basis on which the Attorney General's decision could be set aside was for the Court to conclude that the evidence was so flimsy it wasn't really evidence, or that serious procedural error had occurred. That in substance was what the Court held, with a very strong dissent written by Chief Justice Stone.

There had been a previous decision of James M. Landis as hearing examiner which the Board of Immigration Appeals apparently took as the guide. They apparently concluded that the proceeding before Judge Sears had not produced evidence of any greater moment although the Executive branch had thrown out, as it were, the Landis proceedings and initiated this new one.

In answering a contention of counsel for Bridges in referring to the evidence as not evidence, I asked 'What was it? It was not a ghost.' But the majority of the Court held it was not enough. During the argument Justice Black showed his trend of thought. He wondered whether the government should take a position, where the liberty of an individual was involved, that the same rule should apply as, for example, in a Labor Board case where the courts were required to leave undisturbed the findings of fact of the Board if supported by substantial evidence. It was a good question. From the tenor of the opinion the Court felt a different approach should
be made to the question of evidence where it was a matter of deporting a person.

Mr. Lee Pressman argued the case for Bridges. Miss Carol King and Mr. Richard Glazstein appear on the brief. I think Mr. Glazstein also argued orally. There were briefs filed amicus curiae by the American Civil Liberties Union, the American Committee for the Protection of the Foreign Born and the American Legion. Mr. Pressman’s argument was a strong one.

Referring to the syllabus of the report of the case to refresh my recollection, it states the court held that upon the record the finding of affiliation was based on too loose a meaning of the term. Also there was the question, which comes back now that I see the syllabus, whether the administrative hearing was conducted according to the rules which had been laid down by the proper authorities administering the law, important in connection with the admission of certain evidence. The Court held it was error to admit against Bridges certain sworn statements, in violation of the rules. Finally, it was thought the case was not properly proved where evidence was improperly received and where it was speculative whether the finding would have been made but for the admission of evidence in violation of the governing rules.

It is not a convincing opinion, although I must say at the same time that the proof against Bridges was not convincing either. The case against Bridges on membership in or affiliation with an organization that believed in the overthrow of the government by force or violence was not strong; but the appraisal of the evidence was a matter which I thought the law left to the Attorney General. His resolution of the factual issue I thought should not be disturbed by the Court under the existing statutory scheme. That
was the basis on which Chief Justice Stone, with Roberts and Frankfurter, dissented. The Chief Justice says, "The Attorney General has his functions and the courts theirs in such cases. Ours is a very limited one. In this case, our decision turns on the application of the long settled rule that in reviewing the fact findings of administrative officers or agencies, courts are without authority to set aside their findings if they are supported by evidence."

At the earlier period when the proceedings against Bridges had been initiated he was an unpopular labor leader on the West Coast. When the case reached the Supreme Court years later he and his union were making a fine record of cooperation in shipping on the West Coast during the War. And as in Schneiderman the argument in the Supreme Court was almost in the middle of the defense by the Soviet of Stalingrad, which the whole country was applauding. In the Ex parte and Korematsu cases, however, I could not say there was an atmosphere adverse to the government. The strength of argument against the government in those cases was that while there is great power in the military in time of war its exercise in those cases was too drastic, in forcibly moving human beings within the continental United States when the interior was not a battleground. Judges are human beings. In close cases involving the liberty of individuals imponderables, however subconsciously, are influences which affect the judge's view of the law when the law is not clear and explicit.

*Screws v. United States*, decided May 7, 1945, was a prosecution by the United States growing out of the killing by a deputy sheriff in Georgia of a Negro whom he had arrested and was taking to jail. He beat him to death. The crime was subject to prosecution under state law; but the United States indicted the deputy sheriff under the civil rights statute on the theory that the action of the state officer was attributable to state authority and constituted a violation of the individual's rights protected by the Fourteenth Amendment to the Constitution. The conviction had been affirmed by the Circuit Court of Appeals for the Fifth Circuit.

In the Supreme Court the case turned on the constitutionality of the statute, if construed to permit such a prosecution for violation of the due process clause of the Fourteenth Amendment. This was a serious question because of the vagueness in imputing criminal responsibility under the civil rights statute to a violation of due process of law, without other specification of the crime charged. The Supreme Court sustained the validity of the statute but reversed the particular conviction on the ground that in applying the statute it was essential for the trial court to instruct the jury more precisely than had been done on the question of intent and willfulness, else there would be unconstitutional vagueness. There was also the question whether the action of the deputy sheriff could be attributed to the state within the meaning of the Fourteenth Amendment.

The staff considered the outcome favorable to the government because of the basic principles which the case established.

I think the case was handled by the Criminal Division and the Civil Rights Section. I do not remember accurately, but I notice now, in looking
at the brief which was filed in the Supreme Court, that it was signed not only by the Solicitor General but by Assistant Attorney General Tom O. Clark, who was then in charge of the Criminal Division, by Mr. Erdahl in that division, and by Victor Rotan, who was in the Civil Rights Section. It was a difficult case to argue and evoked a great deal of discussion between the Court and myself. Could a criminal statute be phrased so broadly as to make a crime of a violation of due process without further or more explicit definition? How would a person know when he was committing a crime? Also, was the deputy sheriff's alleged criminal conduct state action within the meaning of the Fourteenth Amendment? How could it be said that action of an employee of the state, or of a subdivision of a state, which was illegal under state law, should be attributed to the state itself? Mr. Justice Frankfurter was particularly concerned about this. He queried whether an illegal act of a state officer, unless in some way adopted by the state, could be attributed to the state. One answer made during argument was a reference to the old case of Ex parte Virginia in 100 U. S., where the same statute, or its predecessor, was upheld in its application to the conduct of a judge of a state court in depriving an individual of rights sought to be protected by Congress under the Fourteenth Amendment.

The Court's opinion answered the constitutional questions favorably to the government in an opinion by Justice Douglas. Justice Rutledge in a separate opinion concurred in the result. Justice Murphy dissented — he would have affirmed entirely — and Justices Roberts, Frankfurter and Jackson dissented because they would not have sent the case back for a retrial, but would have held the statute unconstitutional in its application to the facts of this case. Fundamentally I think the division within the Court was
due to different views as to the dividing line between what should be left to the states and what should be permitted to the federal government.

The report of the case, 325 U. S. 91, shows that it was argued for the petitioner by Mr. James F. Kemp, but does not indicate that he was a public official, so he probably was private counsel. The report also shows that a brief was filed on behalf of the National Association for the Advancement of Colored People as amicus curiae, signed by Messrs. William H. Hastie, Thurgood Marshall, and Leon Manse, but no brief appears to have been filed by the American Civil Liberties Union nor to my recollection was there any other participation in the case at the Supreme Court level.

Was the Court more interested in what the Solicitor General had to say than counsel for Mr. Screws? I doubt it. After all, Screws was the individual involved. Certainly the Court was interested in his rights as advanced by his counsel.

In view of what the Court had already held in the \textit{Classic} case, I did not see how it could draw an unconstitutional line in \textit{Screws}.

During the argument I was asked if there was any statute of a criminal nature in which the standard of criminality was so vague. I referred to the Sherman Act, which applies criminal sanctions to one who restrains trade.

I argued that there must be willful conduct. Here was conduct which gave content to the statute and was of a character the perpetrator knew was illegal. He wasn't being trapped by a vague statute into responsibility for something he might not know was illegal. He might not have known which particular statutes he was violating but he was acting knowingly and willfully in a criminal manner.
Assuming the evidence showed that Screws beat the poor man over the head with a club until he killed him — that was not innocent or non-criminal conduct which a statute might grab hold of in an unfair manner. It did not seem to me to make a difference in a constitutional sense that, when he was beating Screws, he did not know he was violating a particular federal statute.

Though I felt personally with Justice Murphy, that there should have been complete affirmance, I do not quarrel particularly with the reversal of this conviction on the narrow ground of inadequate instructions to the jury.

12. *Tennessee Coal, Iron and Steel Co. v. Mascola*  
Local No. 123 et al. v. Mascola  
No. 409,  
October, 1943, Term

This was the first so-called portal-to-portal case to reach the Supreme Court. It arose under the Fair Labor Standards Act, at the private suit of employees represented by local unions, to recover compensation for time spent by miners in traveling underground to and from the face of the mine where they actually mined coal. Was this "work" for which the employer must pay or was it traveling on the employees' own time? The United States had intervened in the District Court in support of the position of the employees.

The District Court decided the case to the employees' advantage. With some modification not here important this decision was affirmed by the Circuit Court of Appeals. The Supreme Court granted certiorari because of the importance of the question. The argument there was divided between representatives of the employees and myself representing the United States because of the intervention of the Wage and Hour Division of the Department
of Labor. Mr. Groomton Harris of Birmingham presented the argument for the employees. (He is related to an old Rome, Georgia, family, friends of the Foyhs.) The Court affirmed in an opinion by Mr. Justice Murphy. There were separate concurring opinions by Mr. Justice Frankfurter and Mr. Justice Jackson, with Mr. Justice Roberts writing an opinion for reversal in which Chief Justice Stone joined.

The case was argued on behalf of the petitioning companies by Mr. Nathan L. Miller, former Governor of New York. Governor Miller was then a man well along in years but of fine physique and of vigorous mental capacity. He argued the full hour allowed him, with his brief and other documents in front of him on the lectern, but I think he never referred to any of these papers or to notes during his cogent and strong argument.

I think the case was an arguable one as a matter of statutory construction, but I also think the Act contained adequate standards to support our contentions. Even though this particular problem had not been foreseen by the Congress, it was as well to leave to the courts, in the first instance at least, the question whether or not this was compensable work within the definitions the statute did contain.

Was it fair for industry to be required to meet this financial demand when Congress had not seen fit to write a particular covering definition into the statute? This is not easy to answer. In light of the terms of the statute, however, I would not say industry generally had a right to complain of unfairness. For industry generally was not affected by the decision. The decision affected mining especially, although perhaps not exclusively. Assuming that the case affected a significant part of industry I think the question was in a controversial area of dispute to be fairly re-
solved by litigation. It would not have been fair to mining employees if the statute had been construed to exclude this time in the work week.

Justices and Judges, when they feel strongly about a principle, sometimes support their views by statements which seem to lay down principles beyond the necessities of the particular case. There might be something in Justice Murphy's opinion along these lines. But my approach personally as a judge and I think generally as an advocate has been that the case decides the case and nothing more, though what is said beyond this might be used later in argument to extend the scope of the decision.

I'm not very competent to comment on the question whether extension of the principle decided in this case led to distortions of the statute. I do think that neither the Jewell Ridge nor the Tennessee case were such distortions. Questionable applications might since have been given by courts, but in the mining of coal or iron I think clearly the statute should have been construed to apply. "Clearly" may be too strong a word. I mean to say that the statute should have been construed as it was. That is a different question from what Congress might do as a matter of legislation on further consideration of the issues, but as the statute was worded the Court in my opinion made the correct decision.


These two cases, Nos. 554 and 555 of the October, 1942, term, involved the validity of a substantial number of so-called chain broadcasting regulations promulgated by the Federal Communications Commission. They were argued on behalf of the National Broadcasting Company by Mr. John T. Cahill and on behalf of the Columbia Broadcasting System by Mr. Charles M. Hughes,
Jr. Involved fundamentally was the scope of discretion the Supreme Court would allow the Federal Communications Commission in laying down general rules and regulations to guide industry, and standards for the Commission itself to follow in granting licenses. The opinion of the Court, by Mr. Justice Frankfurter, treats each of the detailed regulations separately and rather fully. Mr. Justice Murphy, joined by Mr. Justice Roberts, dissented, on the ground the Commission had exceeded its statutory authority.

Though I presented the case for the Commission I am not able from memory to give a clear exposition of the regulations. They had been promulgated after long hearings and consideration, and were designed to establish standards for the Commission and industry as to licensing for chain broadcasting. They laid down inter alia principles to govern programming, coverage of broadcasting, timing of programs, and overlapping of programs and stations.

The attack I thought was doomed to fail. The broadcasting companies assumed a heavy burden in trying to persuade the Supreme Court to substitute its judgment for that of the Commission. Of course the Court should protect the industry against arbitrary or other illegal action but here was an intelligent and reasonable effort on the part of the Commission, after very full and elaborate hearings, to meet a public problem. My own effort, as I recall the oral argument, was to seek to convince the Court, on consideration of each principal regulation, that it was reasonable. The First Amendment question -- emphasized orally by Mr. Cahill more than by Mr. Hughes -- did not elicit much interest on the part of the Court.

The case was not an easy one for me in preparation for argument. This
was due to my personal problem in understanding the regulations in their applications to an industry of which I had very little knowledge.

Mr. Hughes' argument, as was each one I heard him make, was a strong, fair, capable presentation. I never heard his father argue but I have heard stories about the unusually forceful character of his advocacy. He was a great presiding Chief Justice, a living personification of the office, during several of the years of my appearances before the Court.


The Aluminum Company case was remarkable because of the nature of the Aluminum Company of America, as well as for other reasons. Several years were consumed in the trial in the District Court for the Southern District of New York. In the end the district judge delivered a lengthy opinion, principally oral, holding that the Government had failed to prove that the Company had violated the Sherman Act. He accordingly dismissed the suit. Under the applicable statute there was a direct appeal available to the Supreme Court. In view, however, of the long history of the case in the Department of Justice, when the appeal reached the Supreme Court there was no quorum of the Court available due to disqualifications. Chief Justice Stone disqualified I understood because as Attorney General he had initiated the original investigation. I believe Justices Murphy and Reed and Jackson or Clark -- I'm not now sure which -- felt disqualified because of some participation in the case in the Department of Justice.

The matter was taken up with the judiciary committees of Congress. My own opinion, as in the North American case when a similar situation arose on a writ of certiorari from the circuit court, was that a quorum of five
should be permitted by statute to dispose of a case. A parliamentary quorum of a court of nine is five, but the quorum of our Supreme Court had been fixed as six by an old statute, enacted I believe when the Court consisted of ten members. When the membership dropped back to nine the statutory quorum was not changed. It is a fair inference that originally an historical accident left the quorum at a higher number than five.

Due to the still prevailing atmosphere of Congress created by the Court fight there was reluctance to make a legislative change affecting the Supreme Court. In the end Congress enacted a statute which provided in general terms that where a situation of this kind arose the case should be certified to a court composed of the three senior circuit judges of the circuit within which the district court that decided the case was located. The decision of this specially constituted court would be final, without resort to the Supreme Court. The Alviso case accordingly was heard by the three senior judges of the Second Circuit, Judges Learned Hand, Augustus Hand, and Swan. Attorney General Milledge asked me to assist in the oral argument.

The record was a massive one. I learned that Lawrence Aspey, in charge of the case in the New York office of the Antitrust Division, knew the case thoroughly. But in accordance with the wishes of the Attorney General I discussed the matter with him and Mr. Bruce, Assistant Attorney General in charge of the Antitrust Division. It was decided I should argue the so-called one hundred percent monopoly point, which was fairly susceptible of separate treatment.

The court allowed two full days for the arguments. I used only about one hour and held closely to the point that because of the peculiar fact
that the Aluminum Company of America constituted, prior to governmental entry into the same field during the war, a hundred percent monopoly of virgin aluminum the company was in violation of the Sherman Act as a monopoly, all else aside. Mr. Aspey, with great skill and a fine grasp of the details of the government's case, made an outstanding argument on other aspects of the case. The case was well argued, too, on behalf of the company, the main burden falling upon Mr. Smith of Pittsburgh.

In an opinion written by Judge Learned Hand the Court sustained the government's position that the company was in violation of the Sherman Act, but withheld decision as to the terms of a final decree because of the necessity of considering the disposition to be made by the United States of the aluminum plants constructed as part of the war production program. 148 F. 2d 418.

I came to know Judge Learned Hand personally very pleasantly over the years. Both he and Judge Augustus Hand were extraordinarily fine judges. When arranging for the memorial services of the Supreme Court bar in honor of Justice Brandeis, I asked Learned Hand to give one of the eulogies. He readily accepted and of course delivered an unusually fine paper. His selection was not entirely my own thought. I consulted Mr. Justice Frankfurter, who was a very close friend of the Brandeis family, and perhaps others, but there was no question in my own mind about the happiness of the selection.

16. Falbo v. United States, 330 U. S. 549 (1943)

This was No. 73 at the October, 1943, term, the first case in which the Jehovah's Witnesses litigated with the United States in the Supreme Court,
though they had been often involved there under municipal or state regulations.

The case arose under the Selective Training and Service Act. Mr. Falbo, a Jehovah's Witness, claimed exemption as a minister from military or other service. He was classified as a conscientious objector and ordered to report for civil, non-military duties. He refused to report and was indicted for violation of the statute. In the resulting criminal prosecution he sought to defend his failure to report on the ground that his classification was invalid in that he was a minister and not merely a conscientious objector and was entirely exempt. The district court in substance held this defense not available in the criminal proceeding. The jury found him guilty. His conviction was affirmed in the circuit court of appeals, after which the Supreme Court granted certiorari.

There was a separate section in the Department of Justice which gave special attention to conscientious objectors in the effort to prevent unjustifiable prosecutions and oppressive measures. I think such a special group went back to the time when Harlan F. Stone was Attorney General. He had taken a great interest in the problems of conscientious objectors.

The Supreme Court upheld the conviction, ruling that Falbo had not exhausted his remedies under the Selective Service Act.

Left open was the question, involved in subsequent litigation in the Supreme Court, as to the remedy available after reporting, acceptance, and induction, if one still claimed that his classification was illegal. See the Falbo case.

Falbo was important in maintaining the integrity of the Selective Service system. If the decision had gone the other way the doors would have
been open for substitution of the courts for the Selective Service boards. I argued that Congress had a right to leave the final decision with the boards, subject only to court intervention to protect constitutional rights, and that such constitutional rights could be protected through resort to habeas corpus if one were finally inducted, which had not occurred in Falbo's case.

Justice Murphy dissented, and Justice Rutledge filed a concurring opinion in order primarily to comment upon one part of the majority opinion.

The case was argued for Falbo by Mr. Covington, an accomplished advocate with considerable experience in Supreme Court litigation on behalf of Jehovah's Witnesses. The courtroom was rather crowded with young people whom I assumed to be adherents of the Witnesses, pleasant and well dressed young men and women who came to listen with attention and respect.

16. Montgomery Ward Seizure

The National War Labor Board had been created to seek adjustment of labor disputes interfering with the war effort. Over a considerable period of time a good deal of trouble had occurred between the unions and Montgomery Ward at its Chicago and other plants. The matter came before the Board, and it made an award to which Montgomery Ward refused to accede. This brought about some actual interruption of the enormous Montgomery Ward operations, and threatened further interruptions, considered by the President and his economic advisers — including Mr. Vinson and I also think Mr. Byrnes — to threaten the war effort. After the Board made its decision the company let it be known that it would not comply. The President thereupon, on the recommendation of his advisers, including Mr. William Davis,
Chairman of the Board, issued an Executive Order directing the officers of
the Army to take possession of the plants, which was done. Appreciating,
however, the legal issues involved, the United States simultaneously sub-
mitted the validity of its action to the federal courts. I was brought
into the case when it was in the district court in Illinois, at Chicago,
before District Judge Philip L. Sullivan. This was a suit initiated by the
United States seeking a declaratory judgment to the effect that the officials
of the United States who had taken possession of the Montgomery Ward plants
were lawfully in possession. I would now restate the turning point of the
case to be whether the Montgomery Ward wholesale and distribution plants
and facilities could be construed as engaged in "production" within the
meaning of the War Labor Disputes Act.

I had had very little to do with the case until after the suit was
filed. Then the Attorney General asked me to go out with Mr. Hugh Cox,
Assistant Solicitor General, and present the argument for the United States.
This followed pretty closely upon the Aluminum case to which I have re-
ferred. I never felt comfortable about the adequacy of my preparation.
However, I think the case was argued adequately on behalf of the United
States because in any event Mr. Cox was well prepared and extremely able.
Judge Sullivan, however, was clear in his view that the President had ex-
ceeded his powers. In my opinion it was a close case under the statute and
a very substantial legal victory for the United States came later when the
Circuit Court reversed the District Court and sustained the government. I
did not participate in the Circuit Court argument. My recollection is that
Mr. Cox alone handled it there.
Before the Circuit Court's decision the United States requested the Supreme Court in its discretion to issue a writ of certiorari to bring the case before it without awaiting the decision of the Circuit Court. This was the procedure followed in the subsequent and famous Steel Seizure case during the administration of President Truman, when the Supreme Court took the case after Judge Pine's decision was appealed to our Circuit Court but before we had passed upon its merits. In the Montgomery Ward case, however, the Supreme Court refused to exercise its power to take the case prior to a Circuit Court decision. My recollection is that when the case again came to the Supreme Court possession had been abandoned and the Court considered the case moot.

The President of Montgomery Ward was a man of very strong personality and convictions, and quite outspoken in his views about the whole matter. The case was a rather notorious one from the public standpoint.

I am reminded of the first seizure due to labor-management disputes interrupting or threatening production vital to the war effort. It involved the "North American" aircraft plant in California. This was when I was Acting Solicitor General, before Pearl Harbor, and before enactment of the legislation construed in Montgomery Ward. I drew the first draft of the Executive Order under the authority of which the United States took possession of the North American plant. After some revisions it was signed by the President, ending the strike. The next instance, I believe, was that of the Federal Shipbuilding Company, in New Jersey, a subsidiary of United States Steel, where, in contrast with North American, the management was deemed at fault. Production for the Navy was involved. The Company would not accede to the recommendations of government officials who in-
cluded, as I now recall, Under Secretary of War Robert H. Patterson. When all efforts at persuasion failed the plant was "seized," ending the threatened, or actual, interruption to production.

17. Ickes v. United States, 321 U.S. 414 (1944)

This and its companion case, Nos. 374 and 375 of the October, 1943, term, decided the constitutionality of the Emergency Price Control Act of 1943 as amended. Ickes was prosecuted criminally for selling above the applicable prices fixed by the Price Administration. He sought to defend on the ground that the price regulation was invalid. However, he had failed to follow the procedures authorized by the statute for attacking or seeking modification of the regulation. Thus the case is reminiscent of Yalta.

The Supreme Court, in an opinion by Chief Justice Stone, with Mr. Justice Roberts, Mr. Justice Rutledge, and Mr. Justice Murphy dissenting, upheld the validity of the statute and the action of the trial court in refusing to permit the accused, in the criminal proceeding itself, to require the court to determine the validity of the violated regulation which he had not attacked in the manner authorized by the Price Control Act.

The government faced the possible breakdown of the whole price structure unless this view prevailed. Congress had attempted to give a remedy in an Emergency Court of Appeals to which resort could be had for relief by one in Ickes' position. Any person aggrieved, should his protest be denied by the administrator, could go to that court seeking an injunction against the regulation or price schedule. Thus Congress sought uniformity in decisions and the prevention of widespread disruption of price control which would follow if district courts all over the country could pass upon the
validity of the prices fixed. The Jakus case presented very difficult questions of due process which I think might have been decided adversely to the government except that the controls were of emergency character, resting in good part upon the war powers. I am not an economist but I believe there would have been serious economic upheaval due to the inflationary effects of war production, had the Government not been sustained in this case.

I was troubled about the case, but felt the controls were essential as a war measure. Justice Roberts' dissent is persuasive, and so is Justice Rutledge's, but I think the majority decision, by a vote of six to three, was sound in light of the war powers and the meaning which must be given the due process clause in the context of the prosecution of a war. That is not to say that the Constitution changes, but conditions do affect questions of due process. The Government consistently with due process can take steps in defense of the nation which are not otherwise available to it.

18. Corn Products Refining Co. v. FTC.
No. 680 October Term, 1944

This case originated in the Federal Trade Commission and I believe was the vehicle for the first Supreme Court decision holding invalid a so-called basing point system of price fixing. The companies had two plants for the manufacture of glucose or corn syrup, used in manufacturing candy. One was at Argo, Illinois, within the Chicago switching district, and the other at Kansas City, Missouri. The Court says,

"Petitioner's sales are at delivered prices which are computed whether the shipments are from Chicago or Kansas City at the company's Chicago prices, plus the freight rate from Chicago to the place of delivery, whether or not the actual delivery
is from Chicago or from Kansas City. Thus purchasers in all places other than Chicago pay a higher price than do the Chicago purchasers."

The question was whether this constituted discrimination against the purchaser who bought the product which had borne less transportation cost than he was required to pay. Section 11 of the Clayton Act prevents discrimination in price between different purchasers, and Section 2 provides that it shall "be unlawful for any person engaged in commerce . . . to discriminate in price between different purchasers of commodities of like grade and quality where the effect would be substantially to lessen competition."

The case presented an interesting question of statutory construction in the light of the legislative history of the acts, -- whether Congress intended to exempt a basing point system even if it amounted to price discrimination. This was perhaps the most difficult question. It seemed clear the facts made out a case of price discrimination.

Whether a basing point system has advantages which offset its disadvantages is a question. On one side is the protection of industry, in Birmingham, e.g., instead of a disruption of it. On the other hand, if the system is not used the tendency is to aid the development of industry in parts of the country where the consuming public can be reached with low transportation costs. From an economics standpoint, I do not attempt to pass judgment, though my leanings are toward the policy of Congress, which has been against price discrimination.

Some years ago the Commission made a careful study of the steel industry and issued an elaborate report, condemning its basing point system. The Commission claimed the industry lulled it into abandoning further legal
tests by promises of compliance with the Commission's directives but, as a matter of fact, as later Commissions seemed to feel, there was not compliance as anticipated. In any event that earlier work of the Commission in the steel industry did not bear full fruit one way or the other. The Commission renewed the general subject in this Corn Products case and fought it all the way through with great vigor and confidence. But I cannot answer as to its application to other industries though there was the earlier case in the Supreme Court involving the cement industry. The system involved in that case was not condemned, but this I think was not because the Court thought it to be non-discriminatory, but because there was no unreasonable effect on commerce.

The Corn Products case was difficult for me, as some other economic cases were, such as the National Broadcasting case; but before I argued it I think I understood it, which was essential if I was to be of help to the Court. Once adequately prepared the case was not difficult to argue. Yet I met firm resistance from the Court during the first part of the argument, until the Court understood the facts. The Court was unanimous, except that Justice Roberts did not participate in the decision, and Justice Jackson concurred in the result. He apparently had some reservation about the text of the opinion.

19. Goldman v. United States

There were two wire tapping cases, Nos. 962 and 980, at the 1941 term. In essence they involved the question whether the use of a dictaphone to record a conversation in a private room, with the recording used as evidence in a criminal prosecution, violated the defendant's right under the Fourth
Amendment not to be subjected to an unreasonable search or seizure. The cases must have come up through the Criminal Division. They arose in New York. Mr. John T. Cahill was the United States Attorney who signed the indictment. I do not know their history, -- how this means of getting the evidence originated.

The accused were charged with a conspiracy to violate certain provisions of the Bankruptcy Act. They had met in a room in New York and were there said to have been discussing the matter. The recording of their discussion was obtained by the FBI placing a little electrical instrument on the outside of the wall of the room; that is, in an adjoining room with a wall common to the room in which the conversation occurred. The device picked up the conversation by means of the sound waves coming through the wall.

The case was argued for the accused in the Supreme Court by Mr. Jeremiah Mahoney, a former major of New York City, and a very vigorous and impressive advocate. Briefs were also filed for petitioners on behalf of the National Federation for Constitutional Liberties amicus curiae; and counsel for petitioners were joined by Osmond L. Frankel. Mr. Frankel is identified at times with the American Civil Liberties Union. A formidable effort was made to have the Court overrule the Olmstead case. The government defended the admission of the evidence under the Olmstead decision, in which the opinion was by Chief Justice Taft. The Court held there held evidence obtained by wiretapping to be admissible in the Federal Courts notwithstanding the Fourth Amendment.

In an opinion by Mr. Justice Roberts the Court held that Olmstead controlled, and affirmed the convictions which had been obtained in part by
the use of the evidence. The Court was unwilling to overrule *Olmstead*, saying it had been the subject of prolonged consideration by the Court, with the various views of the Justices clearly expressed. Mr. Justice Stone and Mr. Justice Frankfurter stated that had the majority of the Court been willing to overrule *Olmstead* they would have been happy to join in doing so. But as the majority had declined to do this, and as "we think the case is indistinguishable in principle from the *Olmstead* case," there was no occasion to repeat now the dissenting views in *Olmstead*, with which they agreed. Mr. Justice Jackson did not participate and Mr. Justice Murphy dissented vigorously.

I felt that the case was controlled by *Olmstead*, though I thought *Olmstead* itself was questionable. I had been greatly impressed by the dissenting opinions in *Olmstead*. I did feel, however, that there was enough to be said in favor of *Olmstead* for the government to seek to uphold it. The Solicitor General is sometimes confronted with a situation where if he were a judge he might have a different view from that he expresses as an advocate. If I had been sitting in the *Olmstead* case, I might have agreed with the dissenting views there expressed. But in those cases I felt I was called upon to present the strongest available arguments that I could ethically and fairly build in support of the government's position.

I felt the Court would be divided, but I do not recall that I felt how it would divide. I would not have been surprised if the decision had gone the other way.

Justice Murphy did not show the same vigor during oral argument as is evidenced by his dissent — he rarely did. He would not often interrupt argument. His opinions, however, were often very vigorous. I would have
guessed he would be against the government in this case, because of his
general approach to the sort of problem involved.

20. Tideland Oil

When I was Solicitor General the Department of the Interior had initia-
ted with the Attorney General the matter of recovering for the United States
the so-called tideland oil deposits. The question first emerged I believe
in Interior, when Mr. Abe Fortas was in that Department. At least he was
one of those active in the matter along with Secretary Ickes. I approximate
the time as 1944 when the problem came to me.

I think the question would have arisen regardless of the war. There
had been discussion over a longer period of time, growing out of the in-
crease in the drilling for oil under the seas, which I think began about
fifteen years ago.

At a certain point the Attorney General referred the question to me
for advice as to whether he should authorize suit. The problem became more
urgent because there was legislative consideration of granting title to the
states. Interior was strongly opposed to this, and thought that if the
matter were litigated Congress should not legislate, or the President ap-
prove legislation, until the courts had passed upon the question.

Research in Justice had gone forward in the Lands Division under
Assistant Attorney General Norman M. Littell, where a great deal of data
had been prepared. I assigned Mr. Henry O. Ingraham, of my staff, to make
a special study, using all the material available. He made an independent
analysis of the legal question, in relation to the facts available, and I
then made an independent study with him. I concluded there was sufficient
question to justify the United States in initiating litigation to obtain a judicial determination, and recommended to the Attorney General that this be done. I did not come to a definite opinion as to how such a case ought to be decided by the courts. The Attorney General authorized suit to be filed. I recommended, and initially this was done, that suit be instituted in a district court of the United States rather than in the Supreme Court. Suit was filed in one of the district courts of California.

Before the case proceeded very far I left for the work in Germany. Later the suit in the District Court was withdrawn and the Attorney General -- then Attorney General Clark -- authorized an original suit to be filed in the Supreme Court. This became the vehicle for the decision later rendered by the Court. My reason for suggesting that the suit be filed first in the District Court was that I felt the questions might in the end be better resolved by a process of judicial progression through the courts. I learned later that some procedural difficulty made it seem wise to substitute an original action in the Supreme Court.

When I was in private practice in 1948, after the Supreme Court had made its basic decision, the Court was under the necessity of appointing a special master to draw the lines between State and Federal ownership under the principles laid down in the decision. This would involve extensive hearings in the field. Chief Justice Vinson asked me personally if I were available. I had to advise him of my participation in the early stages of the case as above outlined. We agreed that although I had taken no position on the merits it was inadvisable for me to act as special master. It would have been an attractive task for me at that time.
The Supreme Court has rejected a later suit filed in the effort to overturn legislation enacted to overturn the basic Court decision. I think the Court has made up its mind that Congress, having control over the property of the United States under the Constitution, has validly disposed of it.


This, No. 42 at the October, 1941, term, involved the construction and effect of the so-called Litvinov note and its acceptance by the President. In connection with our recognition of Soviet Russia in 1933, the Soviet Commissar for Foreign Affairs, Makin Litvinov, in the note referred to agreed that the Soviet Union would take no steps "to enforce any decision of courts or initiate any new litigation for the amounts admitted to be due or that may be found to be due it, as a successor of prior governments of Russia, from American nationals, and would not object to such amounts being assigned, and does hereby release and assign such amounts to the United States." In acknowledging the assignment, the President said that he was glad to have these undertakings by the Russian government, and would be pleased to notify that government in each case of any amount realized by the United States from the release and assignment to it of the amounts due the government of the Soviet Union.

The United States later filed suit in the district court of New York against Mr. Fink, the Superintendent of Insurance in New York, to recover assets in his hands of certain Russian insurance companies (which had been doing business in the State of New York) remaining after the claims of domestic creditors had been satisfied. The ultimate issue, as I analyse
the case, which is pretty complicated, was whether it was contrary to our policy as a nation, assuming that it might be contrary to the policy of the State of New York, to recognize the effect of Soviet confiscation or expropriation of assets of the insurance corporations insofar as those assets might belong to Russian nationals. This in turn involved the effect of the exchange between Litvinov and our President, considered as an executive agreement, under which the United States accepted the proceeds of these holdings in New York to be used pro tanto to satisfy claims of American nationals against Russia.

A rather lengthy opinion was written by Mr. Justice Douglas, which went into the question of executive agreements and their relation to the power of the President to conduct our foreign affairs. The Court held that the right to the funds or property in question became vested in the Soviet government as successor to the insurance companies, that "this right is passed to the United States under the Litvinov assignment, and that the United States is entitled to the property, as against the corporation and foreign creditors."

It has recently been argued in support of the Bricker Amendment that the Pink case illustrates the danger of executive agreements which do not have the concurrence of either the Senate, as a treaty, or of the two houses of Congress. The Pink case upheld the power of the President alone, in the conduct of foreign affairs, to make an agreement which overrode the policy of a state. The answer to the Bricker amendment proponents was contained in a letter to the New York Times from Mr. Pink himself, although he had opposed the Government in the litigation. The whole matter had been laid
before Congress, and Congress had passed legislation which gave approval to the arrangement the President had entered into, so that in substance what Senator Bricker was arguing should be done by amendment to the Constitution had in fact been done in the so-called Pink episode without a constitutional amendment. I think I have fairly stated the position Mr. Pink took; I knew it is the position Mr. Justice Roberts took in opposing the Bricker amendment after his retirement, although as an active Justice of the Supreme Court he had joined in Chief Justice Stone’s dissent in Pink.

The cases mounted in number as the years passed. A list of those I presented orally, in whole or in part, for the United States, is appended. There were two others after I returned to private practice in 1947. The Court of Chief Justice Hughes was then no longer. It had been succeeded by that of Chief Justice Stone and still later by the Court of Chief Justice Vinson. In 1937 when the Labor Board cases were presented the Court, in addition to Chief Justice Hughes, consisted of Justices Van Devanter, McReynolds, Brandeis, Sutherland, Butler, Stone, Roberts and Cardozo. At the end of my appearances from 1937 to 1940 none of these Justices remained. My last argument for the government was before Chief Justice Stone and Justices Roberts, Black, Reed, Frankfurter, Douglas, Murphy, Jackson and Rutledge. My last argument of all, in 1949, was before Chief Justice Vinson and the same Justices last above named except Justice Burton had joined the Court and Chief Justice Stone had died. At the time of the Van case in 1924, when I was first on a brief in the Court, the courtroom was in the Capitol. William Howard Taft was Chief Justice, with Associate Justices Mckenna, Holmes, Van Devanter, McReynolds, Brandeis, Sutherland, Butler and
Sanford. Mr. Harlan F. Stone was Attorney General. The intervening years were among the most important in the Court's history. During the earlier part of the period, with strong dissents, the Court confined federal and even state power to narrower compass than legislatures felt the Constitution required; for example, in cases involving the regulation of working conditions. In the thirties the efforts of Congress and the Executive to broaden the scope of national economic and social aid to the people, during the great depression, first met also with judicial rebuff, with some of the ablest members of the Court, at times including Chief Justice Hughes, again dissenting in strong terms. Then came a change in constitutional interpretation, a return as it seemed to us to the approach of a much earlier period. The Court began to close the void where neither state nor federal action for the common good had been permitted. We are still in this period. During the whole era, however, while the Court varied in its approach to what I term remedial social and economic legislation, it remained consistent in its defense of the rights guaranteed by the Bill of Rights, and continued to assert power under the due process clauses. There have been some fluctuation, however, in constraining religious freedom under the First Amendment. The last important decision in the New York Times case, 343 U. S. 306, evidences a return and seems to me, to a better position, hoped for in my contribution to "Law and Contemporary Problems," Winter Edition of 1949, Duke University School of Law.

The Court during these years maintained the high quality of its work. Though its composition changed, and storms raged about the Court, there it was -- the third great branch, the arbiter of the Constitution. And even
during the periods of its internal tension it was constituted of men who
compared favorably in ability with its membership at any time in our
history.

The presentation of cases for the United States was a rewarding ex-
perience. I lost some cases I should have won but the decisions were under-
standable, and there were able dissenters as a bit of consolation.

Many important cases I assigned to others, to Francis N. Shee, my good
friend over the years, then Assistant Attorney General in charge of the
Claims Division, or Thurman Arnold, holding a like position in Antitrust,
or Wendell Berge, Criminal Division, or to Sam Clark, Tax Division, or to
members of my own staff or to the staffs of other departments or agencies.
I continued the practice of assigning Labor Board cases to the Board's
General Counsel, or in consultation with him to a member of his staff. One
case was assigned to Tom C. Clark, I believe his first Supreme Court argu-
ment. Not many years were to pass before he was on the Court itself.

Shee and I would often forgather after arguments to try to size up
the situation and to discuss the way things had gone. He was an excellent
advocate, as were all of these fine public servants, each of whom played an
important part in the development of the law of the period.

Alvin Rockwell and Ernest Gross were also assigned their first argu-
ments during this period. Arnold Haus bore a heavy burden, and Robert L. Stern
was entering upon his distinguished career in the office and in Supreme
Court advocacy. Paul Freudt took on a number of important and difficult
cases and always made an argument of distinction. There were still others,
some now not so young as then, who began to present cases to the final tri-
bunal and who worthily represented the country.
I acquired a great respect for the men on the Court, as I had always had for the Court as an institution. The more I worked on cases, argued them, and became personally immersed in the rights and wrongs of different positions, the greater came a realisation that the Court was a human institution like so many others, by no means infallible even on those questions peculiarly within its own special function. But the Court is and has been a marvelous exemplar of the genius of our institutions.

Agnes almost invariably came to hear my cases. She was a good and helpful critic, as well as a fine companion with whom to talk over the arguments, before and after. The Marshal and other Court officials, as well as those members of the Court who knew her, always seemed glad to see her and were courteous and thoughtful. Sometimes one of the children came, but they were mostly in school. We talked over some of the cases at home, at the dining room table at times. I remember my surprise, at his young age, when Charles showed a clear grasp of the problem in Nickard v. Filburn.

We continued to live in the small but pleasant home at 3700 Northampton Street. The war was on and we did little official entertaining. The neighborhood remained a pleasant one for the children, who were active in school. They grew happily and healthily under the close devotion and care of Mother. Our families, the O'Donnells, Laves and Fahys, continued to see one another in varying degrees, and, as before, there were occasional visits from Santa Fe. Agnes' mother died during this period, a remarkably fine person.

I attended Cabinet meetings in the absence of the Attorney General and became more a part of the President's official family than I had been. I remember with sadness the last Cabinet meeting before the President left
for Warm Springs never to return alive. The President had not appeared well
for some time. I had noticed a rather decided change after his return from
Teheran. But he had continued to bear his heavy burdens and had subjected
himself to the strains and efforts of the 1944 campaign. The last Cabinet
meeting was rather quiet, as if there was an unexpressed feeling the Presi-
dent was not as well as usual. In addition to the physical strains he had
endured, and the tremendous burdens of the office of those times, perhaps
he had begun to feel in a way the chill of the cold war to come, which he
had strove so valiantly to prevent. He had made a great bid for peace in
justice with the Soviet. Though his efforts have not succeeded as he hoped,
and though in retrospect some decisions, even military ones, seem to have
been unwise, I cannot say others would have been more successful. Those
acts were made in the belief they were wise. The problems were enormous.
The solutions for the international disturbances and dislocations due to
the tremendous upheavals and the great forces set in motion, were not clear-
sut, and were seriously complicated by the fact that Russia was our power-
ful ally in the defeat of the Axis.

I shall not in these notes attempt my own fully stated appraisal of
the President, but do say now that in my own opinion he was one of our very
greatest Presidents, unusually well equipped for his responsibilities, that
he grew with them, was an inspiring leader of a great country in great
times, was as well a wonderful personality, and that he enlisted my own per-
sonal respect and devotion.

Agnes and I went to the services each March 4th with the President,
first at his church across from the White House, later in the East Room of
the White House itself, deeming them of at least a semi-official character.
The President, I have always thought, was a good man, and a religious one.

As the war drew towards its end so did my work as Solicitor General. The future turned now towards the international. My resignation as Solicitor General, however, was not officially accepted until September 27, 1945, when I was in Germany. See 326 U. S. p. iv. President Truman had remembered.

A very trying special assignment from the Attorney General comes to mind, involving the Naval Oil Reserves in California. Perhaps I should add a few words about it. It is probable that it led a while later to the removal by the President of Mr. Norman Littell as Assistant Attorney General in charge of the Lands Division, due to his difficulties with Attorney General Biddle.

The Navy had entered into an agreement with Standard Oil of California for what might be called a joint operation of the Naval Reserve and properties of the Company in the same vicinity. A drainage problem was involved that indicated the desirability of unit operation of some kind. The particular unit agreement had been approved by Navy and was sent to the White House for Presidential approval. The President submitted the matter to the Attorney General who quite properly sent it to Littell. His Division made an elaborate study, followed by a "leak" to the public before the result of the study was made known to the Attorney General or the President, to the effect that the agreement was most disadvantageous to the United States, etc. I was called to a White House conference to discuss the matter with Mr. Byrnes, Mr. Forrestal and, if memory serves, with Mr. Stimson present. There was no suggestion of any corruption, but I thought the agreement was not a good one for the United States and recommended its cancellation. The
Company readily agreed, taking the position it did not wish to try to hold
the Navy to an agreement deemed unsatisfactory.

Then followed a long negotiation which the Attorney General placed in
my charge for the Department. I insisted on Littell being kept fully ad-
vised and contemplated securing his full assent to the terms of a new agree-
ment. Mr. Keith Kane primarily represented the Navy, capably and patiently.
A short form of interim arrangement was prepared by me and agreed to. In
the end a full new agreement was entered into and submitted to the approp-
riate House Committee for its public knowledge and acquiescence before the
Executive branch accepted it. It was a tough and tedious assignment.
Fourteen years have passed and I have heard no criticism of the outcome.

INTERNATIONAL JURISTS' CONFERENCE, WASHINGTON, 1945

DEATH OF PRESIDENT ROOSEVELT

As a young man I had been a devotee of Wilson's efforts to bring the
United States to international leadership. As the Second World War period
was coming to an end it was good to see the United States moving strongly
in the direction of such leadership on a bi-partisan basis under President
Roosevelt.

Practically all government cases ready for the current term of the Su-
preme Court had been submitted. There was considerable additional paper
work but I felt freer than earlier in the term.

Somewhat coincidental with the conclusion of the Dumbarton Oaks Confer-
ence, in which I had no part, and a few weeks preceding the San Francisco
Conference, the State Department was convening an international jurists'
meeting in Washington. Representatives came from many nations, including
England, France, Belgium, Australia, China, South and Central American countries, Greece, the Soviet Union, Yugoslavia, Egypt, Saudi Arabia, Iran, Iraq, Syria and Poland. The purpose was to revise the statute of the World Court, so that when the United Nations Conference convened this preliminary work would have been done. The statute of the future World Court was to become a part of the Charter of the United Nations. Mr. Green H. Hackworth, then Legal Adviser of the Department of State, was the American representative at the International Jurists' Conference, and became its chairman.

Before the meetings began he asked me to be one of the advisers to the American representative. Mr. Hackworth had held the office of Legal Adviser for many years, longer I believe than any other person. He was an authority on international law, author of one of the best known works on the subject. As I write these notes (August 1954) he is a member of the World Court itself. As a negotiator he was simple, clear and unadorned in method of presentation. As chairman of the Conference he was respected and successful, but not I think as much because of any special negotiating capacity as the persuasiveness of positions he took.

Mr. Philip C. Jessup was the other adviser to Mr. Hackworth. He also was an authority on international law, with a reputation that would naturally lead the State Department to look in his direction for assistance on such matters.

The fact that Mr. Hackworth was chairman created a small problem as to how we as his advisers should function. It worked out pretty well; all of us consulted on points as to which the United States was required to take a position. Final positions of importance would also be cleared with others of the Department, and we had the help of a staff. In the end final deci-
sions were the responsibility of the Secretary of State, but matters were not taken up with him personally. I knew Mr. Hull pleasantly but had not been close to him, as had Mr. Hackworth, in whom I understand he placed a great deal of confidence.

For perhaps two weeks in late March and early April, 1945, this conference of representatives of some thirty-odd United Nations met at the Departmental Auditorium on Constitution Avenue. Its proceedings were conducted usually in three languages, and sometimes in five. We revised the statute of the Court. A report was made to the San Francisco Conference recommending adoption of the suggested revisions, but on a few matters the Conference submitted alternative solutions. I believe this was the first large gathering of representatives of the United Nations.

We considered the statute of the Old Court, quite a lengthy document, paragraph by paragraph, and worked together on those suggestions and modifications the United States and other nations desired to advance. There were questions about a nation acceding to jurisdiction in a limited manner, or without limitation, how countries not members of the United Nations might nevertheless have access to the Court, how many judges there should be, how they should be selected, the problem of domestic in relation to international questions, the compensation and tenure of the judges, whether the Court should have continuity with the old Court or should be considered new, whether its name should remain the same. There were also questions as to representation through court membership of the several legal systems of the world.

Professional men in a conference of this kind, to a degree removed from political considerations — although of course not entirely because
the representatives are influenced by the political climate and policies of their own country — reach a broad area of agreement in working on an instrument of this nature. The representatives worked well together on the whole. Some men present had great prestige in legal circles of the international community. Some had been members of the Court or close to it in some capacity. There was also much new blood in the picture as a result of the scope of the Second World War, and the international movements coming out of it. We were all friends then, before the beginning of the cold war. Indeed, it was before the unconditional surrender in Germany and the defeat of Japan. There was a great measure of accord and a lack of controversial spirit. There were intellectual differences on details to be expected in any group of serious men dealing with such a problem but there was not a controversial atmosphere.

The conference usually met in what might be called a committee of the whole. There were subcommittees on drafting of particular provisions agreed on in principle, and other committees, but principally the work was in the conference as a whole.

You ask whether in terms of words being imperfect tools to convey meanings we ran into constructions and concepts which had a specific meaning to an Anglo-American common law system but which did not find an applicable word in the continental law system. Yes, I think so, but I don't know that it was particularly due to different systems. There were some differences to which we easily became accustomed. For example, an American, speaking in terms of the sort of cases a Court may adjudicate, ordinarily speaks in terms of jurisdiction. Other nations are likely to speak of the competence of the Court. A difference might arise between a lawyer accustomed to
speak in terms of international law as to the factors essential to a justiciable controversy, in comparison with our constitutional law. There were some difference over the problem of advisory opinions, but not quite as much as there would have been before we became accustomed in our country to declaratory judgments.

I do not think the relatively minor role of the continental lawyer in court follows into a court of this kind. Most of the continental lawyers were thinking in terms of the old Permanent Court of International Justice, which was not a trial court in the usual sense. The cases ordinarily came before the Court on paper and not on testimony taken in court. Arguments on the lawyers made to the Court as in an appellate court. I do not remember now differences due to the different functions of a judge in continental Europe and in the United States.

There was a feeling among some in favor of the old court, and there was a hope among others of us that in the future the Court would be more important. I thought the old court had failed to play the role hoped for it. I was not keen to tie ourselves too rigidly to what had gone before simply because it had gone before. I was hopeful the dearth of important problems before the old Court would end, and there would be a growth in the international community of a rule of law which would make the Court a significant instrumentality for the settlement of controversy by peaceful means. For this reason I did not want the Court to be identified too closely in people’s minds with the old one, which might detract from its ability to come out of the past into a larger amount of judicial activity. I wanted to keep the benefits of the old but not identification with the failures that followed the First World War.
The writing of the report was by a committee. This report contained the recommendations to the Conference at San Francisco. Some representatives had been assigned from the Washington embassies. Different personnel would represent some of the countries at San Francisco, but a great many went on to the Conference there.

Several difficult problems were left unanswered by the report. I mention three. One was whether the Court was to be a continuation of the Permanent Court of International Justice or was to be a new Court, as I favored. Secondly, whether the statute should contain provision for compulsory or optional jurisdiction, as had been worked out during the life of the old Court. Thirdly, the manner of selecting judges — whether by the United Nations on nomination of governments or, as in the case of the old Court, on nomination of national groups independent of governments. Of course the whole statute was left open in a sense, because the committee's work was only recommendatory.

I think on reflection that probably the report was not prepared by a committee but by the rapporteur of the Conference subject to the approval of the conference as a whole.

In developing the American position on the selection of judges Mr. Jessup and I consulted Chief Justice Stone and retired Chief Justice Hughes, the latter of whom had been a member of the old Court. Each was somewhat reticent in giving definite advice but I thought sufficiently indicated a view favorable to non-political nominations, in aid of the independent -- international -- character of the Court.

The visit with Chief Justice Hughes was poignant. Sad news indeed came while we were with him at his residence. We had about concluded our
discussion when a member of the staff of his household, a colored man, came
to the door of the study and said that Mr. Weggeman, Marshal of the Supreme
Court, had called to advise the Chief Justice that President Roosevelt had
died. I need not say how deeply saddened I was. Chief Justice Hughes was
visibly affected and seemed reluctant to believe the message. He asked
that his secretary or law clerk, I am not sure which, be called with a view
to checking on the report. While this was being done a call came to me
from the Department, requesting that I return as quickly as possible. I
took this indirectly to be verification that the President was dead. Mr.
Jessup and I left, I returning to the Department.

Chief Justice Hughes' advice on the question, as I have indicated,
leaned toward the non-political method of nominations. I am not so certain
it was preferable. I think it might well have been left to the governments
to nominate those to be considered for election by the United Nations to
the Court. I do not consider such a method political in an invidious sense.
I have always thought that the President would probably be better qualified
to select Americans than any other medium in the country. But at San Fran-
cisco the old system was adhered to and my own doubts receded in face of
the position taken by my government.

Before the International Jurists' Conference ended, as I have said,
President Roosevelt died. We adjourned the Conference the afternoon the
body of the great man passed down Constitution Avenue after reaching Wash-
ington from Warm Springs. We went out to stand in solemn tribute as the
flag-draped caisson was drawn by, with the earthly remaines of a good friend
to me and to all the people. The institutions in the international commun-
ity which he envisaged as instruments of peace in justice were being formed
as he reached his mortal end. The voice of courage and of faith we had heard in Santa Fe ever and above the static in the Spring of 1933 was stillled, but his leadership had brought us to a better land in the domestic order, while in the international community he had taken up where Wilson left off these many years ago. He initiated again American leadership, this time toward a successful conclusion.

The Conference at San Francisco which had been inspired primarily by President Roosevelt was later opened by President Truman. Our report became part of the agenda of Commission IV of the Conference. To this Commission were assigned the legal problems which confronted the Conference, as well as some others. When I became adviser at the Jurists' meeting I do not recall that I knew I would also go to the San Francisco Conference as an adviser, though I think it likely the latter designation came somewhat before the Washington Conference ended. The Attorney General at one point was thinking he might go to San Francisco. But the President frowned on members of the Cabinet, other than the Secretary of State, participating there. I indicated my interest to Biddle, and he told me that if he did not go I would be designated from the Department.

SAN FRANCISCO CONFERENCE

Harley Newton's book on the preparations made for the Conference indicates that advisers of my status were informally nominated by the head of the Department. But my recollection is a letter came from the Secretary of State requesting my appointment, perhaps after an informal designation by the Attorney General.
Except in connection with the Court statute as already described I had no part in the preparations for the Conference. As matters developed I was again to work closely with Mr. Backworth. He, like Mr. Armstrong, Mr. Pavlovsky, Mr. Dulles and Mr. Bowman, were principal advisers. Others from several departments, including Mr. Adlai Stevenson from Navy, Mr. Abe Fortas from Interior, and myself from Justice, had more limited roles.

The work of the Conference was divided among four commissions. My work was primarily in Commission IV, to which legal problems were assigned. Mr. Backworth was indisposed during a good part of the earlier weeks of the Conference, which threw more responsibility on Mr. Jessup, also an adviser on legal matters, and myself than otherwise might have been the case. I sat quite often as the representative of the United States in Commission IV, handling the details on the agenda of that Commission, composed of representatives of all of the nations participating.

We kept in touch with the delegation as necessary by memoranda and conferences. Only occasionally was it necessary to submit a problem to the full United States Delegation. But we met with the Delegation occasionally, even when we had no special problem of our own. Through such meetings, or with the Secretary, we were kept more or less in touch with the progress of affairs, with an opportunity to comment or suggest, especially at the meetings with the Secretary.

The report of the Jurists' Committee came before Commission IV. I wanted the Court of the future to be a new Court, with no formal continuation of the old, on policy as well as legal grounds. As to the latter some nations which had been members of the Old Court were not represented, yet the statute was being amended and modified. This raised a question whether
we could legally arrange a continuation of the old Court. Mr. Jessup was of a different view from mine. Mr. Backworth held off taking a position for quite a while. After a period of uncertainty the decision was made that there would be a new Court.

The majority of the San Francisco Conference favored granting the Court compulsory jurisdiction of legal controversies between States. A minority, including the United States, were of a contrary view. Although in principle we might think it desirable, the United States was not ready for it. It seemed unwise to endanger our adherence to the statute, dependent upon Senate approval, by having a provision which would call for reservations or qualifications by the Senate.

So the majority of the Conference, represented in Commission IV, acceded to policy arguments which favored a clause known as the optional jurisdictional clause, which had been worked out during the life of the old Court and was reputed to be in considerable part the handiwork of Elihu Root. The United States had never granted the old Court any jurisdiction. But, as appears later, the Senate adhered to the statute of the new Court in 1947, when I was Legal Adviser of the State Department.

A great deal of continuity with the old Court was of course maintained. It was provided that existing treaties calling for submission of disputes to the Permanent Court of International Justice would have the effect of sending such disputes to the International Court of Justice. Indeed, the statute of the new Court was that of the old with modifications, but with a new legal status for the new Court.

The Secretary of State made a report to the President on the results of the Conference, published as Department of State Publication No. 2349,
Conference Series 41. It gives a rather full but not exhaustive report on
the whole conference, including legal problems as well as the more difficult
political questions resolved.

There had been a great deal of staff work prior to the Conference.
Three things which caused controversy came immediately to mind. One was
whether or not Argentina should be admitted to the Conference as a member
of the United Nations. A terrific furor arose about this. There was a
division of sentiment within the American staff -- I don't know that I can
say within the delegation. One position was that Argentina had not really
borne any of the brunt of the war as one of the United Nations and that
only when the trend of events was obvious had she declared war late in the
day. It was also said that her government was undemocratic. The United
States position became pretty clearly and quickly known. It was that Argen-
tina should be admitted. I thought this was right, and that Secretary
Stettinius intelligently and persuasively stated the American position.
The other republics in South America wanted Argentina admitted, and would
have been quite aggrieved had she been excluded; moreover, I didn't see any
future benefit by pursuing to the bitter end our disappointment over Argen-
tina's course in the war. I thought the best chance of drawing her to a
position consistent with our policies was not to close the door on her.

Other very controversial questions, more important and more fundamental,
were the veto and the composition and powers of the Security Council in re-
lation to the General Assembly. The Australian delegation, under the leader-
ship of Mr. Earle W. Hallet, took a prominent part in marshalling the sen-
timent of the small or medium-sized nations to restrict the veto power.
The United States favored the veto. In a perfect world, an ideal situation,
such a veto could not be defended. But the United States could not, I
thought, and felt confident the Senate would feel the same way, put its
military power at the disposal of the United Nations without our consent,
which is really what the absence of the veto on our part would have done in
theory. As time has passed the abuse of the veto by the Soviet Union has
clouded the issue. But I still think today the United States should support
the veto as conditions exist and that the Senate would not approve a Charter
amendment which abolished it. The trouble is the veto has been used when
it should not have been. I think the veto should be limited but not yet
abolished.

Within the American delegation there was debate over the scope of the
veto, as I recall. But there was general recognition the United States
would insist upon it. Of course the Soviet Union insisted upon it too, but
my point is that we insisted upon it.

Another question with the Soviet Union was whether the veto could be
applied to prevent consideration and discussion by the Security Council of
a dispute brought to its attention under the provisions having to do with
the peaceful settlement of disputes. The Soviet Union, as I now recall, in
the case of a matter to which the veto would apply if action were to be
taken by the Council, wanted the veto to extend also to prevent its discuss-
ion. But the United States stood firmly on the principle of the right to
discuss. The result was the issuance of a statement by the sponsoring
powers towards the end of the Conference which became part of the legisla-
tive history, as it were, of this provision. It recognized the right of
discussion. It states:
No individual member of the Council can alone prevent consideration and discussion by the Council of a dispute or situation brought to its attention under Paragraph 2, Section A, Chapter 3 . . .

This reference is apparently to the old Dumbarton Oaks proposal, which reads,

Any state, whether a member of the organization or not, may bring any such dispute or situation to the attention of the General Assembly or of the Security Council.

The statement of the sponsoring powers, with which France, who was not a sponsoring power, associated herself, continues:

. . . nor can parties to such a dispute be prevented by these means from being heard by the Council. Likewise the requirement for unanimity of the permanent members cannot prevent any member of the Council from reminding the members of the organization of their general obligations assumed under the charter as regards peaceful settlement of disputes.

The report of the Secretary of State continues,

By the time the joint statement was presented to the committee it appeared that there was no serious disposition on the part of other delegations to press certain amendments designed to eliminate the rule of unanimity with respect to enforcement action. The only open question then as to voting procedure was with actual peaceful settlement. Many delegations had proposed amendments to alter the voting procedure, several of them with the idea of removing the process of pacific settlement from the requirement of unanimity. This was the purpose of an Australian amendment which, when offered originally, had enlisted the support of several other delegations, and, in a revised form, provided the test of Conference sentiment of this problem after the issuing of the Sponsoring Powers' statement. The amendment was rejected, although many delegations abstained when the vote was taken.

During the course of the debate on the Australian amendment and the voting formula itself, it was stressed by the great powers that their special voting position would be used with a great sense of responsibility and consideration of the interest of the smaller nations and that therefore the veto would be used sparingly. The eyes of world opinion will be directed upon the Security Council in all of its deliberations with respect to the maintenance of peace and security. Any misuse of the voting procedure would offend this great weight of opinion and impair the
development of the prestige upon which the ultimate success of
the organization will depend. Since the great powers have
carried the brunt of two great wars in one generation, their in-
terest in building a strong and effective organization will
surely make them ever conscious of maintaining this prestige.
(pp. 76-7.)

But the Secretary's hope was not fulfilled because the Soviets, con-
trary to the sentiment reflected in the atmosphere at San Francisco, have
abused the veto. For example, they have used it constantly to keep well
qualified nations from becoming members of the United Nations.

The Soviet Union's attitude at San Francisco as to what could be dis-
cussed without being subject to a veto cutoff can be said now to have fore-
cast its later obstructionist attitude. But on the whole I left San Fran-
cisco with the feeling that the Soviet Union was in sympathy with the real
purposes of the United Nations insofar as those purposes were directed
toward the maintenance of international peace. I cannot say I thought the
Soviet leaders were in sympathy with all statements of principles in the
Charter, though she subscribed to the Charter; but I do think she was
anxious then for the world to be united in an organization to prevent a re-
currence of a world war. And I did not think then that she would become as
obstructive as in fact has been the case. Even if this had been foresee-
able it would in my opinion have been outweighed, on the issue of the de-
sirability of her membership, by the world influence operating upon the
Soviet Union as a member, with opportunity for joint and collective action.
I thought it would be healthy for her to be drawn into participation with
all these other nations in international problems within the jurisdiction
of the Charter.

I think this view was perhaps typical of the American delegation. I
cannot speak for others, but as far as I can judge, I think something of
this sort was their belief. I might have been more optimistic than some. Some might have thought, "Well, we ought to try this in any event," but they may not have had much hope. But I think the sentiment of the times in the American delegation, in the country and in the world, was that the enterprise would do a great deal of good.

I had some little feeling the Conference was too largely composed of delegations accustomed to international conferences; that is, the old school of the League of Nations and what had gone before, which to me, whatever the causes — and I have already expressed myself — had failed. But this probably was more true of the legal people than of the political members of delegations. It was not true of our own delegation. It represented a broad segment of current American political opinion and life.

As for England, their lawyers were alert career men. Their principal was Sir William Malthin, the legal adviser of the Foreign Office, a fine gentleman and excellent lawyer. Sir William lost his life on the way home by air from San Francisco. His plane simply disappeared over the Atlantic. I remembered him pleasantly and admiringly from the destroyer-bases negotiations of 1941 in London. The second legal man in the British group at San Francisco was G. G. Pitmanrice, also a good man. He had been at the Jurists' Conference and I was to work with him later in the General Assembly. I have no independent personal impressions gained at San Francisco regarding their top political men.

The Russian legal men were, principally, S. A. Galunsky and S. J. Krylov. Krylov later became a member of the World Court. Both were able lawyers and seemed to be relatively non-political and to approach the legal problems of the Conference pretty much from a professional standpoint.
The interesting thing, as my own view developed through further contact with the Soviet representatives at the United Nations -- although this was not clear at San Francisco -- is that notwithstanding they would actively participate in committees of the General Assembly in the formulation of legal documents, such as those setting up the International Law Commission, in the end they would not approve for political reasons. Concessions made in committees to obtain unanimity would in the end fail of their purpose. This became pretty clear to me -- I don't know exactly when, but at a certain point. Notwithstanding a professional approach by their lawyers to international agreements, the Soviet position in the end was not to agree to be bound by legal or juridical institutions or documents, but only to be guided by political or power considerations. My later legal work with the Soviet in the Control Council machinery for the government of Germany gave supporting evidence of the same limitations upon their lawyers.

I saw this illustrated several times at the United Nations. We would clear through the Sixth Committee of the General Assembly some position in which they had taken an active part in committee; and yet when the result reached the floor of the General Assembly for approval they abstained or voted against it.

At San Francisco we had several interesting problems in our Commission other than those involving the statute of the Court: the charter provisions on privileges and immunities, the organization's legal status in the international community and within nations, the effect of the Charter on earlier treaties with inconsistent provisions, the development of international law and the registration of treaties. We dealt with Chapter 16, termed "Miscellaneous Provisions," as I recall. Later, toward the end of the Confer-
ence, I believe Mr. Hackworth and Mr. Golumsky, as well as others, were
designated to review the whole draft of the Charter for inconsistencies in
form, but I did not personally have a hand in this. Commission IV was
quite busy and sat regularly. We usually met both mornings and afternoons,
with a luncheon break.

The American group was housed in different hotels but the offices of
the delegation, including advisers and staff, were all in the Fairmont
Hotel. Some of the delegation lived there too, and it was the meeting
place of the delegation. I lived at the Sir Francis Drake Hotel, going
back and forth to my office at the Fairmont. Miss Vanest, my secretary,
was at San Francisco and a great help as always. I usually went from my
office to the meetings of Commission IV in a delegation or conference bus,
or I might go by car. The meeting places were well arranged in the group
of buildings near the Opera House and plaza. The plenary sessions were in
the Opera House. The Conference functioned well. The American delegation
was well equipped and well staffed.

The City went full out to do everything possible to help the Confer-
ence, not only from a standpoint of efficiency but also in the way of enter-
tainment and social amenities. I was hopeful the permanent headquarters of
the United Nations would be at San Francisco, and still think it would have
been better.

The Conference was conducted in two languages, French and English, the
old languages of diplomacy, but everyone had a right to have a translation
into Spanish, Russian, or Chinese. There were so many South American or
Spanish speaking nations, that the routine was for practically all dis-
cussions to be translated into French, English, and Spanish. If a Soviet
representative did not understand French or English, a separate interpreter was provided. This saved a good deal of time. The same system was used for the Chinese. Though the working languages were English and French, the official languages were English, French, Russian, Chinese and Spanish. Of course the necessity for interpretations slowed down the work, but one became accustomed to it. The simultaneous translation system installed later at Nuremberg and at the meetings of the organs of the United Nations was not available to us.

The people of the United States and public opinion generally throughout the world had great hope in the United Nations. There were bound to be differences in degree of expectations, but the general feeling I as confident was one of tremendous worthwhileness, a conviction that the effort was constructive and desirable, and would bear fruit in helping to prevent recurrence of such suffering as the world had twice experienced in a few decades.

I would like to comment on the bi-partisan nature of the United States delegation -- which brings me back a bit to the Wilson era. Without enlarging upon my thoughts, one of the reasons I've always felt the League failed to secure the adherence of the United States was that it became, wrongly in my view, a partisan issue. President Roosevelt, the chief world leader in the development of the United Nations, not only took the discerning step of having the Conference arranged before the fighting was over, while all the great nations, as well as the others, were joined in a common enterprise, but also wisely composed the American delegation on a non-partisan basis, as clearly evidenced by its membership.
The delegation consisted of the Secretary of State as chairman, and included both the chairman and ranking minority members of the foreign affairs committees of the Senate and of the House. Senator Tom Connally was the committee chairman, and Senator Arthur H. Vandenberg the ranking Republican member on the Senate side. In the House, Sol Bloom was chairman and Charles A. Eaton was the ranking Republican member. Both Mr. Vandenberg and Mr. Eaton as well as Mr. Bloom and Mr. Connally were members of the delegation. Mr. Stassen, a prominent Republican political figure at the time, was also a member. One of the principal advisers to the delegation became Mr. John Foster Dulles, a prominent Republican known to be especially interested in international affairs. Thus the President undertook to make the American position non-partisan, and drew into the effort men of great influence and prestige in the opposite political party, so that they not only would have the educational advantage of active participation, but the country would have the advantage of their support of the work of the Conference.

I have a footnote about Senator Vandenberg and Senator Connally. I felt Senator Connally, who was chairman of the Senate Foreign Relations Committee, handled controversial issues in the delegation very skillfully in relation to Senator Vandenberg, the minority ranking member who later was to become chairman of the committee when his party gained control of the Senate. Senator Vandenberg seemed to me at first to be more skeptical than most of us, including Senator Connally, about the United Nations. In delegation meetings he often raised issues or indicated uncertainty. There was no effort to outvote anybody in these meetings, as I recall. The process was one of exposition, explanation, argument, discussion and of reaching common ground, without seeking to determine who was in the majority and who
in the minority. Working that way, with the Secretary of State as far as I could observe being an excellent chairman, the delegation became a cohesive group. There grew in Senator Vandenberg's mind as the Conference progressed, in my view, more hopefulness, a subsiding of skepticism. He became an advocate of the United Nations. I do not mean he expected it to accomplish more than it was capable of accomplishing, but that he took a realistic view of what it could accomplish and came to believe in it, to believe that joining and supporting it was right. This was a triumph not only, as I see it, for right reason, but also for the breadth of the Senator, and of the President in the broad national foundation he gave to the delegation which was to handle the American position at San Francisco. Credit is not due principally to Senator Vandenberg, but to those whose position he came to adopt as his own. It is a mistake, I think, for history to give predominant accolade to the converts in such matters, in preference to the "orthodox," though each is entitled to gratitude.

DIRECTOR OF LEGAL DIVISION OF OMGUS AND LEGAL ADVISER

TO MILITARY GOVERNOR OF GERMANY

1. Appointment as Director of Legal Division of OMGUS and Legal Adviser to Military Governor

As the work to which I was assigned drew to an end at San Francisco I thought I should return to Washington. Mr. John J. McCloy had been in touch with Attorney General Biddle about asking me to go to Germany as head of the Legal Division of the United States Office of Military Government and as Legal Adviser to the Military Governor. Mr. Biddle communicated
this over the phone to me, followed by more direct contact between Mr.
McCloy and myself.

Before President Roosevelt's death in April, it seemed that I would be
offered appointment to the Court of Appeals in the District of Columbia.
This possibility was still open, and there was also the question whether I
could or should remain as Solicitor General. I came on to Washington and
talked with Attorney General designate Tom Clark, who then was not actually
in office, as I recall it, but had been nominated. He indicated he thought
I could remain as Solicitor General if I desired. I felt, however, that
the President probably would wish to name a new Solicitor General, as he
had a new Attorney General. In any event, I thought that if I were to re-
main in the government I should now either go to Germany or go on the court,
if the latter was still available. Chief Judge Groner had urged me to ac-
cept appointment to the Court and Harold M. Stephens had also encouraged me
to do so.

About a week before I was to return Agnes came to San Francisco. It
was an opportunity for her enroute also to re-visit Santa Fe, where she
spent a week at the home of Mrs. Alexander and enjoyed seeing again friends
of our first married years. Los Alamos was then a mystery to Santa Feans.
It was the scene of an explosion while she was there. Mrs. Alexander came
on to San Francisco with Agnes, to the wedding of her son Laughlin. William
Barker, her husband during our years in Santa Fe, and Laughlin's father,
came separately. All of us attended the very beautiful wedding at the
Catholic Church "Star of the Sea," just outside the City. Agnes and I had
pleasant visits with Will, too. That we could not all be together at the
same time was sad. Neither Will nor Ruth (Mrs. Alexander) ever spoke to
me unkindly of the other and I never knew just what the trouble was.
Agnes and I returned together to Washington after my own work was finished. I would have liked to stay to the end, but it was not necessary and it seemed better in view of the change in the Washington scene to leave when my own duties were concluded. My sister Sarah had come to Washington to look after the children and the house while Agnes was away, a very nice thing for her to do.

Mr. Clark told me he knew of the plans which had matured before President Roosevelt's death for my appointment to the Court of Appeals. The appointment had been held up because of uncertainty in the President's mind about a successor as Solicitor General, including the question whether Judge Sam Rosenman might be appointed. Clark told me he felt confident that if I desired President Truman would carry out the plan of President Roosevelt. However, the matter never reached a point of finding out whether this was definitely true because I decided in any event to comply with the request that I go to Germany. The War Department was anxious that the staff be organized as promptly as possible so that civilians who were to head up the legal work in Germany could go there soon.

I had had no intimation I might be asked to go to Germany until near the end of the San Francisco Conference. So I had made no special studies of the problems and had not been drawn into preparation of any of the basic documents for military government's operations in Germany. I remember one Cabinet meeting when there was a general discussion of what might be vaguely called a plan for Germany, in which Secretary Morgenthau participated, but the discussion was too general to give me much knowledge of details. After it was decided I should go I was given the plan for study, and had some discussions of it with Mr. McCloy. One of the things Mr. McCloy said was that
the basic directive was harsh -- I don't know that he used that exact word -- but that if I read it carefully I would see that in certain respects there was room for flexibility.

I was attracted to the work. It would afford an opportunity to engage directly in the unusual occupation problems, following unconditional surrender of Germany. Mr. McCloy thought that if we could succeed in Germany in our relations with the Soviet we would succeed generally.

I began to "enlist" a few men of my own selection to supplement military government personnel already in Germany.

At a personal conference with the President I gave him my resignation as Solicitor General but suggested that he do not accept it, unless he felt it necessary, until I had been in Germany a month or six weeks. He said he would follow my own wishes in that regard, and he did so. In fact it was accepted by the appointment of Mr. J. Howard McGrath, Governor of Rhode Island, as my successor, in September or October. At my visit with the President he indicated he had offered the Solicitor Generalship to Judge Sherman Minton, a former Senatorial colleague then on the Court of Appeals for the Seventh Circuit, in later years to be appointed by the President to the Supreme Court. It was strongly rumored after I was in Germany that the office had also been tendered to Governor Ellis Arnall of Georgia, who had declined it.

When I saw the President in July he had been in office about three months. About a week later, in Germany, I wrote this account of the visit, which I think contains nothing of a confidential character:

On the Thursday before departure, saw President Truman and handed him my letter of resignation. I said that as he knew I was leaving in the capacity of S. G. (Solicitor General) but thought a S. G. should be appointed reasonably soon. He said he
would hold the resignation until I thought proper, that he wished to handle the matter as I wanted. I said perhaps a month or six weeks was my thought. He said that was all right, that he was leaving for the "Big Three" meeting (he did not so phrase it) would not be back for six or seven weeks -- would not announce the resignation until his return. The President was assured, looked well and spoke about the problem of Germany at some length. He seemed unhurried and collected, spoke freely and thoughtfully. He mentioned the ideal of a U. S. of Europe, but added that only twice had it been attempted, by Caesar and Henry IV -- both of whom met untimely deaths, thought Germany was cut as a threat in any event for 50 years; I was with him between 30 and 25 minutes. Left my letter of resignation and explained my position regarding the need for a Solicitor General reasonably soon in justice to the work. * * * I remarked about the new work that I felt no particular competence for. He said to put that out of my mind, that he would not have asked me to do it if he had not thought I could do it. I spoke of my feeling about the office of Solicitor General, the privilege of representing the people before the Court. He agreed. Said he had spoken to Judge Winton re taking the office, but he did not wish to do so. He walked to the door with me and wished me well in the work. I wished him every success, mentioning particularly the coming conference, and said he was doing a fine job, to which he replied that he had good advisers, disclaiming personal accomplishments.

The announcement of my assignment to the German work was made at the White House as though the selection had been by General Eisenhower, who was Military Governor, whereas, as a matter of fact, the selection had been made in Washington, though perhaps it had been cleared with General Eisenhower. General Lucius D. Clay, Deputy Military Governor, I feel sure was consulted. I had not had any personal contact with General Eisenhower and saw him for the first time in July, in his office in Frankfurt.

We were fortunate, indeed, in the associate directors -- Judge J. Warren Madden, on leave from the Court of Claims, and Mr. Herman Phleger of San Francisco. Judge Madden, as these notes have already indicated, was chairman of the National Labor Relations Board when I was its general counsel. I had the greatest respect for his ability and character, and was
fond of him personally. I think Mr. Phleger had been interested by Mr. McCloy who knew him well, but Mr. Phleger did not wish to go without my personal approval after I was designated to head the group. He came on to Washington and we had a visit. I urged him to go with us, not only on the basis of Mr. McCloy's recommendation, which was very high, but on the basis of my own appraisal of him and the commendations also of Mr. Eugene Meyer, of the Washington Post, also a personal friend of Mr. Phleger. He only remained until December. Madden remained somewhat longer than I.

I will not enumerate all the good men who joined the staff, including Mr. Phil Elman of my own Solicitor General's office and several others from the Department of Justice. Later on, Mr. Alvin J. Rockwell, with whom I had been associated in government work over a number of years, joined us and later became head of the Legal Division, as also Mr. Madden did for a while. Rockwell's family joined him and he remained several years altogether.

We took off from the Washington Airport July 13th. Charles came to the airport as representative of the family to see me off. Agnes and I decided that was the best way. She and I parted at the Department of Justice. I had a talk with Charles about his own future. He said that he still intended to be a priest, which, God willing, pleased me very much.

We landed in Newfoundland, the Azores, Paris and finally at Frankfurt. In crossing France, beyond Paris, we could see evidence of some destruction due to the war, but not a great deal that I could pick out from the air. And in the brief time it took to traverse France it was impossible to appraise the significance of all that had occurred there the last few years.
General Edward O. Betts, the theatre judge advocate, met us at the Frankfurt Airport and took us to his establishment out some miles from the city for our first night in Germany. The destruction around Frankfurt was heavy. It was startling to see, in the light of our own remoteness from such a result of participation in the war. As we rode out into the countryside toward General Betts' place of residence the destruction was not so obvious. Many people were working in the fields, mostly old men and women. One hardly ever saw a young man, and the roads were almost entirely free of German vehicular traffic. There were many bicycles.

The General, along with other American officers, lived in a residential section guarded and surrounded by barbed-wire. The house was rather pretentious, well furnished and well appointed.

The headquarters of our work was then about ten kilometers out from Frankfurt, at Höchst. Military Government, SNOUS as it was called (Office of the Military Government, United States), had taken over the I. G. Farben buildings there. These were quite substantial and in good condition, although not as extensive and modern as the buildings of the same company in Frankfurt itself, which were then General Eisenhower's headquarters as Military Governor and General of the occupation armies.

We were given offices in Höchst and were soon billeted in a house outside of town, with a car at our disposal. Madden, Phleger and I lived together. We and the other lawyers who had come with us were worked into the existing military government establishment and came under the immediate supervision of General Clay, Deputy Military Governor, directly responsible under General Eisenhower for military government. General Eisenhower then was paying more attention to the problems of the army.
Although my new group of lawyers had not been a part of military government we were cordially welcomed by the fine officers who had come into the army from civilian life and had had military government training under the General Wickersham program.

The whole of OMGUS was making its plans to move to Berlin at the conclusion of the Potsdam Conference, which was to activate the four-power government of Germany.

2. Potsdam, Justice Jackson and the Nuremberg Trial

During the Potsdam Conference, Justice Jackson was in London as our principal negotiator of the instrument which became known as the Charter of the International Military Tribunal. I should say here that the legal work of which I was in charge did not include to any degree the Nuremberg Trial itself, though we did help in getting the trial under way with German counsel for the accused and in a number of other respects. Mr. Justice Jackson had his own separate organization. As I go along I will probably point out somewhat how our work became related to or touched his. Our organization was responsible for the United States legal work of the occupation, and of the government of Germany, other than the Nuremberg trials.

Justice Jackson, in London, sent word that he wished General Bedell and me to meet him in Berlin. He wished to take advantage of the presence there of the President, the Secretary of State (Mr. Byrnes), and Mr. McCloy, to bring them up to date on the status of negotiations in London, where he was having difficulty, principally because of the Soviet point of view, but not entirely due to the Soviet.
General Betts and I flew to Berlin in General Betts' plane, arriving in the afternoon. We were driven out to the American quarters at Potsdam and there met Justice Jackson, who had flown over from London. That evening we met with the Secretary of State and Mr. McCloy. As I recall the meeting was participated in by Mr. Justice Jackson, the Secretary of State, Mr. McCloy, Mr. James C. Dunn of the Department of State, General Betts, perhaps Miss Katherine Pite, and myself.

Justice Jackson explained his problems. The London negotiations were taking longer than was healthy. He wished to consult the Secretary about drawing them to an end, if possible, by taking a more vigorous attitude. While he was anxious that the Soviets participate in the trial, there was a question how far the United States should now go in seeking agreement if the negotiations continued to be protracted.

I don't remember that he indicated to me any disturbance on his part that the Russians might be seeking some particular agreement at Potsdam by dragging their heels at London. He did say the Russians were reluctant to have as much due process or procedure as we desired, taking the view that a political decision had been made by Stalin that these men were guilty.

Jackson was encouraged by Secretary Byrnes to use his best judgment, with the full support of his government. My own position, which I expressed more fully to Jackson personally than during the conference, was that he should press pretty hard toward a conclusion, even if it meant a substantial threat of having to conduct the trial without the Soviets.

At our meeting with him the Secretary spoke of the general situation. I noted later in personal notes that he said: "We will not sacrifice our
principles or traditions." He was conscious of the future opinion of the world regarding the policy of the United States.

Shortly before our meeting word had reached Potsdam that the Churchill government had fallen in the elections. Mr. Churchill had left Potsdam to receive the results in England and would not return. Mr. Atlee, who had been with him at Potsdam, remained.

The next day, we were taken on a tour of Berlin. The destruction was amazing and colossal. There had been a terrific amount of fighting. Among other places we went to Hitler's Chancellery and to his nearby underground quarters where he probably spent his last moments. We saw the couch on which he was supposed to have shot himself. Bloodstains were still there; the place was in disorder. That part of Berlin was then patrolled, if one could call it that, by Soviet troops, a few rather nondescript-looking soldiers standing around, not paying much attention to who was going in and out. They did not present a smart appearance. In the immediate area were one or two old abandoned horsedrawn Russian wagons that had been drawn close up to Hitler's headquarters. In contrast with this nondescript character of some Russian army personnel the routes to Potsdam from the airport were patrolled by Russian soldiers with spirit and discipline. The Soviet had also brought to Berlin a corps of young Russian women who directed traffic at key intersections. They were smartly uniformed and did an unusual and unique job of traffic control, maneuvering smartly with little flags.

Some sewage was badly out of order. In the center of the city the odors were bad. There was a beginning of cleaning up of the rubble. Most of the workers were women and old men. We thought we knew why this was so. The young men were still prisoners of war or disarmed enemy forces, as they were called.
Berlin was a very depressing place. The devastation was in stark contrast with evidences of the height of the Hitler regime, now in ruins. The destruction was so extensive one could not help wondering why the Germans had not surrendered earlier. It must have been apparent to the military long before actual surrender that the situation was hopeless. They had been taking a terrific beating. The situation might have been more obvious to the civilians than to the military, but it is a strange comment on the whole Hitler regime that in the end Hitler permitted his country to be destroyed so extensively when he must have known he was thoroughly beaten. But then of course he didn't live to have to worry about it among his people; he apparently destroyed himself, too.

In my opinion the Nuremberg trial was justified. I do not recall any discussion among ourselves of treating the war criminals as Napoleon, for example, had been treated, nor any discussion to the effect the trials were instruments to justify politically what had been achieved militarily. The German leaders had been told they would be tried. In the Moscow Declaration, as early as 1943, they were warned they would be held accountable as war criminals for atrocities and so forth, long before Nuremberg. It became a fixed policy of the Allies, certainly of the United States, that the war criminals would be tried and punished as criminals. There was no definition then of the procedure to be adopted, but one must remember that the things done by Hitler and his regime were criminal. We apply the word "criminal" to an individual who violates the law by stealing a loaf of bread or a small sum of money; the things these men were accused of doing were criminal. The fact that they acted on a massive scale does not make this less true.
Laying aside the question whether a Justice of the Supreme Court should have been selected as our principal prosecutor, the President in selecting Jackson selected an outstanding man, a lawyer of great character and capacity. Under his leadership our government worked out the international Charter which eventually had the adherence not simply of the four signatories in London but of some twenty odd nations. Under it these men were tried with fair procedure.

It is said the conquerors were the triers, so that the tribunal was not impartial. There is something to this. It would be better if, as I think the Holy Father has pointed out more recently, there were a court to conduct trials of this character, set up in advance and not composed of representatives of the victors. Although this criticism of Nuremberg has some substance it is not sufficient to have warranted omission to try these men. The tribunal was discriminating; it was not a political court. It reached different judgments on the basis of the evidence. The government of the United States, which prosecutes a criminal, is the same government that appoints the judge. This is not quite a parallel situation; but in initiating for the first time in history such a trial some new ground had to be broken.

The argument against holding heads of states responsible in my view is answered by pointing out that the time had come when the international community should denominate what was done as an international crime.

We do not live in a perfect world, but I think the Nuremberg enterprise was sound in light of the problem. The evidence was overwhelming — I'm not speaking now as to each individual. We must distinguish between those,
but if we are to punish people in our civilization then those accused were also subject to punishment if guilty of the charges against them.

General Clay asked me to make arrangements for the continuation of war crimes trials after the conclusion of the first big Nuremberg trial under Justice Jackson. The arrangements had to be made well in advance of the conclusion of the main trial so that whoever was to be responsible would have an opportunity to hold on to members of Justice Jackson’s staff.

General Clay had come to the conclusion — with which I was in agreement — that after Justice Jackson completed the main trial the organization to go forward with other trials should be under the Military Governor, rather than continue as a separate organization operating under executive order of the President.

I wanted Mr. Francis M. Shea to take over where Justice Jackson would leave off but he returned to the United States and made himself unavailable. It then seemed for a while that Colonel William Donovan, who at one time was part of the Nuremberg group, would do so, but in the end he was unwilling.

I then learned that Colonel Telford Taylor, also part of the organization, might be willing. I talked with him a number of times and recommended him for appointment. It eventuated that he became the chief prosecutor on behalf of the United States subsequent to the international trial. In all of this there were several trips to Nuremberg, where I kept in close touch with Justice Jackson about future plans. The matter had to be worked out also with General Betts, who conferred with General Eisenhower. We later took up the final plans with General Bedell Smith, and he approved. Washington’s approval, including that of the White House, as I recall, was also necessary because of the nature of the Jackson organization.
The question had to be answered whether the subsequent trials should be international or local. With the approval of Justice Jackson and, according to my best recollection, with his recommendation, it was decided that no further trials on an international basis would be held. While the big trial was to go forward with the cooperation of the four powers it was unlikely such cooperation would continue—at least it was risky. I advised General Clay to the same effect.

Another question of policy was whether the future trials should include industrialists as war criminals. I thought not, unless by agreement between France, England and ourselves. However, it turned out that some industrialists were tried by the United States independently of the position of France and Britain.

I should mention that Colonel Charles Fairman, a right-hand of General Betts, the theatre judge advocate, worked closely with me in making the arrangements for the future and made a most valuable contribution. General Betts himself personally participated, and Colonel Claude B. Nickelwait was also consulted. He was then in charge of the more orthodox war crimes prosecutions under the articles of war, apart from the Nuremberg Charter.

Colonel Taylor felt that if he was to become chief United States war crimes representative he should have the rank of a general. I agreed and took the matter up with General Clay. He preferred that I make the recommendation direct to the War Department, due to personnel problems of his own. I wrote directly to Under Secretary Patterson and the promotion was made available.

We were moving forward in the Legal Directorate of the Control Council in Berlin with Law No. 10, a comprehensive law drafted largely by Mr.
Phleger to cover the rules and procedures, consistently with the Nuremberg
Charter, for war crimes not within the Articles of War. This was to be the
law for our zone, and we also sought its approval for Germany as a whole.
It embraced the troublesome “membership” problem, about which I had several
conferences with Justice Jackson and others at Nuremberg. We sought later
to amend Law 10 in this respect. Membership in the Nazi Party, or pari-
Nazi organizations, was different from individual guilt by conduct. I
wouldn’t want to talk pretentiously about this from recollection, but the
Charter gave the court jurisdiction to find organizations criminal with ensu-
ing responsibility, as some thought, of criminality imputed to members.
This was a serious problem from the standpoint of American conceptions of
criminal responsibility. What I would like to say at this time without
-going back further into the records is that I think this problem was largely
if not entirely solved, as far as we were concerned, by the Denazification
Law of March 5th, 1946, later referred to more fully. Guilt in connection
with membership was placed by that law on an individual basis for decision
by the tribunals set up under this Denazification Law. Hearings or trials
on the American side in this connection were largely left to the denazi-
fication program, where individual responsibility was the basic test. It
comes back to me more clearly as I begin to talk about it that I made a
determined effort to get the membership problem into the denazification
program as the ultimate solution. There the individual could have an in-
dividual hearing.

The courts in which the so-called trials were to take place were author-
ized under Control Council Law No. 10, which was put in effect while I was
in Germany. The selection of the judges, however, was not undertaken before
I left. In fact the Nuremberg trial itself did not end until after I left. The Legal Division of Military Government I think participated in the selection of judges, and the War Department in Washington was active in helping obtain judges to go over and preside over these subsequent trials. Mr. Charles Horsky, who had aided Justice Jackson in personnel matters, also assisted Military Government in securing judges. He consulted me from time to time and I gave him what help I could, but I did not bear any of the brunt, after my return, of selecting these gentlemen.

In early October, 1945, I was in touch with Justice Jackson about the opening in Berlin of the "Nuremberg" trial, scheduled for October 18th. It is not usually remembered that the court first convened in Berlin, not in Nuremberg. Jackson and others of his group arrived October 5th. He and our old friend Frank Shea stayed with us. (A fine young private followed Jackson around as a bodyguard. He also stayed in our house.) I must say the plans for the first meeting of the Court were unavoidably confused a bit. Our own group in Berlin did a fine job of pulling things together there. The Court itself had no organisation and we supplied this initially, and in part thereafter.

When Jackson arrived he went immediately to the meeting of the Chief Prosecutors then in session at the Allied Control Building. He had been delayed a day, but as I recall Mr. Sidney Alderman, one of his principal lieutenants, was on hand, as well as Mr. Shea. To complicate the problem, the Lord Chief Justice of England had come to Berlin and a social gathering had been arranged in his honor (where I met my new opposite from the United Kingdom, Mr. Macaskie). The Lord Chief Justice was upset, we learned, because Jackson did not appear at the gathering, due to pressure of other
matters. Learning of the Chief Justice's unreasonable attitude Jackson nevertheless went out of his way to be courteous to him. After a late dinner he went over to my office and called the Lord Chief Justice. There was no usable phone in our house. The next day he saw him off at the Airport, and all was well I suppose.

There was the business of getting the indictment printed, and the delay in the Soviet translation, etc. In the meantime Jackson worked in a study at our house. On October 8th Biddle and Parker, the American Judge and alternate, arrive, with Rowe, Wechsler and Wright. In conferences between Jackson, Ambassador Murphy and myself, Jackson indicates the American Judge ought not to be President of the Court because of Jackson's own predominant part in other aspects of the whole undertaking. We agree and it is decided that I am to meet Biddle and Parker at the airport and discuss this with them, which I do. Biddle readily acquiesces. On the 9th the Court convenes in the Allied Control Building under the Presidency of Sir Robert Lawrence, of England. The indictment was presented.

Our assistance to the Court was not ended. We were asked to obtain counsel for the accused, which we did, with funds to pay them, and transportation, etc., — counsel of the choice of those who wished to choose. Mr. Dickman, Colonel McLendon and others did invaluable work in this and other respects in helping the Court get under way at Nuremberg, including the supplying of a clerk from our staff, the competent Mr. Willey, though he was not the permanent Clerk of the Nuremberg Court. He later became Clerk of the Supreme Court of the United States. At that time he was Deputy Clerk of the Supreme Court and came to Berlin as part of our group, on leave.
One of the very interesting personalities whom I saw at times in Nuremberg was Fr. Edmund A. Walsh, S. J., of Georgetown University, who helped Justice Jackson in preparing a part of the case of the prosecution. We met in the Grand Hotel and he was once at our household in Berlin. It was always pleasant to see him. The Grand Hotel at Nuremberg was a fantastic place then -- physically destroyed in part, in part rehabilitated, and atmospherically well-nigh indescribable, as was so much of the early occupation.

3. Quadrupartite Government of Germany

Potsdam activated the quadrupartite government of Germany. France, although not a signatory of the Potsdam protocol, was given a zone carved out of the British and American zones. Germany was thus divided into four zones, and Berlin into four sectors. There were housed in their several sectors governmental bodies of the four countries. The old courthouse where the People's Court had held forth under Hitler was rehabilitated as the Allied Control Authority Building. The rehabilitation was accomplished primarily by American engineering and other troops. The United States moved into Berlin and got things physically in order so that the Allied Control Authority could operate properly. At the Control Authority Building the representatives of the four governments met to decide upon the laws, ordinances and directives for Germany as a whole to be carried out in each zone by the representatives there of the zonal nations.

On our side was the Military Governor, General Eisenhower at first, with General Clay Deputy Military Governor and in immediate day to day charge. Eisenhower remained in Frankfurt, Clay was in Berlin. Eisenhower
came every ten days for the meeting of the four Military Governors, constituting the Control Council, to act on matters which had cleared up to them through the Deputies -- the Coordinating Committee -- and the Directorates.

With General Clay was Robert D. Murphy as Political Adviser and principal representative of the Department of State. There were divisions of Military Government -- the Political Division, Finance Division, Production, Industry, Manpower, Legal and so forth, departments roughly comparable to those of our government. In this sense the Legal Division was the Department of Justice. Our legal group moved to Berlin in part, leaving in the zone the usual organization.

The Control Council consisted originally of General Dwight D. Eisenhower, Marshal Gregori K. Zhukov, General Bernard Montgomery and General Joseph Marie René Koenig, the four military leaders at the end of the fighting. The organization then dropped to the Deputy Military Governor level, termed the Coordinating Committees. Below this were the quadripartite Directorates, such as the Legal Directorate.

The Control Council met only every ten days. The Coordinating Committee met every two or three days. The Directorates met even oftener as a rule. Proposals for the government of Germany ordinarily worked up through a Directorate to the Coordinating Committee and if there approved went on the agenda of the Control Council.

There were special problems in each zone which might of course never reach the Control Council level.

The basic policy document of the United States, in addition to the three-power Potsdam Protocol, was known as Joint Chief Staff Directive 1097 (JCS 1097.) This was the so-called Morgenthau Plan, insofar as any parti-
cular document could be said to be. Certain other documents were important, such as the declaration of June 5th assuming control of all Germany.

Our Legal Division was subdivided into sections; there were a Legal Advice or opinion section, available for opinions to all of United States military government, a Judicial Section with primary responsibility for our participation in the reconstitution of the German judicial system, a Prison Section, responsible for the administration of German prisons (I was fortunate to have Mr. James V. Bennett, then Director of the federal prisons in the United States, to head up this section initially) and a War Crimes Section. The latter was somewhat of a misnomer. It had to do with Military Government's responsibility in connection with war crimes outside the Nuremberg organization under Justice Jackson. Its tasks were considerable but did not include trials; the section did, however, help Nuremberg in a number of ways.

The provisions of the Potsdam Protocol and of JCS 1097 were divided among the Divisions of Military Government to administer. Legal Division was given responsibility for certain provisions, as well as being counsel as it were for the other Divisions and for the Governor and Deputy Governor.

Judge Madden went ahead to Berlin as the spearhead of the Legal Division. He called me from Berlin in early August. (It was a desperate business sometimes to get a call through.) General Clay, in Berlin, had presented some questions on which it was thought I should pass. General Scholz's plane, bright, new and deluxe, was sent for me. Although I had been once to Berlin to meet Justice Jackson at Potsdam, this was my first time at the United States offices of OMGUS, in the old German Air Ministry which a swarm of workmen were rehabilitating for us. The problems concerned the
President's draft of the vesting of German external assets and the Pauley-Clayton property removal matter. Madden, Hudson and I put the papers in the form of a law with a covering memo for General Clay in time for the meeting of the Coordinating Committee.

I remained in Berlin. We first stayed at the Garnack House until the house we chose for our quarters was habitable.

In some notes made along about this time I find the following:

The book of our proposals for C. C. (Central Council) action is about finished in its first form, the Wehrmacht property law is completed, Levenstein takes the landed estate problem, Madden, Dickman et al. do a good job in the direction of selection of German governmental officials (Justice Ministry and Judicial) for consideration, and after our discussions Phleger and Klamer draft a 'decarralization' statute. I believe in spite of all the handicaps this week we are beginning to get down to doing our part along the lines of my staff talk the last Saturday at Hohst. More sense of need of accomplishment has been created. Madden and Phleger have now taken hold of specific things, and Madden this week has been especially helpful. *** I have seen much more of Berlin; but the deep impression of a badly beaten place persists. I fear for the winter. It would be a mistake to let the people suffer too much if we can help it. Health conditions will be bad enough without malnutrition and cold. With the closing of the Japanese war perhaps we can do more than seems to have been planned.

a. Demobilization Program

Part of the demobilization policy is set forth in the Potsdam agreement and part in our own Joint Chiefs of Staff directive. In general all members of the Nazi party were to be kept out of German life in any position of responsibility. This was a huge undertaking. Those covered were broken down into categories.

The Potsdam Agreement itself provides that:

War criminals and those who have participated in planning or carrying out Nazi enterprises involving or resulting in atrocities or war crimes shall be arrested and brought to judgment. Nazi leaders, influential Nazi supporters, and high officials
of Nazi organizations and institutions and all other persons
dangerous to the occupation or its objectives shall be arres-
ted and interned.

These were the "arrest" categories:

All members of the Nazi Party who have been more than nominal
participants in its activities shall be removed from public
and semi-public office, and from positions of responsibility in
important private undertakings. Such persons shall be replaced
by persons who, by their political and moral qualities, are
deemed capable of assisting in developing genuine Democratic
institutions in Germany.

Directives had been previously prepared, also, with specification of
categories to be arrested and interned.

The "arrest" categories presented a serious problem. A tremendous
number of arrests were made but no disposition of the cases was indicated,
extcept as to war criminals, in which event the criminals program applied.

There was no system for review, disposition, or correction of error. And
families were not even required to be notified of arrests.

I took the matter up with General Clay and suggested that review
boards be set up to review cases on an individual basis. October 4th Gene-
ral Clay gave us the go ahead signal. We set to work to bring this problem
into better position, including notice to families when arrests were made,
revision of arrest categories in light of occupation experience, and review
boards to consider individual cases after arrest.

It was difficult to get the review board system in operation, because
of poor communications and transportation and also because of confusion in
initiating something new in a generally deadened governmental situation.
Boards were gradually set up and began to release some who should no longer
be kept in custody — old people, sick people, and those in no sense influ-
ential or dangerous. Thus we progressed beyond the rigidity or incompleten-
ness of the original directives.
The whole question of denazification was extremely troublesome. After I had been in Germany several months I concluded the denazification program needed revision, consolidation, and coordination in a basic law under central supervision, instead of being carried out through "arrest" categories or by particular directives or laws issued from time to time. I suggested to General Clay, with the support of Robert Bowie, with whom I had discussed the matter (he was one of General Clay's assistants, a lawyer but not a part of the Legal Division — he was what we might call a member of the palace guard, an excellent man who as I write is the head of the Planning and Policy Board of the Department of State) that a group of us be authorized to study the whole question of denazification and make recommendations.

General Clay appointed me chairman of the Denazification Policy Board created for this purpose. Its other members were Robert Murphy, the Political Adviser, General William H. Draper, Jr., the Economic Adviser, Joseph M. Dodge, the Financial Adviser, and Wilson, head of Public Safety Division, with special responsibility in security matters. We selected an executive committee under Robert Bowie to do the principal staff work. Phil Elman of my staff, and others, including Fritz Oppenheimer, worked closely with him. The upshot of it was that we recommended a basic law which included in one instrument the whole denazification program and absorbed or modified all "arrest" categories and other directives. Primarily it was designed to set up procedures for individual hearings on the basis of which classifications would be made of individual cases according to degree of guilt, with penalties imposed accordingly. There would be an elimination of those who did not fall within any of the offenses defined. German instrumentalities of government in our zone had been created, and our proposals were taken up
with them, because it was General Clay's strong opinion the program should be administered by the Germans. We had conferences at Stuttgart with representatives of the approved German agencies. As a consequence a law was devised, largely on the basis of our report, which had received the general approval of General Clay, and submitted by the German authorities as a German law to be put into effect with the approval of Military Government. It became known as the Law of March 5th, 1946. Thereafter it remained, as far as I know, the basic demasification program in our zone. It was by no means a perfect law, and as time went on it had its supporters and its critics. Some said it was too stern and tried to cover too much ground. Some said it was not stern enough. Some said it would have been better to have limited it to the more serious cases and not clutter the administrative procedures with hundreds of thousands of cases which included categories of nominal Nazis.

But the program went forward. I cannot myself judge it. It was carried out principally after I left. I do think that as of the time it was approved it was about as good an approach as could have been undertaken, and much better than continuing under the system it superseded. General Clay became convinced, during the period of its operation, that certain amnesties should be granted, relieving many of further processing under the law. There were several amnesties, I believe, which helped to unclutter the administrative procedures.

I should say in fairness that before this comprehensive law was enacted and put in effect, which I had a great deal to do with, Law No. 3 was also put into effect and I must bear some blame for it. It was drastic, and one of the segments of demasification which emphasized my feeling we should
stop promulgating separate laws and place in effect a comprehensive one, as we did. Law No. 8 followed closely upon the hue and cry raised at home as a result of the remark of the great soldier, General Patton, indicating he would use Nazis because of their efficiency if he needed them to get things done, and saying he couldn't see much difference between a Nazi and others he described. Some such remark was picked up and used by influential elements of public opinion to indicate Military Government was soft on the Nazis. Law No. 8 went to the other extreme and required the removal from positions of anyone who had been a member of the party or affiliated organizations. My self-criticism is that when General Clay asked for such a law I should have avoided the poor draftsmanship. In mitigation I add that I expected to be able to have another shot at the draft I first submitted, and to be more mature in thinking about it. But General Clay left for Frankfurt and put the law in effect before I saw him again. I should have protected him from what I think was a mistake, although General Clay I believe always thought he was right about it. I mention this as another reason I was troubled about the denazification program. Law No. 8 became pretty much absorbed in the basic March 5th law; and before that Colonel Hayden Smith, at Frankfurt with General Adcock, and Colonel Oppenheimer, did a good job in remedying some of the defects of Law No. 8 by regulations framed for its operation in our zone.

The denazification law of March 5th, 1946, was first put into effect as an American zone program, with the hope that it could be applied to Germany as a whole through the Control Council. A similar plan was submitted to the Control Council but was not adopted. There had been some denazification laws enacted on a four power basis, that is, through the Control
Council, and one of the problems incident to our March 6th law was to keep it consistent with laws which had been adopted by the Control Council for all of Germany. There was no certainty these laws were carried out uniformly though adopted on a uniform basis. We had intimations, for example, that the Russians, though bitterly against the Nazis, did not hesitate to use Nazis the Americans would not use, if for some purposes of their own they found them useful. The Americans were more sincere about the demasification program than the Russians, though when they really wanted to get rid of someone the Soviets were more drastic. Our own efforts in transportation and other economic areas were hampered by our refusal, because of our demasification directives, to use people in positions of responsibility who no doubt would have been much more efficient, in some ways at least, than those available who could pass the demasification tests. I don't think this was true of the Soviets.

It is pretty hard to say about the French. I just am not qualified to comment very intelligently about how they actually carried out the program. The English approached more nearly our standards but I believe they were not as strict in adhering to the directives as we were. They were more lenient in using people if they thought they needed their help to get things in good running order in their zone. They were slower to impose the penalties of demasification.

When this comprehensive law of ours came along in March, 1946, I couldn't say there was much pressure by other governments for the same sort of thing. At that point the United States was further advanced in feeling the need of a better system. The other countries were willing more or less to rock along under the older directives and under their own policy of un-
forcement or not, without feeling the necessity we did of a more orderly system. If we had a law or directive we sought to carry it out and if we thought it wrong we sought to change it.

There are differences of opinion as to the effect of the demasifica-
tion program on the efficiency of German industry. I was not in a position, as were those dealing more directly with economic problems -- transport, industry, farming, etc. -- to judge; but I think it quite likely the demasifica-
tion program tended to retard efficiency in German life in the business and industrial areas. It was a deliberate choice on the part of the United States, and I did not in any sense quarrel with it, provided the program was administered well and on an individual basis, as we finally worked it out. It was necessary from our standpoint, I thought, to demasify. One may question the extent to which we went; but it was inconsistent with the pro-
per American approach to permit those who had brought about all this suffer-
ing in the world to resume positions of significance in either the German industrial or political life. The resultant loss of efficiency was sound in relation to the over-all policy.

The same comment might be applied to the courts too. There might be able jurists in a sense, who were not permitted to be jurists any longer. Those selected might not be as good legal scholars, or as experienced judges, but this result was an inevitable consequence of all that had oc-
curred.

As to ownership of property in relation to demasification, there was no confiscation of property of a person demasified except as required by a particular law, as a penalty or forfeiture. There was, however, the de-
struction by law of ownership of equipment of the para-military Nazi organi-
izations. As to decartelization of industry there was a different problem, but I am not speaking of that, which operated under different laws from those governing denazification.

I have omitted to mention the physical destruction of certain war plants, used directly in the war effort, and there was also a dismantling and transfer to Russia under the reparations program of certain industrial plants. The Allies did not compensate the owners; the cost was to be absorbed by the German people as a cost of the war. I can't say at the moment just how it worked out but the compensation to the owners was to be out of funds in the treasury of Germany, if at all, as a part of the consequences of the war, and not paid by the occupying powers to the owners. If the individual recouped his loss he did so from the German people, not from the Allies.

Planning for industrial revival came to the Legal Directorate only second-hand, after having been worked out in the Directorates having to do with German industry. Such other Directorates referred to us for approval or comment many of the laws or ordinances within their more immediate responsibility, including those dealing with taxation.

b. "Fundamental Principles of Judicial Reform"

The four-power Legal Directorate first met at the Allied Control Authority Building in Berlin August 18, 1945. One of the first instruments approved, published in the first edition of the Official Gazette of the Control Council for Germany, was Proclamation No., setting forth "Fundamental Principles of Judicial Reform," a sort of Bill of Rights for the German people. It provides that all persons are equal before the law.

No person, no matter whatever his race, nationality or religion, shall be deprived of his legal rights. No person shall be de-
prived of life, liberty or property without due process of law. Criminal responsibility shall be determined only for offenses provided by law. Determination by any court of any crime by analogy or by so-called sound popular instincts (one of the criteria used by the Nazis) is prohibited. In any criminal prosecution the accused shall have the rights recognized by democratic law; namely, the right to a speedy and public trial and to be informed of the nature and cause of the accusation, the right to be confronted with witnesses against him and to have the process of obtaining witnesses in his favor, and the right to have the assistance of counsel for his defense. Excessive and inhuman punishment, or any not provided by law, will not be inflicted. Sentences of persons convicted under the Hitler regime on political, racial and religious grounds must be quashed.

The same proclamation also eliminated the extraordinary Hitler courts, the People's Courts, courts of the NSDAP, and Special courts. They were formally abolished and their reestablishment prohibited. The concluding paragraph relates to the judiciary:

Judges will be independent of executive control when exercising their functions and obedient only to the law. Access to judicial functions will be open to all who accept democratic principles without account of race, social origin, or religion. The promotion of judges will be based solely on merit, and legal qualifications.

It will be seen that the language in some respects parallels closely our Bill of Rights, but there are some variations in language adopted in accommodation to obtaining unanimous approval, as was required.

This proclamation went from our Directorate to the Coordinating Committee, where it was approved, and then to the Control Council, where it was also approved. At approximately the same time there went through the Legal Directorate, Coordinating Committee, and the Control Council, Law No. 1 repealing a long list of Nazi laws. This was accompanied by Proclamation No. 2, putting into effect requirements imposed on Germany. They were quite lengthy and had been formulated some time in advance. They were not the product of the Legal Directorate.
Law No. 2 provided for the termination and liquidation of Nazi organizations, listing a number of them.

There had been a complete collapse of all German instrumentalities of government. All courts had ceased to function. Law and order was maintained by the occupying authorities.

There was the necessity of reconstituting a German judicial system, and this was one of the prime functions of the legal groups. The United States introduced into the Legal Directorate, and in the processes which followed it was approved by the Control Council, a law reconstituting a judicial system for the German people as distinct from military courts. It became known as Law No. 4, entitled "The Reorganization of the German Judicial System," published in Volume No. 2, November 30, 1945, edition of the Official Gazette of the Control Council for Germany. The Gazette itself had been, through the Legal Directorate, Coordinating Committee and Control Council, made the official publication for the laws of the Control Council.

Law No. 4 followed to a degree the pattern of the regular German courts of the past, as distinct from the special Nazi courts which had been abolished. But we did not then reconstitute a Supreme Court for all of Germany. This judicial law originated with us and had been the subject of careful consideration in our zone, for local operation, where Colonel Finlay, an able military government lawyer at Frankfurt when we arrived, had borne the chief burden of its preparation.

The courts reestablished were three in name: *Amtsgerichte*, *Länderichts*, and *Oberlandesgerichte*, the first a court of initial jurisdiction in minor civil and criminal matters, with some appeal to the *Länderichts*. The latter had original jurisdiction as well in more important matters, with appeal to
the Oberlandgerichts, with jurisdiction over a "land," comparable to a state in the United States as far as one can make a comparison. No appeal to a Supreme Court for Germany as a whole was provided in this law. The four powers were not ready for this.

After establishing this system by law applicable to the German people, came the problem of restaffing the courts and actually bring them into operation. This too was a responsibility of our legal personnel. It was delegated principally to our legal men in the field, acting under the supervision of the United States Director of military government in the Land. I might here note that General Clay put into effect before I left Germany a system of control by the Director of the Legal Division of MGUSA, in Berlin, of all legal officers throughout Military Government in our zone or elsewhere.

The staffing of the judicial system had the assistance of Public Safety and other personnel having responsibility under the denazification program to prevent the selection of men who did not meet the required standards. Finally as to the judicial system I might sum up by saying we abolished what we had and began to reestablish on satisfactory lines.

I do not recall now any active participation by Germans in Berlin in the formulation of the judicial system I have outlined. Colonel Finley and those working with him at Frankfurt and during the earlier period of the march forward of Military Government with the armies, had familiarized themselves with the old system in Germany. Their work was the foundation of ours in Berlin. And our own officers were in touch with Germans in the legal, judicial and governmental field, as became true also to a degree with our Berlin staff.
The courts were not reestablished exactly as they had existed. There were some jurisdictional modifications. The law was not a code of procedure; it was a reorganization of the courts. Details of procedure come later.

c. Validity of the Geneva Convention

Our position was that the victors, under the basic state papers and documents relating to unconditional surrender, had control over the governing of Germany. There was no legal obligation on their part to conform to the laws of Germany. Question was raised as to the status of the Geneva Convention of 1907, to which the United States had adhered, which contains rules for an army of occupation in relation to the inhabitants of a foreign country in time of war, including, as some contended, the period following the end of hostilities.

The War Department sought my opinion before I took off for Germany, but I thought it not advisable to give an opinion in the abstract at that time. If an opinion became necessary it should be in the context of some particular application. I did conclude — and this became the basis when necessary of my own conduct as Legal Director and Adviser — that this Convention did not apply to the situation in Germany after unconditional surrender; that it was intended to apply to an army actually fighting in a foreign country, not to military occupation after the fighting had ceased and when there had been, as in Germany, complete surrender of a defeated enemy to, and assumption of authority by, the government of the occupying country which had defeated her. I felt otherwise with respect to the Geneva Convention on prisoners of war, always taking the position it was in effect. Prisoners of war were prisoners of war whether the country had
unconditionally surrendered or not, and whether or not the fighting had
ceased.

The Geneva Convention of 1907 was to be looked to as a guide though
not binding. Although Military Government in Germany assumed complete au-
thority, this did not mean it would exercise it by putting out of operation
laws and institutions of Germany which were sound, as distinguished from
those which were a part of the Nazi machine.

I can't well answer the question whether we expected the foundations
we laid to be incorporated into a later German constitution, but I can say
that we definitely hoped to bring German thinking toward civil liberties as
we knew them in the United States.

The time of which I write was not one for the introduction into the
Legal Directorate of an over-all plan for Germany. Studies were being made
principally in the Civil Affairs Division, which eventually had principal
responsibility for the drafting of a constitution, with the assistance of
the Legal, Political and other Divisions.

The United States was given the first chairmanships when the Control
Council machinery was set in motion shortly after the conclusion of the Pots-
dam Conference. It thus fell to me to preside over the first meeting of
the Legal Directorate in Berlin, August 21, 1945. The chairmanship rotated
by the month. I sat for the United States during the earlier meetings and
sometimes thereafter; but as time went by Judge Madden sat more often than
I as the American representative. I should add that this was partly due to
his own unusual qualifications and abilities and not simply to my absorption
in other matters. He was an exceptionally able representative of the
United States. Mr. Plieger, of like caliber, also sat once or twice before he returned to the United States in December, 1943.

4. Assessment of General Attitudes

In the earlier meetings of the Legal Directorate the British knew accurately the implications of the civil liberties papers we introduced. I think the French understood also, although perhaps not so clearly. The expression "due process" is peculiar to the common law. As for the Soviets I have a good deal of qualification, as I had then. Insofar as the measures we took meant opposition to the kind of thing the Soviets knew Hitler had done the words were approved. Beyond that and in the actual administration of the principles themselves, I never felt the document meant the same to them as to us. I did feel, however, that they would mean a good deal to the German people in the Eastern Zone.

There were times when it seemed obvious, in the light of the rigidity of the Soviet position, there was not a free interplay of a legal approach between us. It was limited by superior authority. This was not apparent in anything I have mentioned so far, but became so as time went on. They were under more rigid restrictions than we, though all of us were under the policies of our own government.

They had a translation for due process and so knew what it meant to themselves, but whether that was the same as it meant to us I think doubtful. The German people would have a clearer conception of it, and these laws and proclamations were not so much for the Russians as for the people of Germany.

There were minutes of the meetings but details of discussions were not circulated. Each nation had present its own secretariat. The secretariat
for the four-power group rotated with the chairmanship. The secretariat for
the United States during August acted for the whole group, but that did not
mean the group would have the notes our secretariat kept for ourselves.
The paper preparation for our meetings was full and careful. The minute
"books," or record books, prepared by the staff for the United States repre-
sentative in the Directorate, grew in numbers as the weeks and months
passed. These contain a considerable wealth of material. Final enactments
by the Control Council were published in the Official Gazette, which we
created. Each law or order was published in this manner in English, French,
Russian and German.

Our legislation was not for the Soviets except indirectly. They would
have to administer it in their area, but it was primarily for the German
people, who had a much clearer conception of Western theories and princi-
ples than the Soviets, except for some scholarly Soviet professors who had
made special studies.

France did not sign the Potsdam agreement. Although she had been
brought into the quadripartite government she did not feel legally bound by
it. She did not cooperate in one important respect, the setting up of cen-
tral administrative agencies for Germany as a whole. This was one of the
means provided in the Potsdam Protocol by which we had hoped to gain unity
in Germany in certain essential aspects of German life, notwithstanding the
quadripartite government. The French would not permit this. That was the
first important non-cooperative attitude, and it did not come from the
Soviet. The present (September, 1954) situation with respect to NDC is
reminiscent of the French attitude in Germany in 1945. The French were re-
luctant to take any step within Germany which tended toward the rehabilita-
tion of a strong central government. The reason they are now unwilling to
join in EDC is because of the same general reluctance, in present day terms,
with respect to a German army. Yet the idea of EDC originated with the
French, and I think it sound. While it would gain for the West the strength
of Western Germany it would mesh that strength into a European cooperative
community.

(Paragraph IV of the subdivision of the Potsdam Protocol entitled,
"The Political and Economic Principles to Govern the Treatment of Germany
in the Initial Control Period," reads:

For the time being, no central German government shall be estab-
lished. Notwithstanding this, however, certain essential cen-
tral German administrative departments, headed by state secre-
taries, shall be established, particularly in the fields of
finance, transport, communications, foreign trade and industry.
Such departments will act on the direction of the Control
Council.)

With this exception, which I thought important, the earlier period of
the occupation witnessed a spirit of cooperation on the part of all in a
common task. There was friendliness on the part of Soviet personnel to-
ward American personnel. I do not mean there was unfriendliness on their
part toward either the French or the British, but I think the good will
which existed in general toward our own people, as far as we could judge,
was quite evident in the attitude of the Soviet representatives in Berlin
toward American representatives there. This was not confined to legal per-
sonnel. In fact, I suppose it might have been more obvious in other areas.
But there was a spirit of cooperation, a friendliness, a common feeling of
joint success in the war, and one of hopefulness for the future. I know
now this gradually deteriorated, but I speak of the earlier post-war period.

I felt at the time and still do that it was unfortunate the French
opposed the central administrative agencies. Some thought at the time that
if the French had not objected the Soviets would have done so. But the
fact is it was the French. We know now the Soviet policy as it developed
was opposed to unification of Germany. Just when that policy solidified is
a question. In any event, Marshal Stalin at Potsdam within the recent past
— speaking of those earlier months — had agreed to central administrative
agencies. I think there was a likelihood the Soviet would not have vetoed
these agencies if the French had gone along at that time. If in fact they
had been set up as contemplated it would have been a force in the direction
of a unified Germany. Their absence was a factor which tended toward per-
petuating the division.

It might be that with all the problems our government had with France
at that period, this one could not have been pressed toward a more favor-
able decision. But I felt we should have done more than I was conscious of
to persuade France to accede to this policy of the Potsdam Protocol and let
these agencies be set up. A Western power should not have been the one to
refuse. It should have been left to the initiative of the Soviet if at all.

The deterioration of the situation between the Soviet and the Western
allies was reflected elsewhere more quickly than in Berlin. But evidence
of it began to appear there. For example, we were very conscientiously
carrying out our obligations under the Potsdam Agreement for reparations to
be delivered in kind to Russia, dismantling plants and so forth, and reduc-
ing the industrial capacity in certain respects in Germany. But at a cer-
tain point it became pretty clear the Soviet was not reciprocating with
their obligations.

Reparations outlined in Article IV of the Potsdam Protocol among other
things provided that:
In addition to reparations to be taken by the USSR from its own zones of occupation the USSR shall receive additionally from the Western Zones among other things fifteen per cent of such usable and complete industrial capital equipment in the first place from the metallurgical, chemical and machine manufacturing industries as is unnecessary for the German peace economy, and should be removed from the Western Zones of Germany in exchange for an equivalent value of food, coal, potash, zinc, timber, clay products, petroleum products and other commodities as may be agreed upon.

This was not my responsibility but a good many things were discussed which were not within our own Legal Division. I put in my say about what was going on. We were dismantling in the Western zones, shipping plants away, and not getting in return from the Eastern Zone what was contemplated by Potsdam. I thought this should stop. The theory of the Potsdam economic provisions was that Germany should be treated as an economic unit. What was going on would lead to a one-sided treatment of Germany from an economic standpoint. I thought we should begin to slow up on doing what Potsdam said we should do when it was conditioned on something being done by the Soviets which was not being done. The Soviet made some attempts to comply. We did get some coal, but it was not sufficient to balance what we were sending to them. That was my thought about it, but I wasn’t in a position to be as well informed as others. We did begin to slow up on reparations. I do not mean this occurred as a result of my suggestion, but Military Government, when it became convinced Potsdam was not being carried out by the Soviet, became more wary.

e. Revision of German Laws

One of the tasks of the Legal Directorate was revision of certain German laws applicable to the civilian population; the marriage laws, for example, and the hereditary farm laws. We initiated quite a comprehensive restudy.
I have already mentioned a war crimes law under which the program of the United States after Nuremberg was to be carried on. This was consistent with the pattern of the Nuremberg Charter but to be made applicable to Germany as a law approved by the occupying authorities as distinct from an international treaty. It had special significance because of its details with respect to the punishment of members of Nazi organizations, left somewhat uncovered in the Nuremberg Charter. The organizations themselves were covered by the Charter, but not the details as to the criminal responsibility to be applied to their members.

We also obtained approval in the Control Council of a basic statement of principles for the German prisons. This was primarily the work of our own prisons division under Mr. Bennett.

There was the question too of what to do with the German patent office, which became the responsibility primarily of our legal people, but not entirely so.

The I. G. Farben problem came before our Legal Division and Directorate for a basic approach for all of Germany. This company was spread all over Germany and could not be handled simply from a sexual standpoint.

I made a review which I might mention here in a paper I delivered, and then somewhat revised, published in the Michigan Law Review in November 1946. It is a somewhat sketchy outline of the legal problems of the German occupation. In the same edition is a fine article on the legal status of occupied Germany by Max Rheinstein, a member of our legal staff in Germany. I'm not in agreement with everything he said but it is a scholarly paper.

Volume III, January 31, 1946, of the Official Gazette of the Control Council enumerates quite a few things, many of which passed through the
Legal Directorate -- disbandment and dissolution of the German armed forces, and principles of the administration of German prisons, which I've already mentioned. The latter was approved by the Legal Directorate and on November 12, 1945 by the Control Council. Law No. 10, the war crimes law was adopted the 20th of December, 1945. Law No. 11 was a repeal of certain provisions of German criminal law.

Many of the earlier measures adopted by the Control Council originated in the Legal Directorate. One dated September 23, 1945, specified the Control Council's method of legislating, a rather important housekeeping law, which, however, did not directly affect the German people. Law No. 12, an amendment to the income tax, corporation tax, and excess profits tax laws applicable in Germany, did not originate in the Legal Directorate, nor Law No. 14, an amendment of motor vehicle tax laws. These cleared our Directorate but I believe originated in the Finance Directorate. Law No. 13 of February 1946 was a revision of the German Marriage laws made by the Legal Directorate, and also Law No. 17, an amendment of the inheritance tax law. All this was on a quadripartite basis, aside from our own legal assistance to our military government, including a growing volume of opinions. The opinions of the Legal Director, handled in our legal advice section, have been preserved in mimeograph form, by volumes covering certain periods, with indices, and constitute an unusual branch of legal lore.

The regulation of working hours, of January, 1946, went through the Directorate but did not originate with us. In a similar category was Law No. 18 of March 1946, the housing law; Law No. 21, of March 30, 1946, entitled "German Labor Courts," which originated in the Manpower Division, as I recall, was cleared through the Legal Directorate. When I say cleared
through, I do not mean that they were approved in the same form in which they came to us. Sometimes they were, and sometimes they were modified.

Others included Order No. 3 of January 7, 1946, "Confiscations for Arms and Ammunitions"; Order No. 3, dated January 17, 1946, "Registration of the Population of Employable Age, Registration of the employed and their Placement in Work." These last two are called orders; some are called directives and some are called laws. Their designation depended upon which category they fell into as specified by the enactment, previously mentioned, defining the Control Council's method of legislating.

I left Germany in the middle of May 1946, which I believe coincides with the end of Volume VII of the Official Gazette. The second law listed in Volume VII was passed the 10th of May, a tax on tobacco. Some of the laws in Volume VII were acted upon by the Legal Directorate while I was still in Germany, and I think some after I left.

General Clay was very sympathetic to the Legal Division and its part in the picture as a whole. Although a military man, he had had experience in other branches of government. And he desired to work into Military Government a rule of law within the concepts of American democracy. This attitude persisted down, and so our legal advice branch was looked to quite extensively for help.

I should like to mention several other items in this summary review many years after. One is that it became increasingly apparent there was inequality in the administration of justice through Military Government courts which had the responsibility of enforcing the Military Government regulations among the German peoples -- for example, violations of the Control Council and Zonal law prohibiting the carrying of firearms. Penalties for
similar offenses were widely variant, as goes on in our own country to a
degree. We have at home no solution for it as yet. But we had a free hand
to attempt a solution in Germany. We created a board which could review
the cases in the effort to obtain uniformity of sentences for like offenses.
I was very pleased that we were able to do this, and I think it worked very
well. It was just getting under way when I left. Dissatisfaction about
the divergence of sentencing came not so much as I recall from the Germans
as from our own personnel.

In October I took up with Ambassador Murphy the plight of German pri-
soners of war, some of whom we had turned over to France rather than send
home, a mistake I think because they no longer constituted a threat and
were entitled to repatriation as prisoners of war. Many of them were re-
turned to Germany from France as litter cases. While appreciating France's
feelings and difficulties there was an obligation on our part. I also men-
tioned it to General Bedell Smith in Frankfurt. Murphy said he would send
word to Secretary Byrnes. I know it became a matter of deep concern to the
Secretary and I have no doubt he did all he could. I pressed the matter
again when I became the Legal Adviser of the Department. I had placed it
before General Clay when he was returning for ten days to the United States
in late October 1945. He thought France would thenceforth live up to its
obligations. The point was that notwithstanding the Nazi brutality these
prisoners of war were young men drafted from German families and not fit
subjects of reprisal; they were I thought within the protection of the
Prisoners of War Convention to which we had adhered.

Judge Madden and I, at Justice Jackson's invitation, attended the open-
ing at Nuremberg, November 20, 1945, following the convening of the court
in Berlin as already mentioned. There they were, in the dock. It was a remarkable and unique historical development. (I sat with Senator Pepper of Florida, who was thinking of the desirability of a separate state of Bavaria.)

A board similar to our Denazification Policy Board was set up on Restitution and its work was well under way, under the able staff direction of Major Donald McLean, when I departed homeward in May.

(In late July 1945, before I moved "permanently" to Berlin, Bowie, Finley, Hayden Smith and I met hurriedly to review the statement to be made by General Eisenhower to the German people, prompted by General Montgomery's proposed statement, thought to be a bit too optimistic and friendly at the time. I agreed General Eisenhower should make a statement, in view of General Montgomery's.)

The first elections among the German people were held before I left. General Clay was anxious to move forward with democratic processes and to place more responsibility on the German people. In these first elections, in which a high percentage of those eligible voted, there were disqualifications under the denazification program. Political parties began to emerge in the new situation. The first elections were on a municipal level, followed progressively by enlargement of their scope. The British followed. I'm not sure there were any elections in the French zone before I left.

There was also the reestablishment of a German press, but under supervision and with a selection of editors to avoid Nazi influence and propaganda possibilities. There was this much interference with our conception of a free press, but I think rightly so at the time. Radio stations also reopened and there was a gradual rebirth of national life in various ways,
but under very close supervision at first. There were gradual relaxations, as we know now, as we became more confident of developments and therefore willing to let those who were being elected by the German people take responsibility.

I must add that in April 1945 before I left Berlin in May, I had a visit to Rome with General Draper, Don McLean and members of General Draper's staff, in the General's plane. We had an audience with the Holy Father, a highlight of my life's experiences. I think he is one of the greatest, if not the greatest, personality of modern times. It was a wonderful trip. I returned a bit earlier than the General's party. Agnes had insisted I go to Rome before coming home. I wanted to do so but did not know how it could come about until this trip came along and I kind of bummed a ride.

* * * * *

I found this ten and one-half months in Europe an absorbing but difficult experience. I wish I had had better qualifications for the undertaking. The conditions were incredible in many respects, and at times I had little feeling of accomplishment. I did not speak the language and did not feel close to the people, except a few friendly neighbors, and so could not tell very well the effect of what we were doing. I am glad to have gone through with the work as a public service but I do not feel very proud of the results.

I came to appreciate the army personnel in positions of responsibility in Military Government; and my own group of lawyers were excellent, faithful, hard working and competent. The Berlin men on the whole did an able job under General Clay, who himself is a remarkably able man. There were
great handicaps, especially at first. The handicaps were increased by difficulties in communication and transportation.

I put down the following notes in September, 1948:

"The work of Military Government is in many ways unsatisfactory. I cannot see that it adequately gets across to the people, either here or at home. It is too much in a 'vacuum' -- too removed from the interplay of knowledge and understanding to which we are accustomed. It has the great danger too of being a government by decree, free of the restraints and curing effects of legislative and public debate. Good men struggle to do what needs to be done, and to do it right as they see it, but government by fiat is most dangerous and unsatisfactory. I wonder if we could set up a legislative council of our own."

As time went on the situation improved. The work as a whole came closer to the people, and the people through elections and otherwise were given greater responsibility.

Germany had been badly beaten, and a four-nation government of one nation was a very non-ideal way to accomplish our purposes, but the fact is the deterioration of intergovernmental relations between the Soviet and ourselves was slower to manifest itself there, where the contacts were so close, than outside of Germany. There was a continued effort to cooperate in Berlin, although at the same time there were severe strains manifesting themselves elsewhere. Gradually these manifested themselves in Germany, too, and the quadripartite effort eventually was abandoned.

General Clay, since he left his responsibilities as Military Governor, has written a book called Decision in Germany giving in some detail his story of this early period as well as after I had gone.

The rehabilitation of Western Germany in recent years brings to mind President Truman's remark to me that Germany would not be a threat for fifty years, as I am sure he was speaking primarily of German weakness. The
rapid rehabilitation has been due in good part to the fact that Germany has been free of the financial burden of an army, navy, air force and other armaments. Freedom from threat will depend upon the part Germany plays in European and other international developments. This part is now a wise one indeed under Chanceller Adenauer, encouraged by the statesmanship initiated so largely by former Premier Schuman of France. It is interesting that while in Germany in 1945-46 Adenauer was to me an unknown name.

On leaving Berlin a few additional notes are added. I should mention Fr. Hannebush, of Pittsburgh, who had been the Catholic Army chaplain at Frankfurt and then came on to Berlin. He did a fine work, quietly and prayerly, understanding, and reaching out always to help save souls. The Catholic population among the army personnel at both places was considerable.

My first experience with evening Mass was in Berlin, for army and Military Government personnel. Sometimes I went to the Mass for the Germans in the neighborhood where we lived. The Catholic Church there had been badly bombed or shelled. All denominations were using a common hall that had escaped damage. But before I left Fr. Gerhardt, whom I met through the Servite family, had been able to rehabilitate a small Catholic chapel. Benito Servite went with me there for Benediction. The house we lived in belonged to the Servites.

I helped Fr. Hannebush a bit in the arrangements for the reception to Cardinal Frasierling, the Bishop of Berlin, on his return from Rome with the Red Hat. Mr. Murphy, through French assistance I understood, had gotten the Bishop to Rome by air, our own people holding back for some reason.

Mr. Murphy also cabled to Mr. Taylor's office in Rome before our visit there. Mr. Franklin McGowan, of that office, a member of our foreign
service, was exceedingly generous of his time and courtesy. He went with us
to our audience with the Holy Father, and the next day he and I returned to
the Vatican for a more leisurely visit. The Holy Father gave each of our
party — I think I was the only Catholic — a rosary, and one for the wife
of each who was married. He gave me another for Charles when in speaking of
my family I said he was at school with the Benedictines. After I returned
to the hotel there was delivered to me from the Holy Father a commemorative
bronze plaque with his likeness.

Rome impressed me deeply. It is of such great significance to us
primarily because it is the See of Peter; but we saw too the impressive an-
cient ruins and historical buildings of the pre-Christian era. I should
like to return to Rome, more than to any place abroad I have seen, because
of its unique and revealing significance to the Faith, now, and as today is
but another day of so much of the past.

When I left Berlin, glad to be coming home to my wife and children but
saddened too at the departure from friends and associates of a difficult
and unusual period, General Clay was with Secretary Byrnes in Paris for a
few days. The Secretary was there on the Balkan peace treaty negotiations.
General Clay had recommended, and the President had awarded me, as I learned
just before leaving Berlin, the Medal for Merit. One General wished to pin
it on me himself, so this was done at Paris, with the Secretary graciously
attending. My old friend Ben Cohen was there too. I was returning to be-
come Legal Adviser of the State Department. Ben was then Counsellor. Not
many hours later the plane landed in the rain at La Guardia Airport, and
then came reunion with family, children and Agnes. I was glad the tour of
duty was over, and to be home.
Madden and I had lunch with Justice Jackson at Buresberg a few days before I left Germany. We had gone down for Middle's birthday gathering May 9th. Chief Justice Stone had died and Jackson was being mentioned as his successor. I referred to this when we were parting. He said he had seen the extra burdens of administrative responsibilities of the Chief Justice and that (I do not remember his exact words) he would as soon remain an Associate Justice. A little later, when the outburst occurred, I felt it was not due to disappointment in not being named Chief Justice but to outrage that anyone would think of resigning from the Court were he named. I do not mean to suggest that anyone would have thought of doing so, but there were reports to that effect.

I am reminded of the June day (or was it July) in 1941 when Jackson as Attorney General advised the staff gathered together that the President was nominating Stone to succeed Hughes as Chief Justice and Byrne and himself as Associate Justices. Many thought at that time that Jackson might be named Chief Justice. Be no doubt knew of such sentiment in the Department. In any event he said he wanted us to know that he thought the President was right in naming Stone.

The death of Chief Justice Stone occurred while I was still in Germany, but Vinson was not appointed until I had returned and was in State. Secretary Byrne advised us at a staff meeting that Vinson's name was being sent down that day. The Secretary had left the Court a few years before at the request of President Roosevelt to help in the war effort and had done noble work even prior to becoming President Truman's first Secretary of State. The war was now over, the "Balkan" and Italian peace treaties, which had taken a great deal of the Secretary's personal effort in Paris, had been
negotiated. I thought there was a suggestion of pensiveness in the Secretary's mood when he told us of Vinson's nomination. Perhaps he would have liked to return to the Court, as Chief Justice. Perhaps he hoped this might occur, though he said no word to that effect.

LEGAL ADVISER TO THE STATE DEPARTMENT

I had gone to Germany with an understanding that I would stay only one year. With my family in the situation it was -- the ages of the children -- I did not feel that I should remain away longer. As the year came toward an end I could have brought the family to Germany, as General Clay suggested, but I did not think it wise to try to carry on the education of the children there, compared with their opportunities in Washington in our fine parochial schools. I knew good men were available to take over my part of the work in Germany.

General Clay wished me to stay and I felt sad about leaving. I had acquired a great respect for him personally, and if he thought I could help I was reluctant to do otherwise. Several months before my year was up Secretary Byrnes out of a clear sky sent a message to me over the teletype in Berlin asking me to return as Legal Adviser to the State Department. Mr. Hackworth had gone on the World Court some months before. To make a long story short, I decided not to come before finishing the year in Germany, declined, and so advised General Clay, who was very close to Secretary Byrnes. When he realized I would go in a few months in any event he said he would be willing for me to go to State and unknown to me asked the Department to hold the place open. The upshot was that I left a little before the year was up to become Legal Adviser of the State Department. I
had been in communication with Agnes about it. She was not anxious for me to take this assignment but that's the way it worked out.

Secretary Byrnes asked me to reorganize the legal staff and gave me a good deal of latitude. Over the years islands of lawyers had grown up in the Department as its responsibilities and size expanded. The Secretary wished the lawyers generally to be brought under the Legal Adviser.

I reorganized the staff rather comprehensively but not completely, leaving some areas for change over a longer period of time. The Secretary also permitted me to select a fair number of new men. The old staff was experienced and competent, and I do not intend any implication to the contrary. I was assisted greatly in the reorganization by Mr. John Howard, who had been in the Department helping Mr. Acheson on some special work. Mr. Puerifoy, then Assistant Secretary in charge of administration, budget, etc., was also very helpful.

1. **Liaison with the Baruch Group**

One problem the Secretary promptly gave me was liaison between the Department in Washington and Mr. Bernard Baruch in New York, who had been selected to endeavor to secure approval by the United Nations of international control of atomic energy. I had to spend quite a little time going back and forth between New York and Washington. Mr. Baruch had his own organization in New York, including Mr. Ferdinand Eberstadt and Mr. John Hancock, close associates, and other personnel he selected. To help me on the project I secured the assistance in New York of Mr. Henry C. Ingraham, who had been with me at the Labor Board and as Solicitor General. He is exceptionally able, and was then living on Long Island and practicing in New York.
The project became known as the Baruch plan for the control of atomic energy. It was really the Acheson-Lilienthal Plan with some modifications. The United Nations had created a commission to seek international control and Mr. Baruch had been selected by the President to handle our participation. The United States had assumed leadership in the effort.

The proposal seemed pretty hopeless to me then, more so than it apparently seemed to Mr. Baruch. The key was whether the Soviets would be willing to accept international inspection within Soviet territory. I felt confident they were then a long way from agreeing to this, and that a great deal more was being made out of the effort to obtain it than the likelihood of success warranted. I do not mean we should not have made the effort; we did obtain the adherence of most nations of the world; but I did feel that the chances of success then were impliedly held out to be greater than they were at that period of history. Eventually Mr. Baruch stepped aside and the work was taken over by General Osborne, also an excellent man. A gradual de-emphasis ensued, more consistent with the actual situation.

We helped Mr. Baruch as we could and to the extent he desired in the preparation and review of papers the United States introduced into the Commission to advance our theories and to seek some agreement. My group also drafted a comprehensive international treaty for the control of atomic energy along the lines of the Baruch plan. This draft was never made public and is somewhere in the government files. I think it was the only document of its kind ever drafted. The Baruch Plan, or the Acheson-Lilienthal Plan, was not a proposed treaty, but the statement of a policy and plan. But Ingraham, Howard and I -- principally those two -- actually drew a detailed draft treaty to carry out international control.
The liaison with the Department in Washington was not by any means left to me entirely. Mr. Baruch was in direct contact with the President and the Secretary, and had the complete confidence of both. But he and the Secretary wished someone from the Department like myself to be in close touch with the situation in New York.

2. Negotiations for the UN Headquarters Agreement

Another matter the Secretary put immediately in my hands was the completion of the negotiations for the headquarters agreement to govern the status of the United Nations in this country. The General Assembly had created an international group to negotiate with the United States and I was designated by the Secretary to take charge of the negotiations for the United States.

This proved quite a task. I had the able assistance in the Department of Mr. Isaac H. R. Stokes, who had been on the work before I became Legal Adviser, and of Mr. Carl Marcy, and at times of others. There were many meetings with the international group and with city and state officials of New York. The Department of Justice was drawn into certain phases of the problem, as well as the office of the Attorney General of the State of New York. Participating also were representatives of the Secretary General of the United Nations, particularly the Assistant Secretary General, Dr. Ivan Kerno, in charge of legal affairs, and Mr. Abe Jeller, general counsel for the Secretary General.

The draft which had been formulated before I took charge for the Department went through revision but was the basic document. An important change had to do with security problems. The draft provided for free access to
the headquarters area by representatives of member countries, notwithstanding our immigration laws. No screening of the representatives of other countries was to be made by the United States. I thought this proper, that if the headquarters were in some other country we would not be willing to have that nation pass upon who should represent us. But I did think that if the privilege of entry was abused by action outside the scope of the capacity under which one entered, then we should be permitted to turn the offender out of the country. This created quite a to-do. I was insistent upon the principle, but not upon any particular method of enforcing it, provided some reasonable method could be agreed. After considerable discussion the principle was acceded to; that is, that if one who came freely, notwithstanding that he might have been excluded under our general law, abused the reason for which he had been permitted to come, he could be deported. But the deportation could not occur until there had been consultation, if desired, with the Secretary of State, and would not be entirely by means of the usual deportation procedures.

After long and complicated negotiations the draft agreement, containing considerable detail, was in a position for me to recommend its approval by the Secretary of State, and for those who represented the United Nations to recommend its approval by the Secretary General. The General Assembly had previously authorized it to be signed on behalf of the United Nations by the Secretary General, subject to final approval by the General Assembly.

Should the agreement be signed as an executive agreement and put into effect by the President, or should it be considered as a treaty and submitted to the Senate for ratification, or should it be approved by both houses of Congress? I recommended the latter, and this was the course taken. It
might well be argued the arrangements were within the authority of the
President, as an executive agreement, but that view would have been subject
to some doubt. I did not myself seriously consider this alternative. The
serious problem it seemed to me was whether the agreement should be sub-
mitted to the Senate alone as a treaty, or to both houses for approval by a
majority of each. I recommended the latter because of the relationship of
the United States to the United Nations. I thought both branches of Con-
gress should participate in solution of the headquarters problem, with full
study and knowledge of the terms of the agreement. The United Nations, if
it was to succeed, needed the full support of the United States, and if it
was to have that to the extent possible then arrangements of this character
should have the approval of both houses of Congress, especially because of
the opportunities for abuse of the privilege of entry into the United States
on the part of unfriendly persons.

The agreement was ready for signature by the Executive branch of the
government on June 28th, 1947. General Marshall, who was authorized to
sign on behalf of the President, was going in his plane to New York for the
signing ceremony and asked me to go along with him, which I did. It was my
wedding anniversary and Agnes was going to be in New York too. It was also
the wedding anniversary of our principal representative to the United Na-
tions, Ambassador Warren Austin, who was giving a reception, for United
Nations personnel principally, and we had planned to go. General Marshall
was a little put out with me when he met Agnes at the reception after the
signing ceremony, saying I should have let him know she was coming up as he
would have wanted her to come along in the plane too. I thoroughly enjoyed
the visit with him on the plane trip up. Only the two of us and the small
crew were in the plane. I had been reticent to suggest that he invite Agnes but later thought I should have let him know.

The agreement was now ready to be submitted to Congress and the President sent it down with a message. It was taken up first in the Foreign Relations Committee of the Senate, over which Senator Vandenberg was then presiding. Rather extensive hearings were held, with Mr. Stokes, Mr. Merry and myself giving the needed explanations, or defense if one can call it that. Mr. Lodge, who is now (September 1954) our principal representative at the United Nations, was then a member of the committee and took a good deal of interest in the hearings, as did Senator Vandenberg, Senator Connally, my old friend of New Mexico Senator Hatch, and the committee generally.

The troublesome question was whether we were giving too much freedom of entry. It was a serious problem and I told the committee frankly I thought there would be an increase in internal risks, but that we would have to use our ingenuity to cope with it. I did not think the alternative was to try to pass upon the persons whom other nations wished to send, that the risk involved, though present, was one which we had really assumed when the Senate unanimously voted to invite the United Nations to establish its headquarters in the United States. The Senate Committee, I believe without any disagreement, recommended that the Senate approve the agreement, after a rather full analysis of the whole problem in its report.

The agreement then came before the House Committee on Foreign Affairs, which also took a great interest in it and had rather extensive and lively discussions. There again the principal problem was internal security, which troubled members of the committee. Questions were raised, including the situation which would prevail should we be at war. The Committee de-
cided to approve the agreement without any change in its text but to accompany approval by a resolution to the effect that nothing in the agreement was to be construed to take away the right of the United States to protect its security. This resolution was thereafter approved by the Senate and the House, though the Senate had originally added no comparable caveat.

I did not advocate this provision. I supported the agreement as we had worked it out and as it had been signed by the Executive. But I must say that in the passage of time I'm glad the House added this provision. I think it showed the wisdom of the submission of the matter to the two houses of Congress. This gave rise to a contribution which otherwise might not have eventuated.

(I understand that later on problems did arise in the State Department about authorizing visas for a few persons who claimed the right to enter under the agreement, not in connection with the General Assembly, the Security Council, or the Trusteeship Council, but in connection with one of the specialized agencies. The United States queried one or two of those persons because of information regarding their possible subversive inclinations or potentialities. This created a problem with the office of the Secretary General and the legal staff of the United Nations. I think the authority we assumed was valid. Reliance was placed upon the security provision in the resolution, rather than entirely upon the terms of the agreement itself. I understand the matter was settled satisfactorily to the Secretary General and to our own government. I gathered from the press that the Secretary General's office had some question about this provision being a reservation to the agreement, but the Secretary General thought operations under it as claimed by the United States were not inconsistent with the agreement it-
self -- that anyone entering must do so in good faith for purposes specified in the agreement. Our government and the Secretary General by somewhat different routes arrived, as I understand the matter, at about the same conclusion.)

The General Assembly also was required to approve the agreement. Congressional approval came at almost the last minute of the session preceding the General Assembly meeting in the fall of 1947. I went to the General Assembly as the alternative representative of the United States, one of the ten, and sat for the United States in the Sixth Committee. The agreement came before this Committee and was referred to a sub-committee. The position of the United States was somewhat dual: we were a member of the United Nations and at the same time the other party to the agreement. The sub-committee finally approved, then the full committee, then the plenary session of the General Assembly. And in due course the agreement came into effect. It was a sticky business, though, in the sub-committee of the Sixth Committee, because there again questions arose about freedom of access. Some nations desired to eliminate all supervision. Particularly, and rather strangely I thought, this was the position of the British representative. The Soviet were rather quiescent and non-controversial about the whole matter, watching it but with little active participation. The British legal representative was reluctant to accede to any supervision whatever and was quite disturbed about the implications of the resolution by which Congress had given its approval.

In the end I simply had to take the position that the United States couldn't do anything except as Congress had authorized, and there it was. But it was a very troublesome, and I thought a rather unnecessarily disagree-
able matter, especially as the United States on the whole was being very generous in its hospitality and attitude toward the headquarters in this country and had gone pretty far, much farther than it might do today if the present climate had existed then.

We were unable for some time to reach a solution as to how the agreement should be brought into effect. Finally this formula was adopted: the General Assembly would approve and authorise the Secretary General to sign under the authority of its own resolution; the United States would put the agreement into effect under the authority granted by the United States. There would be an exchange of notes between the United Nations, acting through the Secretary General, and the United States. Ambassador Austin was authorised to sign the note on behalf of the United States. This note stated explicitly that the agreement was being placed in effect by the United States "subject" to the provisions of the resolution of Congress. The Department had given me the choice of using a note so worded, or one worded that it was "pursuant" to the resolution. I preferred "subject" and this was the word used.

3. Initiation of the Truman Doctrine

While I was in the Department the Truman Doctrine was initiated. The Department received word that England was under the necessity of withdrawing its troops and support in Greece. This posed a serious threat to the independence of Greece. Unless the United States was in a position to replace the British as they moved out, there is no question in my mind Communist influences would have taken over in Greece.
The matter came to my attention first at a staff meeting presided over by Under Secretary Acheson. The presentation was made principally by Mr. Loy Henderson, who was responsible for the particular "desk" in the Department covering the problem. There wasn't much loss of time or doubt about what should be done, especially when one considers the magnitude of the problem. It seemed clear to the Department that since for economic reasons — primarily, I suppose — the British were determined to withdraw, the United States should fill the vacuum; I think there was no dissent. There necessarily was discussion of means and methods. It was decided to recommend to the President that the matter be promptly submitted to Congress in a message, and Congressional approval obtained. This, so far as I know, was the origin of the Truman Doctrine. It was a critical and bold decision, worthy of our position and resources, a definite stand to end the Communist advances in Europe.

Loy Henderson took a lot of abuse in some respects in other matters; the Jews in Palestine, for example, thought he was not sympathetic to the partition plan and to a new state for the Jews. But on this Greek situation, whatever one might say about the other — and I myself was in sympathy with the new state — he did an outstanding job for the free world, as did the Department, the President, and the Congress, in connection with the Truman Doctrine, followed by the great Marshall Plan initiated also while I was in the Department.

4. Adherence to the New World Court

The question of adherence by the United States to the new World Court was brought before the Congress while I was Legal Adviser, Under Secretary
Acheson and I appeared before the Foreign Relations Committee of the Senate in support of the Resolution looking toward such adherence. This was in July 1945, when the Committee was presided over by Senator Vandenberg, with Senator Connally ranking minority member. Senator Thomas of Utah was Chairman of the Subcommittee. The Committee favorably reported the Resolution, No. 196, followed by a rather full and interesting debate on the floor of the Senate. See, inter alia, the Congressional Record of August 2, 1945, pp. 10,822 et seq., resumed 10,842, 10,846-7, 10,850. The Resolution defined the subject matter of the jurisdiction to be granted by the United States, to "remain in force for a period of five years and thereafter until the expiration of six months after notice may be given to terminate the declaration" under para. 2 of Article 56 of the statute of the Court. The Resolution withheld jurisdiction over "disputes with regard to matters which are essentially within the domestic jurisdiction of the United States." to which, on the initiative of Senator Connally were added the words, "as determined by the United States." After considerable debate another amendment, chiefly sponsored on the floor by Senator Millikin, was defeated. Senator Morse took a lead in opposition to this amendment, others included Senator Thomas. The amendment would have limited our grant of jurisdiction by excluding "disputes where the law necessary for decision is not found in existing treaties and conventions to which the United States is a party and where there has not been prior agreement by the United States as to the applicable principles of international law." This proposal originated through a memorandum which Mr. John Foster Dulles had furnished Senator Vandenberg in Committee. The Senator had given me an opportunity to express my views about it, which I had done in a rather short but strongly worded opposing
memorandum. On the floor Senator Vandenberg said, see ibid., pp. 10,645, that while Mr. Dulles was very earnest about the suggestions he had made he did not, upon later inquiry, consider it important to put them in the form of an amendment, and that his interest was in having the resolution adopted substantially in its original form. In the record itself, ibid., pp. 10,646-7, Senator Morse set forth in large part my answer to Mr. Dulles' suggestion.

Secretary Byrnes resigned rather suddenly in early 1947 and was succeeded by General Marshall. I tendered my resignation to General Marshall but indicated a willingness to remain a while longer. I also said I wished now to look forward to leaving government service, perhaps about June. He wished me to stay and I remained until August, thoroughly enjoying the work under him. My old First World War Associate, Robert A. Lovett, came in as Under Secretary when Mr. Acheson left. Mr. Lovett asked me to remain as Counsellor. Had I known he was to come and to want me to take on the Counsellorship I might have remained; but when these prospects became known to me my plans to leave had so matured that it seemed not feasible to discard them. It was a pleasure, however, to work with Lovett again, after the years since 1918 at the air station at St. Inglevert, France. The time had now come, however, for me to change over to private life. This was needed from a family standpoint compared now with further public service, regretful as I was to leave the latter.

A review of the proposed new Defense Department statute, which included the National Resource Security Board, was made during this period.

The ominous trial of Archbishop Stepinac was underway. I suggested to Acting Secretary Acheson that he publicly protest the trial, which he did in a very good statement. The question of continuing Mr. Myron Taylor as
personal representative of the President at the Vatican also arose. The Administration was moving to bring this to an end on legal grounds. The matter came to me. I was unable to give approval under the statutes to an indefinite continuation of the existing situation, but strongly urged the legality and desirability of maintaining the representation for the time being, pointing out inter alia that withdrawal at that time would give encouragement to the Communists in the close balance of power then prevailing in Italy. The withdrawal was delayed. Some work was also done during this period on the German, Japanese and Philippine problems but I shall not prolong the notes by seeking out their details. Separately treated are the sessions of the General Assembly of the United Nations.

General Marshall and Mr. Lovett made a fine team. The renewal after so many years of a personal association with Lovett, and the initiation of one with General Marshall, led to an understanding of the reasons for the outstanding reputations these men had acquired in the service of the nation and of the world. I was sorry to leave.

When I entered the Department in June 1946, Alger Hiss was still there. My recollection is that he resigned the following January 1947. I had known him pleasantly for some years but had not before been in the same department of government with him. At San Francisco he had been Secretary-General of the Conference itself, and was not a participant in the work of the American delegation. At the session of the General Assembly in New York in the fall of 1946 he was not a member of the delegation but my recollection is that he participated in the preparations for and in the conduct of the work of the delegation. Also due to his position in the Department I feel sure he was to some degree a participant in the planning of the San Franci-
co Jurists' meeting in Washington. In none of this did I notice or do I recall the slightest indication of pre-Communism. I had never heard or suspected that he was or had been a member of the party. The subsequent developments regarding Whittaker Chambers came as a complete surprise to me and I expected that he would be able to disprove the accusations against him. I was asked by his brother Donald to be a character witness at the first trial, and did so. I must say that from my close following of the trial as the testimony developed I feel the jury had adequate basis for the conclusion ultimately reached. I was not subpoenaed to be a witness at the second trial and did not feel that I should go unless subpoenaed, although I had done so at the first trial. The case is a mystery to me. My judgment is that if Alger Hiss did not tell the truth about the matter — if he perjured himself — the truth perhaps is that he went wrong in the middle of the second half of the thirties, regretted it, lived it down in his own life, and was later unwilling to face up to acknowledgment of the earlier mistakes. So far as I know, nothing derogatory came out, either at the trials or otherwise, regarding his conduct in the years subsequent to 1937 or 1938, though he remained in the government for ten years thereafter in contact with innumerable people. It is probable that the mistakes, assuming they occurred, were old ones from which he had turned away and which he tried to keep buried in the past.

THE PRESIDENT'S COMMITTEE ON EQUALITY OF TREATMENT
AND OPPORTUNITY IN THE ARMED FORCES

In July, 1948, President Truman issued Executive Order No. 9981, entit-
Opportunity in the Armed Services.  Pursuant to it a Committee was established to carry out the President's policy that there should be equality of treatment and opportunity for all persons in the armed services, without regard to race, color, religion or national origin. The Committee was to be "in the military establishment," and known as the President's Committee on Equality of Treatment and Opportunity in the Armed Services. It was authorized "to make a study of existing rules, procedures and practices, to confer and advise with the Secretary of Defense and the Secretary of the Army, of the Navy and of the Air Force, and to make recommendations to the President and the Secretaries to effectuate the policy stated."

I had returned to private practice in 1947 and in the fall of 1948 was in Santa Fe, New Mexico, engaged in a trial with my old Santa Fe law partner, involving the right of Catholic sisters to teach in the public schools of New Mexico, and kindred problems which had arisen out there over the decades.

While there Mr. David Niles, the President's administrative assistant on minority problems, phoned me that the President wished me to become chairman of the Committee. After he explained the purpose of the work, and said the President really wished me to head up the endeavor, I thought I should do the best I could with it, but explained I would not be able to begin for some little while because of other commitments. Mr. Niles said that would be all right.

The other members of the Committee, all appointed by the President, were Mr. H. A. Donahue of Connecticut, an industrialist; Mr. Lester B. Granger, executive secretary of the National Urban League, a Negro of distinction who had been adviser to Secretary Forrestal on kindred problems;
Mr. Charles Luckman, of Lever Brothers, who, however, was an inactive member of the Committee; Mr. Dwight Palmer, president of General Cable Corporation; Mr. John H. Stengelback, publisher of the Chicago Defender; and Mr. William E. Stevenson, president of Oberlin College. Mr. Donahue died in the early stages of our work. The other members of the Committee, except Mr. Luckman, were active.

We first met -- I do not now remember the date -- for organizational purposes. We selected Mr. E. W. Kenworthy as executive secretary on a full time status, with a small clerical staff, and with an assistant secretary. Mr. Durham, who, however, did not remain to the end.

As I began to realize the difficulties I came to three convictions. One was that if it could be accomplished the Committee must be unanimous. In any event, the white members should not be on one side and the Negro members on the other. Secondly, we should secure the consent of the armed services to the program we might decide should be adopted, because a committee of civilians could not well expect its work to succeed if the men responsible primarily for national defense were opposed to our program as contrary to their expert judgment as to the requirements of national security. Thirdly, we must have a program in operation before we concluded our work rather than simply make a report and do nothing about it.

This approach would take time and I thought it should be laid before the President. This was done at a personal conference and the President gave his full support.

Our meetings and hearings were held in the Pentagon. Individuals and organizations sent representatives before the Committee. Full records of the hearings were preserved. In addition to private persons and organiza-
tions there came before the Committee General Omar Bradley, chairman of the joint chiefs of staff; Mr. Louis Johnson, Secretary of Defense, who had succeeded Mr. Forrestal upon the latter's death; Mr. Kenneth Royall, Secretary of the Army; Mr. John L. Sullivan, Secretary of the Navy; Mr. Stuart Symington, Secretary of the Air Force; and other persons, both civilian and uniformed, having to do with personnel problems in the services. Later, we conferred with General Collins, who had become Chief of Staff of the Army when General Bradley moved to the head of the Joint Chiefs of Staff, and Mr. Gordon Gray, who had become Secretary of the Army, succeeding Mr. Royall.

I also had a personal talk with General Clay in Berlin in the latter part of 1948, where I had gone from Paris where I was for another purpose, and obtained some information about the situation in Germany among the occupation troops. We also wrote to General Eisenhower, who was then president of Columbia University, requesting his views in the light of his experience, but did not receive a reply as I recall.

During the period of the hearings, which began in January 1949, I was seriously troubled as to how to bring the undertaking to a successful conclusion. We had in effect two armies — I refer to the army because it presented the most difficult and important problem. One was a white army and the other a Negro army. The white army, the main one, was not as strong as it should be because it did not contain the good material available from the Negro population. The Negro army was weak because drawn entirely from a level of capacity and training which was below the available talent among the Negroes. To bring about integration in a manner which would be accepted, in view of the history of the subject and the concern of
any military men from a morale standpoint, was very troublesome. Then
came the turning point, so far as my own views were concerned, and I began
to see success as eventually inevitable.

This turning point was a hearing at which two men came before the Com-
mittee, Mr. Boy Davenport, a Negro War Department civilian employee who had
made a special study of the personnel problems involved, and Major Armstrong,
a Negro West Point graduate who had helped Mr. Davenport compile the ma-
terial for presentation to the Committee. With detailed charts and accur-
ate knowledge they demonstrated the wasteful consequences of this two army
situation and how it came about. The details are set forth in the report
of our Committee to the President of May 28, 1950, published by the United
States Government Printing Office under the title, "Freedom to Serve."

The presentation of Davenport and Armstrong showed substantially as
follows:

There are a large number of military occupational specialties, as they
are called, in the army. These are classifications of talents, as it were,
needed in a modern army. An enlistee or draftee is given an occupational
specialty classification. After his basic training he is afforded special
training in army schools which give further training for the needs of the
army. The training a particular man is given is directed in good part by
the occupational specialty into which he fits. After receiving this educa-
tion he is assigned as needed by the army according to his training.

In August, 1949, there were numerous occupational specialties which
were wholly unavailable to Negroes regardless of an individual Negro's
qualification therefor. There were two hundred and forty-five specialties
with authorizations for ten or more whites and for ten or less Negroes. In
ninety-one specialties there were authorizations for ten or less Negroes and for one hundred or more whites. There were one hundred and forty-four specialties with authorizations for ten or more whites and no authorizations for Negroes.

The reason for this situation was that in the "Negro" army, which was only about ten percent of the total army, there was no need for men in the wide range of specialties needed in the white army. In simple terms this situation, without unduly going into detail, meant that a Negro boy who came into the army with the aptitude for example to become a radar operator, could not obtain the occupational specialty leading to such a position, or the schooling designed to perfect him in it, because there was no place in the Negro army for such a man. That meant not only that the boy himself was deprived of equal opportunity because of his color and race alone, but also that the army was deprived of his talent and capability. Further, the Negro army obtained him not as a trained person in the specialty for which he had capacity, but as a boy without such training. This was not only plain inequality of treatment and opportunity, inconsistent with the President's policy, it was demonstrably inefficient in the use of the nation's manpower.

When I understood this situation I felt confident for the first time of being able to accomplish what the President had in mind. I felt that when this situation was explained to persons with final responsibility in the army — the other services presenting a somewhat different problem — they would be unable to resist a program designed to eliminate it. There ensued conferences with Secretary Gordon Gray, General Collins and others, to whom I explained in my own way what I have outlined. Secretary Gray was surprised. I think the matter had never been brought to his attention in
those terms. The army had been saying they were giving equality of treat-
ment and opportunity, with no discrimination against Negroes because of
color, that the Negro boy was taken in if there was a place for him, and
was given the schooling which was available for a place which was available.
In a sense this was true, but it would not bear analysis, because so many
places were closed to him. The Secretary was troubled when he understood
what was occurring.

There were conferences also with Mr. Johnson, Secretary of Defense,
and with others at different times. But insofar as the army itself was con-
cerned the key conferences after the hearings which I have spoken of were
with Secretary Gray, at one of which General Collins was present. General
Bradley was present at one of the earlier conferences.

I took the position that from a military standpoint we were wasting
manpower, failing to utilize properly the available manpower of the United
States. The argument to the contrary primarily was that the morale of the
army would weaken if integration were ordered. I recognized this aspect of
the problem, but took the position with Mr. Gray and General Collins that
whatever risk of that character was involved must be taken. My own judg-
ment was that the risk would be found to be a fear and not an actuality,
that if the Negro boys were given equal opportunity and training along
lines they were capable of receiving, and took their place alongside the
more numerous white boys on the basis of qualifications and ability, after
meeting the same tests, they would be accepted by the white boys without
any significant problem. This was my best judgment though no one could
guarantee no problems would arise and I could not assume to be infallible.
Mr. Gray did not wish to make this judgment unless he obtained the acquiescence of the military men. I think the position of General Collins must have been reassuring to him, because it seemed to me that his attitude and I cannot be more precise -- was more favorable to the direction the Committee was pressing than had been General Bradley's. And Mr. Gray was more favorable than had been Secretary Royall, though we had not been able to think the problem through with Mr. Royall to the extent we were later able to do with Mr. Gray.

When we were reviewing the situation in Mr. Gray's office he agreed that denial of such training was denial of equality of opportunity, but said, "After we train him, what should we do with his if there's no place for him among the Negro troops?"

"Well," I said, "you don't send him there. You assign him wherever there is need for one who has his training."

He said, "That means integration."

"Yes," I answered, "that means integration, but it is integration brought about in a manner which would be accepted and cause you no serious problem. It is integration on a basis you cannot refuse to put into effect, as it seems to me." I urged the advantages with all the persuasion I could.

The army accepted the plan. Attached is a memorandum of 19 September 1949 of the meeting with Mr. Gray, following, as I recall, the one at which General Collins was present.

My arguments, particularly at the conferences with Mr. Gray, were not limited to military or manpower considerations, strong as these were, but included arguments based upon the obvious injustice of the inequality of treatment to the individual.
The army agreed to start, on a step by step basis which, if carried out, would mean the complete integration of the army without regard to race or color, the making of one American army.

(Mr. Nichols's recent book on the subject says the details were finally worked out by Mr. Davenport; but with me they were finally agreed upon in conferences with Colonel Bemdetten, Assistant Secretary of the Army, after I came on the court. However, as I have said, the testimony of Mr. Davenport, with the help of Major Armstrong, opened the way to the solution.)

I was appointed to the court in the fall of 1948 and took office December 15, 1949, before the work of the Committee was quite complete. But it was progressing so well and looked so favorable I was reluctant not to finish it. I took the matter up with the President and the Attorney General. The President asked me to continue. I felt no serious qualms about doing so because none of the Committee's work was of a legal character. It was purely along policy lines, and was nearing a successful conclusion.

The members of the Committee were remarkable on the whole in their approach to the work. We were able to reach unanimity when the army agreed to put into operation the integration plan briefly outlined above. There were other details, one involving the ten percent quota which had been in effect for Negroes, but there is not much point, in view of the report which is available, in my doing more here than outlining the most troublesome matter, as above.

The whole project was given great impetus by the outbreak of the Korean fighting in June, 1950. Under the pressure of necessity the Negro troops there were thrown together with the white troops in the early stages of the fighting, and this turned out very successfully. This tended to allay
fears. I understand the army now is completely integrated and I think there has been no significant difficulty. Furthermore, I understand the general consensus of opinion among the responsible officials of the army is that integration has greatly strengthened our fighting forces, as well as improved our position in the treatment of our citizens without regard to race or color.

There were occasional difficulties within the Committee due to the delay; a feeling that we had the President with us and we should just "lay down the law" and insist that his policy be put into immediate effect.

This created a problem for me as chairman, but the Committee on the whole cooperated beautifully and we managed to hold together to the end.

We sent a memorandum to the President occasionally and talked with Mr. Jiles or Mr. Nash of the White House staff, keeping them advised. And there were conferences with the President. He was not impatient, saw that we were moving in the right direction, and was willing that we take the time we thought we needed. The President was excellent throughout the matter, and was most appreciative of the results.

There was some sentiment in the Committee that when we filed our report we should stay in existence to police the program. I didn't feel strongly about this. I would have been obliged to abandon the work myself, because, although I was willing to complete it, I did not feel that after joining the judiciary I should stay on for the policing. In any event, the President decided to discharge the Committee from further responsibility but left the Executive Order in effect, giving the armed services an opportunity to carry out the program agreed upon.
Perhaps I was something of a brake on the Committee during the earlier months because I did not then see how to meet the conditions which seemed to me to be essential to success. Yet I believed the order sound in principle and militarily. The history of fighting by Negro troops when segregated from the white was an uneasy one on the whole. The story of the Battle of the Bulge was different. There, under the pressure of emergency, Negroes who were available, whatever their previous assignments, were thrown into the front lines to fight along with the white boys. They fought well. They were fighting with the other men rather than segregated and fighting as people who had to fight alone. The record was not usually good in the latter situation. There were times when members of the Committee thought we should put the principles into effect as a command with the backing of the President. We could have done that, but I was determined to use every possible means of getting the army to accept our recommendations.

Looking back on it now, it is amazing the army stayed so inefficient in this respect so long, and wasted so much of the manpower of the United States over so long a period of time, with injustice to both white and Negro. In some manner the army seemed to be trying to protect the former by not according equality of treatment and opportunity to the latter. As a matter of fact until integration the white boys had borne a larger share of the burden than they should have. In that respect they too had been treated unequally. The Negro had not borne the share he was willing and anxious to bear. And the country was the loser.

The Negroes realized this. Their leaders, and others who expressed themselves, realized treatment on an equal basis would increase the burden, responsibility and the suffering of the Negro, but they welcomed this as an
incident to equality of treatment. They realized too that by putting the
program of utilization of manpower on a basis of equal treatment fewer Ne-
groes in the army might actually be in the army, for some time at least, be-
cause they couldn't meet standards on an equal basis, though those in would
bear a heavier responsibility. But they were not interested in numbers;
they were interested in application to them of the same standards applied
to others.

In fairness I must say I have personalized this Committee story more
than should be done, omitting much that could be said about others, particu-
larly Mr. Kenworthy, our excellent executive secretary, and other members
of the staff. Furthermore, the work of the Committee has been told only
from the standpoint of the army, because the problem there was more diffi-
cult and the Committee's contribution was greater.

As to the air force, Secretary Symington came forward quickly after the
President's Executive Order with a program which left very little for us to
do. We stood aside while it was put into effect. As stated in our report
we made a few suggestions as time went on, but the air force created no
serious problem. I understand the whole matter has worked out pretty well
in the air force. I should emphasize in deference to the position of the
army that their's was a much more difficult problem. Larger numbers were
involved, and the standards of entrance were higher in the air force.

The navy was somewhat difficult, but again not as much as the army.
Navy put into effect a reasonably satisfactory paper policy. The Committee
believed, however, that navy's plan needed some additions. The navy prob-
lem also did not involve as high a percentage of Negroes as the army. Hi-
torically, most of the Negroes in the navy had been and were in the
stewards' branch, not in the general services.

The Committee made recommendations to the navy as fellows: that it
make a strenuous effort in its enlisting advertising to emphasize its
change in policy, so that the Negroes would not be fearful -- as largely
they had been -- of landing only in the stewards' branch; that the navy re-
call to active service a number of Negro reserve officers to help in a
Negro recruiting program, and that an effort be made to get more Negroes in
school under the so-called Holloway program of training officers in colleges,
which was falling behind so far as Negroes were concerned. We also recom-
mended a change which would permit chief stewards to receive the grade of
chief petty officer. We found that in the stewards' branch of the navy,
even though a Negro became chief steward, he was not given the rank of
chief petty officer. In every other branch of the navy, one who became a
chief steward became a chief petty officer.

However, the navy, so far as we could ascertain at that time -- and I
think we were reasonably accurate -- began a real integration policy.

I do not have information as to whether the navy is up to date with
the army and air force at this time. It had been ahead of the army on
policy, because it earlier put into effect an integration policy reasonably
satisfactory to the Committee. We sent a team into the field to go to
several navy installations to see if they were going ahead with the program
adopted, and received as of that time favorable reports. This was also
true of the air force. But there was not the same degree of interplay be-
tween the Committee and responsible personnel in the navy and air force as
with the army, because there did not seem to be the necessity. We used the
succeed of the air force and the navy in persuading the army. Army would
answer that its problem was more complicated. But the acceptance of inte-
gration by the air force and navy, and its working out to the degree then in
operation, added weight to our arguments with the army.

I understand the government used the program in its overseas propa-
ganda campaign to help offset Communist propaganda against racial policy
within the United States. There were some suggestions made during the work
of the Committee that something be said in our report about the desira-
bility of doing away with segregation as a means of offsetting Communist
propaganda, but I thought that while no doubt our success would have this
indirect advantage, that should not be given as a reason for our program.
We were proceeding on the basis of principles of our own, and it was a
little unfair to the work to put it in terms of a counteraction to Commu-
nist propaganda, although that was an incidental advantage.

I think integration of the air force and the army, and to the degree
it has occurred in the navy, has indirectly moved forward integration in
general. It was the first big break and it succeeded. Our Committee was
willing to lay aside social problems. It seemed better to hold to the man-
power problem as we did -- equality of treatment and opportunity of the men
and women in the services -- and to stay away from the question of dances,
clubs and the like, leaving this to take care of itself.

While the Committee was set up "in the national military establish-ment,"
it was civilian. We were responsible to the President, not to the Secre-
tary of Defense. The only one who could give the Committee orders was the
President. This gave us prestige and independence; it was discerning on
the part of the President to set it up that way.
The Committee papers I am sure were left with the Defense Department, including a copy of the transcript of the hearings. I also have a copy of the hearings, and other papers which accumulated in my own office. Some of the critical conferences were without any record. (Most of the papers I accumulated as Chairman have since been sent to the Truman Library, at Independence, Missouri, after correspondence between President Truman and myself.)

Lt. Dennis D. Nelson, U.S.N., who was a fine help to the Committee, has written an interesting book, "The Integration of the Negro into the U.S. Navy" -- in which he refers to the Committee. Mr. Lee Nichols, in his "Breakthrough on the Color Front" does likewise. The press release of the White House of May 22, 1950, and letters of President Truman to me of July 6, 1950, and September 31, 1950, about the Committee's work are appended.

REPRESENTATION OF THE UNITED STATES IN THE GENERAL ASSEMBLY OF THE UNITED NATIONS

The General Assembly of the United Nations met in the United States in the fall of 1946. The Assembly had first convened in London the preceding winter and had adjourned to New York in October. The New York meeting accordingly was the second part of the First Session of the General Assembly. I went to the session as adviser to the American delegation, and also became our representative on the Sixth (Legal) Committee.

The headquarters of the delegation were then at the Pennsylvania Hotel, where delegation meetings were held almost daily before we dispersed to attend the Assembly committees, subcommittees, or plenary sessions. These
sessions were at the temporary headquarters of the Assembly at Lake Success. Plenary sessions were held at Flushing Meadows.

As required by the Participation Act of 1945 President Truman, under date of February 5, 1947, transmitted to Congress his first annual report on the activities of the United Nations and the participation therein of the United States. This report reviews the work of this session. (Department of State Publication 2735, U. S. Gov't. Printing Office.) The report lists the delegation as follows: Sen. Warren A. Austin, Senator Tom Connally, Senator Arthur H. Vandenberg, Mrs. Franklin D. Roosevelt, and Representative Sol Bloom. There were four alternates: Representative Hatton, Representative Helen Gahagan Douglas, Sen. John Foster Dulles, and Sen. Adlai E. Stevenson. The report adds, "The Delegation was assisted in New York by Mr. Benjamin V. Cohen, Mr. Charles Faby, and Mr. John C. Ross, serving as senior advisers; by a principal adviser, Mr. Durward V. Sandifer; and by advisers and assistants drawn from the Department of State and other agencies of Government."

Mr. Spack of Belgium was President of this Assembly. President Truman addressed the Assembly with quiet dignity. He said, "The American people look upon the United Nations not as a temporary expedient but as a permanent partnership — a partnership among the peoples of the world for their common peace and common well-being. . . . May God Almighty, in His infinite wisdom and mercy, guide us and sustain us as we seek to bring peace everlasting to the world. With His help we shall succeed."

The Foreign Ministers were meeting in New York during part of the session and each also headed his country's delegation to the Assembly. Byrnes, Eden, Bidault and Molotov. Here indeed were the nations gathered
within an international organization for peace under a Charter binding them to that purpose. Our Senate had ratified the Charter overwhelmingly. This was a far cry from the days of Wilson.

The Legal Committee had a fairly active session, with the United States taking a good deal of initiative. We introduced resolutions: 1. To further the provisions of Article 13, para. 1(a) of the Charter, to establish a committee of 17 members to study methods by which the General Assembly should encourage the progressive development of international law and its eventual codification, and to report to the General Assembly at its next regular session; 2. In the same general area, to affirm the principles of international law recognized by the Charter of the Nuremberg Tribunal and the judgment of the Tribunal, with directions to the above mentioned committee to treat as a matter of primary importance "plans for the formulation, in the context of a general codification of offenses against the peace and security of mankind, or of an International Criminal Code, of the principles recognized" in the Nuremberg Charter and judgment. (3) embodying regulations for the negotiation of treaties and international agreements in accordance with Article 102 of the Charter. I initiated these subjects but China jointly sponsored with the United States the resolution on Codification of International Law.

In the Legal Committee we actively supported also the resolution condemning genocide as a crime under international law. This resolution was unanimously adopted by the General Assembly December 11, 1948.

A very troublesome problem assigned to me became known on the agenda of the General Assembly as the "Treatment of Indians in the Union of South Africa." India, speaking through Mrs. Pandit, sought condemnation of
alleged discriminatory treatment of Indians resident in the Union of South Africa. Field Marshall Smuts represented South Africa. A jurisdictional problem was involved; that is, whether the question was "essentially within the domestic jurisdiction" of South Africa and therefore, under Art. 2, para. 7, not subject to United Nations intervention. General Smuts was of the view it was domestic, strongly supported by Sir Harley Shawcross of the United Kingdom; but General Smuts was willing to have the question submitted to the International Court of Justice for an advisory opinion. For the United States I supported such a reference. I will leave with these notes a copy of my statement to the Plenary Session on behalf of the United States.

I felt the Court probably would rule, in view of the history of the matter, that it was not essentially domestic. Then South Africa, having consented to a request for such an opinion, would I thought accept the jurisdiction of the United Nations and be under strong moral obligation to follow its recommendations. But India sensed a victory for condemnation, and pressed hard and successfully for it, gaining a two-thirds vote for a resolution offered originally by France and Mexico. Mrs. Pandit handled her case with skill, playing for an expression of the dominant sentiment of the membership against racial discrimination. The statesmanship of General Smuts, looking as it seemed to me to a better chance for help to the Indians actually subject to the discriminatory treatment, was not followed. The problem kept recurring at each subsequent session. According to my information the action of the 1946 General Assembly only made it more difficult to reach a solution in South Africa. I overheard General Smuts gently say to Mrs. Pandit after the vote, "Now, my daughter, what will you do?"

General Smuts himself was not long to remain in power, but had our views been followed at that time I feel greater progress would have been advanced.
both in method of procedure and in substantive way, in South Africa, than
has occurred. As the report of the President states, p. 13:

"The United States Delegation believed . . . that, if the Court
advised that an international obligation existed, the General
Assembly would be in a much stronger position to exert its in-
fluence against the alleged discrimination in South Africa; and
. . . since South Africa questioned the jurisdiction of the
United Nations and was willing to have the matter submitted to
the Court, it was entitled to that consideration. . . . After
a dramatic debate, the General Assembly rejected this view.
. . ."

The 1947 Session of the General Assembly

The President nominated me as alternative representative of the United
States to the 1947 Session of the General Assembly, though I had left the
Government service in August to resume private practice. My senior asso-
ciates, Senator Danaher and Mr. Rufus Peole, were willing, as was my
associate Phil Levy, though it meant postponement for about two months of
actually beginning practice.

The alternative representatives share the work with the representa-
tives. The delegation, as set forth in the Report by the President to the
Congress, for the year 1947, Department of State Publication 2024, describes
the delegation as follows: "The Secretary of State, George C. Marshall,
served as Chairman of the Delegation, and in his absence Warren R. Austin
presided as Senior Representative. They, together with Marshals V. Johnson,
Mrs. Franklin D. Roosevelt, and John Foster Dulles, of New York, constituted
the Representatives on the Delegation. The Alternate Representatives were
Charles Faby, former Legal Adviser of the Department of State; Willard L.
Thorp, Assistant Secretary of State for economic affairs; Francis B. Sayre;
Adlai E. Stevenson, of Illinois; and Major John H. Belding, former
Assistant Secretary of State for occupied areas, who was appointed after illness necessitated the resignation of Miss Virginia G. Cildersleve."

This session was more interesting in some respects than the previous one. Again I sat principally in the Sixth (Legal) Committee, but also in the First (Political) Committee on the recurring Indian-South African problem. In the general debate at the early stages of the session Vishinsky launched his "war-mongering" attack upon the United States, a startling and incredible display of Soviet international immaturity. The United States was silent in response, speaking affirmatively on the great issues through General Marshall. Marshall, by the way, presided over our delegation meetings more regularly than had either Byrnes, or Acheson later, and always with prudence and effectiveness. And no one in my United Nations experience had greater prestige internationally than he, as evidenced by the acclam which greeted his appearances, unless possibly Mrs. Roosevelt, both as widow of the President and in her own right.

This was the session that adopted the Palestine Partition Resolution, recommending the new State of Israel, as it became known, with internationalization of the Holy Places. At a meeting in New York called by General Marshall from among the delegates and a few others, as to the position America should take on this important matter, I favored support of partition and the creation of the new State. I thought, and still think, that the Jews should now have a separate state of their own in Palestine. In the progress of the matter through the Assembly, however, I had no significant part, though there were occasional discussions in the delegation. General Milldring was designated by the United States to bear the principal burden.
This Assembly also created the Special Balkan (Greece) Committee, passed the resolution on the Independence of Korea, looking toward free elections and the withdrawal of foreign troops, created the Interim (Little Assembly) Committee, and dealt again, more moderately, with the Spanish problem in relation to the United Nations. The United States opposed the provision in the proposed Spanish resolution which would have reaffirmed the resolution of 1946. The provision was defeated in plenary session. (I represented the United States in the First Committee and in the Plenary Session on this item of the agenda and spoke on the subject in the Plenary Session.)

It fell to me again to represent the United States in the matter of the "Treatment of Indians in the Union of South Africa." Under the 1946 Resolution both Governments rendered reports to the 1947 Assembly showing no progress toward a solution, thus in my view justifying the United States position of 1946 when, along with Field Marshall Smuts, we had sought a reference to the Court. India in 1947 offered a resolution reaffirming that of 1946, expressing regret the Union Government had refused to implement it, and requesting the two governments to enter a round-table conference, with Pakistan participating. The regret clause was voluntarily deleted. See the President's 1947 report to Congress at pp. 41-2.

But most of my assignments were again in the Legal Committee. There we moved along the Codification of International Law by the creation of an International Law Commission to be composed of fifteen persons of recognized competence in international law, representing the chief powers of civilization and the basic legal systems of the world, nominated by member governments and elected by the Assembly.
The Assembly directed the new Commission when established to prepare a draft declaration on the "rights and duties of States," sponsored by Panama, and to move forward with the formulation of the principles of the Nuremberg Charter and judgment, including a "Code of offenses against the peace and dignity of mankind."

"Genocide" continued its forward march, the Assembly requesting the Economic and Social Council to continue work on a convention, and to report to the Third Assembly.

In all these matters the United States was active, taking the initiative in some.

A subject before the Sixth Committee turned out to be dramatic; this was the proposal of Yugoslavia regarding war criminals, traitors and quislings, which if adopted would have constituted a finding that certain member states, including the United States, were not fulfilling their obligations. The Soviet actively entered the fray in attacking the United States, the United Kingdom, and, to a lesser degree, France. The condemnatory proposal was defeated in Committee after a very lively time. The report of the Committee was approved, the President's 1947 Report to Congress summarizing it at pp. 80-81.

My address to the Plenary Session in support of the Committee position is reproduced at pp. 313 et seq. of the same Report of the President. We would not force a person back to the country of his nationality unless a showing were made he was a war criminal or quisling returnable under the standards agreed upon at the April meeting of the Foreign Ministers. (See, also, the Resolution of the Assembly of 1946 on the subject.) We would not return these simply because they were displaced persons. The debate had
overtone pertinent to the future problem of returning persons to North
Korea against their wishes.

The Headquarters Agreement, referred to in these notes covering my
tenure as Legal Adviser vended its rather troublesome way through the Sixth
Committee, after detailed consideration by a Subcommittee. The Secretary
General in his report to the General Assembly had referred to the signing of
the Agreement the previous June 26, 1947. He had called attention to the
Joint Resolution of Congress, with special reference to its provision res-
specting the security of the United States; (Sec. 6 of the Joint Resolution
of August 4, 1947, Public Law 367, 80th Cong., 1st Sess.) This was fully
discussed in the Subcommittee. The Agreement was not changed and was unani-
mously approved by the General Assembly in a resolution which authorized
the Secretary General to bring it into force in the following manner:

"This agreement shall be brought into effect by an exchange of
notes between the Secretary General, duly authorized pursuant to
a resolution of the General Assembly of the United Nations, and
the appropriate executive officer of the United States, duly au-
thorized pursuant to appropriate action of the Congress."

Our note, as already explained, set forth that Ambassador Austin acted
for the United States in bringing the agreement into effect subject to the
provisions of the Joint Resolution (Act) of Congress referred to.

Through the Sixth Committee also came the resolution adopting a United
Nations flag.

The 1947 Assembly also established, initially through the processes of
the Sixth Committee, a United Nations Day, designating October 24. At
first June 26, the anniversary of the signing of the Charter, was selected.
October 24 was the day on which the Charter came into operation by deposit
of the requisite number of ratifications. I preferred the October date
because schools would be in session then in the United States and in many other countries, though not on June 26. So much of the future might depend upon the children of today. If United Nations Day could be made one of special study and exposition in the schools it would be a wonderful thing. With the eloquent help of Mr. Amaro of Brasil in the Committee discussion October 24 was finally selected.

When in New York for this session Miss Frances Perkins called on the "phone from Washington to ask if I would take the Chairmanship of the President's Loyalty Board then to be established for the government employees loyalty program. Since I needed to devote myself to the law office after the Assembly ended, I declined, believing the work would take too much time. She mentioned Mr. Seth Richardson as possibly becoming Vice-Chairman. I told Miss Perkins I thought he would make a good Chairman and this is what occurred. I did later, however, take the Chairmanship of the Board of more limited jurisdiction, the Personnel Security Review Board of the Atomic Energy Commission.

The 1949 Session of the General Assembly

The President again (I was first called as to my availability by Mr. Dean Rusk, of the State Department) nominated me as Alternative Representative to the 1949 General Assembly to meet in New York in September. My associates in practice, Senator Danaher, Mr. Pools and my more immediate associate Mr. Phil Levy, again acquiesced; and, as it turned out, I was not to return to practice except to "finish up" and "turn over" to others, because in October, while at the General Assembly, the President appointed me to the Court. My part of the Assembly work was completed so I could return
to Washington in time to arrange to take the oath December 15, 1949, under recess appointment as desired by the President. Judge Bazelon and Judge Washington were appointed at the same time but were able earlier to take office.

At this Assembly my principal tasks were not legal but items assigned to the Fourth (Trusteeship) Committee, concerned with the non-self-governing and dependent territories. I also handled for the United States the Korean question in the First (Political) Committee, and, again, the Indian-South African problem, and helped on the Spanish question. In the delegation meetings itself I disqualified and left the meetings when the Palestine issue came up in any form because of private representation which had intervened since the last session. This representation had terminated some months before and I had informed Mr. Buck when he inquired of my availability that I would be disqualified on this subject and could not participate. I carefully refrained from doing so.

The work of the Session is discussed in general outline, though in a changed form, in the Report of the President to the Congress for the year 1950, United States Participation in the United Nations, Department of State Publication 3765, released May 1950. The delegation consisted of: Representatives, Secretary of State Dean G. Acheson, Chairman, Warren R. Austin, Philip C. Jessup, Mrs. Franklin D. Roosevelt, John Sherman Cooper, and Alternative Representatives Benjamin V. Cohen, Charles Faby, Wilson M. Compton, John C. Hickerson, Mrs. Ruth E. Hobde, John C. Ross. (Upon departure from the Delegation of the Secretary, Ambassador Austin assumed the Chairmanship, Mr. Cohen became a Representative and Mr. Ross an Alternative Representative.)
I should state here that in all my Assembly work there were able assistants and able staffs, as well as the whole Department in Washington, as necessary, supporting the delegations in New York. Mr. Ernest A. Green had succeeded me as Legal Adviser in 1947, followed by Mr. Adrian Fisher. In New York I usually had the fine help of Mr. John Maktoe on legal problems, also at numerous times of Mr. Carl Norby and at less frequent times of Mr. Halderman, Miss Brown and others. At the 1949 session there was Mr. Benjamin Gerig on the difficult trusteeship items. And the political questions always gathered, according to the nature of the question, the capable help of the political advisers. I acquired again, as when Legal Adviser, a great respect for the talents of the career men in the Department.

The questions before the Fourth Committee were not easy for the United States, though not of such direct and immediate concern to this country as to the colonial powers. We were anxious to further the principles of the Charter and our own traditions of liberty and independence among the millions of dependent peoples. At the same time we wished to avoid change which would be too rapid and difficult for our allies who had more immediate responsibility. To keep the proper balance while moving in the right direction without at the same time exceeding Charter limitations, proved difficult. The situation was complicated by the constant readiness of the Soviet bloc to seek propaganda advantages among the smaller nations. The membership of the Committee itself, with of course the non-colonial constituting a majority, could always outvote the colonial powers. Our great record in the Philippines stood us in good stead, but did not prevent at one point an uncalled for attack by the Ukrainian representative on our Puerto Rican responsibilities. After overnight consultation with the De-
partment and staff, I made a detailed reply, and ended by saying that Ukraine itself was non-self-governing, which infuriated the Ukrainian spokesman. See Part III of the Report of the President, pp. 145–165 particularly.

General Carlos Romulo was President of this General Assembly, and closely followed the work of the Trusteeship Committee. I received a cordial letter from him at the close of the Session. He had followed with special interest the positions of the United States in the Committee.

The General made an excellent President, equal to every occasion. He has been a consistent friend of the United States. He called me to the rostrum twice to preside over the General Assembly for brief periods, a courteous gesture to the United States. Our record in the Philippines, which has on appropriate occasions evoked his eloquent defense of the United States, has greatly added to our standing among the non-self-governing peoples.

It was something of a relief to leave the Fourth Committee and to move into the ad hoc Political Committee to represent the United States on the Korean item on the agenda. The question was the continuation of the United Nations Commission in Korea, established under the General Assembly Resolution of December 13, 1948, at the Paris session. On the basis of the Commission's report (see synopsis in Report of the President to the Congress, pp. 24–27) the principal debate in the Committee was on a resolution introduced by the United States, Australia, China and the Philippine Republic, for continuation of the Commission, with the new functions of observing and reporting any developments that might lead to or otherwise involve military conflict in Korea, et cetera. The Soviet introduced a resolution calling
for the termination of the Commission. "On October 3, 1949, the Ad Hoc Political Committee by a vote of 44 to 6, with 5 abstentions, adopted the joint resolution, and rejected by identical vote the Soviet resolution." (Ibid, p. 37) In plenary session the General Assembly, October 21, 1949, voted 48 to 6, with 3 abstentions, for the joint resolution, and 48 to 6, with 5 abstentions, against the Soviet. I spoke on the resolution on behalf of the United States in the plenary session. It was the United Nations Commission thus continued which was on the ground and alerted the world to the Communist attack across the 38th parallel in August, 1950.

I was very happy that during this, my last representation at the General Assembly, so many of the family were in New York at different times. Duke and Rosa came and saw the Assembly functioning. I wanted Mary Agnes to see the United Nations operating and we had a nice little visit, with Joe Jr. going to sessions with us. Earlier Anne and Sarah came for the beautiful ball given by General Hearst as President of the Assembly. Agnes and I went too, though Anne and Sarah had their own escorts. Agnes Stephanie was of course living in New York and occasionally came to a session and we would see one another at other times. Charles was at Notre Dame.

A week or ten days before December 15 I returned to Washington to finish arranging affairs with my associates so as to take the oath as judge December 15, 1949. Chief Justice Vinson kindly consented to administer the oath. Good friends had presented me with a handsome robe at Larry Knapp’s home, which touched me very much. Gertrude O’Donnell, Margaret and Tom Lane, my sister Sarah and Julian and his wife Frances were present. There were kindly greetings and remembrances from all in Rome and from Agnes in New York. Charles came on from Notre Dame for the event, so
all of the family were together, Agnes, Charles, Anne, Sarah and Mary Agnes. With the Chief Justice for the swearing in came from the Court, where in earlier years I had argued so much, Justices Black, Burton, Clark and Minton, which I appreciated a great deal.

Though the period covered by these notes really ends now, the notes have not been typed in this form until later; so I take advantage of the situation to add a few words about our children:

In August, 1952, after he graduated in June Magna Cum Laude at Notre Dame, Charles (Don Thomas) entered the Order of St. Benedict.


In August, 1953, after graduating that June at Trinity, Sarah entered the Order of Notre Dame de Namur.

Mary Agnes is continuing her college progress at Trinity. Agnes and I are very blessed in our children, and I in her, through the mercy of God.
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* * *
My dear Mr. Attorney General:

With reference to the appointment by the President of Mr. Charles Fahy, Assistant Solicitor General, as a member of a commission to proceed to London to work out the technical details of the formal leases in connection with the acquisition of United States military bases on certain British territory in the Western Hemisphere, I take pleasure in enclosing a copy of a telegram addressed to the American Embassy at London expressing on behalf of the President and myself deep appreciation to Mr. Fahy and the other members of the Commission for the splendid work which they rendered in negotiating the Agreement, which was signed on March 27, 1941.

I also

The Honorable
Robert H. Jackson,
Attorney General.
I also take pleasure in enclosing a copy of a telegram from the American Ambassador at London in regard to the difficulties encountered and successfully overcome by Mr. Fahy and the other members of the Commission in connection with the negotiations.

Sincerely yours,

/s/ CORDELL HULL

Enclosures:

1. To American Embassy London, no. 1041, March 27, 1941.
2. From American Embassy London, no. 1207, March 27, 1941.
PLAIN

London

Dated March 27, 1941

Rec'd 1:05 p.m.

Secretary of State,

Washington.

1207, 27th.

For the President and the Secretary of State.

The Base Lease Agreement has been signed. I think it contains everything we need to use these bases effectively.

The rights and powers it conveys are far-reaching, probably more far-reaching than any the British Government has ever given anyone over British territory before. They are not used to giving such concessions and on certain points they have fought every inch of the way. While they have intended all along to give us everything we really needed—they could do no less and had no desire to do less—it was a real struggle for them to break habits of three hundred years. The Prime Minister has been generous throughout. Certain powers, notably those in Article 11, are so sweeping that the British would never have granted them except as a natural consequence of the original agreement and the spirit which it embodies.

It is
March 27th, No. 1207 from London.

It is important that the agreement be carried out in that spirit. The colonies have been lightly touched by the war, their point of view is local and their way of life will be greatly changed by the bases. In the main the changes will benefit them but it may take them some time to find it out.

In the negotiations both sides have tried to avoid anything which would wall off the bases from the local communities. Our people and theirs are to live together without even a fence, much less a frontier, between them.

The character of the men in command of the bases is of tremendous importance, especially in the beginning. If they are the right kind and ready to carry out our part of the agreement in a friendly and understanding spirit they can do much to inaugurate ninety-nine years of good neighborliness.

Malony, Fahy and Biesemeier have fought hard and won everyone's respect and friendship. You sent a fine team and they have done a grand job. So did Achilles in assisting them.

WINANT.

CSB
TELEGRAM SENT

March 27, 1941
4 p.m.

AMBASSADOR
LONDON

1041
FOR FAHY, MALONY AND BIESEMEIER FROM THE ACTING SECRETARY.

The President joins with me in expressing to you deep appreciation for the splendid work which you have done in negotiating the Agreement which has just been signed. All of us are proud of you and send you heartiest congratulations on the conclusion of this Agreement.

WELLES
Acting
Mr. Charles Fahy  
Room 553, Hotel Pennsylvania  
New York, New York

My dear Charlie:

I see no harm in the second paragraph of your resolution but the first paragraph, which reaffirms both the Charter and the judgment of the Tribunal, runs into the difficulty that the two are not the same. I have not wanted to be critical of the judgment, nor have I had the time to give to its proper analysis; but it is apparent that the application by the Tribunal cut down very materially the intent of the Charter.

The only person who has caught this is Mr. Stimson. An article which he is publishing in the coming issue of FOREIGN AFFAIRS I have seen, and I am sure he would not object to my quoting from it to you confidentially. He says:

"The charge of crimes against humanity was limited by the Tribunal to include only activities pursued in connection with the crime of war. The Tribunal eliminated from its jurisdiction the question of the criminal accountability of those responsible for wholesale persecution before the outbreak of the war in 1939. With this decision I do not here venture to quarrel, but its effect appears to me to involve a reduction of the meaning of crimes against humanity to a point where they become practically synonymous with war crimes.

If there is a weakness in the Tribunal's findings, I believe it lies in its very limited construction of the legal concept of conspiracy. That only eight of the 22 defendants should have been found guilty on the court of conspiracy to commit the various crimes involved in the indictment seems to me surprising. I believe that the Tribunal would have been justified in a broader construction of the law of conspiracy, and under such a construction it might well have found a different verdict in a case like that of Schacht."
I note that Shawcross has run into great difficulty with his resolution, which seemed as innocuous as this. It is that sort of thing that I fear. I do not see how your second paragraph could be objected to. Perhaps the first one is harmless. Anyway, you are on the ground and I shall be content with whatever you do.

With all good wishes, I am

Sincerely yours,

/S/ Bob
Dear Bob:

Thank you very much for sending me a copy of your letter of November 16 to Secretary Byrnes and Senator Austin. The United States had intended to make no specific proposal regarding the London Agreement at this meeting of the General Assembly. We had, however, secured a place on the agenda for an item looking toward fulfillment of the Assembly's obligation under Article 13 of the Charter to encourage the progressive development of international law and its codification. The United States proposal in this regard, joined in by China, is now before Committee VI. A copy is enclosed. As you will see it is for the study of methods as the first step, and makes no reference to any particular subject matter.

When the correspondence between the President and Francis Biddle was made public, while the Assembly was in session, it seemed desirable to do something more, especially as the President expressed the hope "that the United Nations, in line with your proposal, will reaffirm the principles of the Nuremberg charter in the context of a general codification of offenses against the peace and security of mankind." The American Delegation at my request has accordingly approved the enclosed additional resolution. It is now also before Committee VI. This resolution is in general terms and no effort will be made at this session of the General Assembly to do more. I think the resolution will be adopted without much controversy; and if that occurs some advance will have been made.

Of course our position is that the principles of the Charter are now a part of international law. It was for this reason that we had not intended any special reference to the Nuremberg principles in our original proposal contained in the resolution first above referred to.

If the fifty-four nations adopt the second resolution, this would seem to furnish an appropriate occasion for the State

The Honorable
Justice Robert H. Jackson
United States Supreme Court
Washington, D. C.
State Department to notify the other signatory governments of termination under Article 7 of the London Agreement. Any misconstruction of our termination would be obviated, especially since the resolution of the General Assembly would have been passed on the initiative of the United States. The alternative is to notify the governments that we do not intend to participate in any further international trials, which leaves our status under the Agreement rather anomalous. Please let me know what you think of this suggested course.

Yours sincerely,

Charles Fahy

Enclosure:
A/C.6/69 and
A/C.6/54

CC: Secretary of State Byrnes,
Senator Austin.
MEMORANDUM FOR THE FAHY COMMITTEE

Subject: Meeting With Secretary Gray, 16 September 1949

On Tuesday, September 13, Mr. Fahy and I had lunch with Mr. Carl Bendetsen (recently appointed assistant to Secretary Gray), and General Byers, deputy to General Brooks in Personnel and Administration. At this time, Mr. Bendetsen proposed that a meeting be held with Secretary Gray on Thursday before Mr. Gray left for Germany. This was later changed to Friday in order to accommodate the schedule of Mr. Palmer and Mr. Fahy.

Present at the meeting on Friday morning were Mr. Fahy, Mr. Palmer and Mr. Kenworthy, representing the Committee; and Secretary Gray, Vice Chief of Staff Haislip, Mr. Bendetsen and Mr. King, both assistants to Mr. Gray, and Colonel MacPadyen from General Brooks's office, representing the Army.

Mr. Gray began by saying that the Army was prepared to accept the Committee's recommendations on opening up all MOS and Army Service Schools to qualified men, regardless of race. There was then considerable discussion of what the Committee meant by the assignment of men following schooling without regard to race. Mr. Fahy and Mr. Palmer made it clear that the Committee, while not seeking the immediate dissolution of segregated units, meant that qualified Negro graduates of the schools would not be limited to assignment in Negro or overhead units, and that if there were vacancies in white units for such specialists, the Army should not refuse to assign qualified Negroes to them on the grounds of race. Secretary Gray accepted this meaning, and agreed to the Committee's principle.

There followed a lengthy discussion of the Committee's recommendation for substituting a GCT for a racial quota. The Army's position is that it has no objection to such a quota system insofar as it would operate to abolish the Negro quota or to control the numbers of low score men. Its objection is that it would lop off roughly 20 percent of the present Army strength, both white and Negro, and the Army could not replace these losses with volunteers who had a GCT rating 80 and above, since the current percentage of high score men is less than during wartime.
Mr. Fahy and Mr. Palmer conceded that this is a real difficulty, and suggested that the Army, rather than turn down the Committee's proposal on the GCT quota and stand flat on the retainment of a racial quota, approach the Committee with a plan and figures of its own; and that both sides sit down together to work out the problem.

Mr. Fahy proposed to Secretary Gray that when he sent up the Army's plan to Secretary Johnson, he state that the Army is prepared to meet the Committee's recommendations on MOS, schools and assignment, and that the subject of the quota is still under study and consideration. Secretary Gray agreed.

Our expectation is that the Army's response will be sent up shortly if it has not already reached Secretary Johnson. Meanwhile we are expecting the Army to send its statisticians around with a plan and figures on the quota.

It is Mr. Fahy's suggestion that, unless the members wish a meeting immediately, a meeting should be held as soon as the Army plan has been sent up to Mr. Johnson. Will the members let the office know their wishes on the meeting. The staff would also welcome any suggestions on the quota problem.

/S/ E. W. Kenworthy
Executive Secretary
Mr. President,

The General Assembly is fulfilling its highest function when it speaks or acts on behalf of the independence of peoples and of governments. This is the present case, the case of Korea. The Ad Hoc Political Committee, as the first action of this Session on an important political matter, overwhelmingly resolved that the United Nations Commission on Korea should continue. The United States urges that the General Assembly now affirm the action of the Committee.

It is approximately two years since the General Assembly adopted its Resolution of November 14, 1947, designed to bring about the creation of a Government in Korea representing the people of that country, who were promised liberation and freedom as a consequence of the defeat of Japan. In the part of Korea south of the 38th Parallel, under United Nations observation, a free election was held. The Government of the Republic of Korea was established. American occupation forces were withdrawn. The lawful character of the new Government was acknowledged by the Third General Assembly, at Paris, and that Government has since been recognized by more than twenty Member States of the United Nations.

No free election was permitted north of the 38th Parallel. There one-third of the people and one-half of the area of the country are behind a barrier erected by a puppet government, supported by the Soviet Union. The representatives of the United Nations are excluded and the authority of the General Assembly is flocked. A vast propaganda campaign is waged against the representative government chosen freely by the people in the area opened to United Nations observation south of the 38th Parallel.

The United Nations Commission on Korea, established at the Third Session of the General Assembly, has made a comprehensive report. It points out the threat of conflict, of explosive incidents, of the continuation of social, economic and political barriers, of lack of unification. There is danger of a cruel civil war growing out of the bellicose manifestations of those who dominate north Korea.

The present Resolution was adopted by the Ad Hoc Political Committee to continue a United Nations Commission in Korea in aid of maintaining peace and furthering the unification and independence of Korea. So long as there exists in Korea the spirit of incitement to armed combat, and so long as upon occasion such conflict in fact occurs, the purpose of the General Assembly to bring about the unification and complete independence of Korea under a single national government, set up under the scrutiny of the Assembly's Commission, is endangered, as is also the safety and well-being of the Republic of Korea, and that of all its inhabitants. It is for this reason that the Committee Resolution provides that the new Commission shall observe and report any developments which might lead to or otherwise involve military conflict in Korea. It is our view that a Commission empowered to act in this field will serve as an important stabilizing and deterrent influence, and that in the event conflict should occur, the United Nations would have at hand testimony from a duly constituted agency.
regarding its nature and origin, and regarding the responsibility for its occurrence.

There remains also the important task of working toward the realization of unity and independence for all Korea. The Committee Resolution provides means whereby, in case the threat of military conflict should be suspended or mitigated, the Commission may assist in the establishment of a single national government over an undivided country. The Commission is to seek to facilitate the removal of barriers to friendly intercourse in Korea, and to make its good offices available and be prepared to assist, whenever in its judgment a favorable opportunity arises, in bringing about the unification of Korea in accordance with the principles endorsed by the General Assembly. Its authority to utilize the services and good offices of persons whether or not representatives on the Commission, is designed to give it the broadest possible facilities in carrying out these functions.

We believe that a Commission having these powers will be able to contribute substantially, in a manner appropriate in the light of present conditions in Korea, to the final solution of the problem of the independence of that country, through the establishment of a national government acting by, and on behalf of, the will of a united people. We accordingly support the Committee resolution, and of course shall vote against the Soviet draft resolution which was rejected by the General Assembly by an overwhelming vote. We strongly recommend the Committee resolution to the favorable consideration of other delegations as an expression of the purpose of the General Assembly to promote the independence of a long-suffering and valiant people whom we should aid to achieve what so many of us enjoy — freedom and independence.

* * * * * * *
IMMEDIATE RELEASE

MAY 22, 1950

STATEMENT BY THE PRESIDENT

I have just received the report of the President's Committee on Equality of Treatment and Opportunity in the Armed Services. For the past two years, this Committee has been working quietly to find ways and means to bring about true equality of opportunity for everyone in military service.

I have followed its work closely, and I know that it has probed deeply into the problem, which is not a simple one, and has been careful to keep uppermost the need for military efficiency.

As the Committee explored personnel practices in the Armed Services, the members of the staff worked in the closest possible consultation with the Army, the Navy and the Air Force. In fact, the consultation was so close and continuous that the Committee's recommendations grew naturally out of the joint discussions. The Services have accepted all of the Committee's recommendations.

It is, therefore, with a great deal of confidence that I learn from the Committee that the present programs of the three Services are designed to accomplish the objectives of the President; and that as these programs are carried out, there will be, within the reasonably near future, equality of treatment and opportunity for all persons in the Armed Services, with a consequent improvement in military efficiency.

I attach the highest importance to this Committee's assignment. In the Committee's own words, equality of treatment and opportunity in the Armed Services is right, it is just, and it will strengthen the nation. That is true throughout our entire national life.

As more and more of our people have shared the opportunity to enjoy the good things of life, and have developed confidence in the willingness of their fellow Americans to extend equal treatment to them, our country has grown great and strong.

Today, the free people of the world are looking to us for the moral leadership that will unite them in a common purpose. The free nations of the world are counting on our strength to sustain them as they mobilize their energies to resist Communist imperialism.

We have accepted these responsibilities gladly and freely. We shall meet them with the sure knowledge that we can move forward
in the solution of our own problems in accordance with the noblest of our national ideals - the belief that all men are created equal.

Judge Fahy and the members of his Committee have been unsparing in the time and energy they have devoted to their mission. Every American who believes sincerely in the language of the Constitution and the Declaration of Independence owes them a debt of gratitude.

This Report is submitted as the United States Senate is considering a motion to take up a Fair Employment Practices Bill. The work of the President's Committee on Equality of Treatment and Opportunity in the Armed Services shows what can be accomplished by a Commission in this admittedly difficult field. I hope the Senate will take this Report into consideration as it debates the merits of FEPC, and that, as I urged in my State of the Union Message in January, it will permit this important measure to come to a vote.
THE WHITE HOUSE
WASHINGTON

July 6, 1950.

Dear Mr. Fahy:

On July 26, 1942, Executive Order No. 9981 created the President's Committee on Equality of Treatment and Opportunity in the Armed Services, and on September 18, 1944, you, as Chairman, and six other members were designated to serve on this Committee. On May 23, 1950, you presented your report to me, and I have read with much interest and satisfaction of the progress that has been made in the Armed Services under your Committee's guidance.

I note that the substance of the report is that the present programs of the three Services are designed to accomplish the objectives of the President; and that as these programs are carried on, there will be, within the reasonably near future, equality of treatment and opportunity in the Armed Services, with a consequent improvement in military efficiency.

The necessary programs having been adopted, I feel that the Armed Services should now have an opportunity to work out in detail the procedures which will complete the steps so carefully initiated by the Committee. Accordingly, I am relieving the Committee of its assignment as of today, while I am, at the same time, leaving in effect Executive Order No. 9981. At some later date, it may prove desirable to examine the effectuation of your Committee's recommendations, which can be done under Executive Order No. 9981.

You and the members of your Committee have performed an outstanding service to your country. The care and skill with which you approached this problem have helped the Services take important steps toward the realization of our national ideals. At this significant moment in our Nation's history, we are able to draw closer together our principles and our practices for the more effective defense of the cause of freedom.

Very sincerely yours,

/s/ Harry S. Truman

The Honorable Charles Fahy
Chairman, The President's Committee on
Equality of Treatment and Opportunity
in the Armed Services
Washington 25, D. C.
THE WHITE HOUSE
Washington

September 21, 1950

My dear Judge Fahy:

Last May, the President's Committee on Equality of Treatment and Opportunity in the Armed Services presented a report to me, and I read with much interest and satisfaction of the progress toward equal opportunity that is being made in the Armed Services.

I am glad that the Services are taking these forward steps, and I am appreciative of the guidance the Committee furnished. I watched the Committee's operations closely, and I was deeply impressed with its search for ways and means to bring about equality of treatment and opportunity throughout the three Services.

Since the Report was submitted, the Armed Services have been called upon by the United Nations to defend the right of small nations to be free from aggression, and they have made a demonstration of improved military efficiency.

The people of our country have shown that they are united in their willingness to accept this grave responsibility, and are enthusiastic in their devotion to the integrity of the United Nations. We Americans will always be eager to develop in our own lives the same ideals of human dignity and individual freedom we are so vigorously defending on behalf of the United Nations.

The country is grateful for the work of this Committee, and I am particularly appreciative of your faithful service as Chairman.

Very sincerely yours,

/S/ Harry Truman

Honorable Charles Fahy,
Judge, United States Court of Appeals
for the District of Columbia,
Washington 1, D. C.
October 16, 1957

Dear Mr. President:

In accordance with our recent correspondence there is going forward to you today by Railway Express Agency a box containing a considerable quantity of papers which accumulated in my hands as Chairman of your Committee on Equality of Treatment and Opportunity in the Armed Services. These are in addition to the files which accumulated at the offices of the staff of the Committee in the Pentagon. I have initiated some inquiries about the possibility of the latter also being lodged in the archives building which you have established in Independence and hope that eventually this can be done. I am mighty glad that you are willing to receive the papers which I am sending.

I hope you are in good health and are enjoying this lovely season of the year.

My kind personal regards and best wishes to you in all things.

Yours sincerely,

Charles Fahey

The Honorable Harry S. Truman
Independence
Missouri
HARRY S. TRUMAN
Independence, Missouri
February 3, 1958

Dear Judge:

Your contribution to the Library came in good shape and those papers will be placed in the files where they will improve the historical background of what was done.

I am as sorry as I can be that we have been so slow in acknowledging their receipt.

I talked to Dr. Brooks about them this morning and he told me they have been received and that they were stored in my private locked file room but that they eventually would be indexed and placed where they would do the most good.

Sincerely yours,

/s/ Harry S. Truman

Honorable Charles Faby
5500 Chevy Chase Parkway
Washington 15, D. C.
ARGUMENTS I MADE DURING THE SUPREME COURT CASES FOR THE UNITED STATES:

1932 Term — NLRR

NLRR v. Jones & Laughlin Steel Co., 301 U.S. 1
NLRR v. Fronhaufer Trailer Co., 301 U.S. 49
NLRR v. Friedman Mercantile Co., 301 U.S. 58
Associated Press v. NLRR, 301 U.S. 103

1932 Term — NLRR

NLRR v. Pacific " " " " 303 U.S. 272
Santa Cruz Fruit Packing Co. v. NLRR, 303 U.S. 453

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Aluminum Company of America (1943 T.), 148 F. 2d 416

U. S. v. Montgomery-Ward & Co., Inc., et al. (1/27/45)

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ERRATA

The house in Rome and the present Store Building were not both built in 1893. The Store was built in 1895. I think 1893 is correct for the home. (p. 2)

The priest whose discourses had primary responsibility as far as we know for Mother's conversion was not a Dominican but a Redemptorist – Bishop (?) Gross. And the discourses were at the Opera House.

I say that Philip Levy was then with Senator Wagner. This I think is a mistake. He was on the old Board staff and in that capacity assisted Senator Wagner. He remained with the new Board as a valuable lawyer, later, however, going with the Senator. (p. 90)

At p. 93 "Reed" should be substituted for "Jackson" as Solicitor General.

At p. 305 the meeting there referred to is mistakenly placed in September. It was December 27, 1949.

The name "Armstrong" at p. 302 and p. 306 should be "Major Fowler". In the Index the reference to "Armstrong" at those pages should also be "Fowler".