

Charles S. Rhyne

**WORKING FOR
JUSTICE IN AMERICA
AND
JUSTICE IN THE WORLD**

**WORKING FOR
JUSTICE IN AMERICA
AND
JUSTICE IN THE WORLD**

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An Autobiography by Charles S. Rhyne

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WORKING FOR JUSTICE IN AMERICA AND JUSTICE IN THE WORLD

UNDER RULE OF LAW
PROVIDING
EQUALITY IN INDIVIDUAL HUMAN RIGHTS, FREEDOM, JUSTICE
AND
ORDERLY, PEACEFUL WORLD-WIDE RELATIONS
AMONG NATIONS AND THEIR PEOPLE

PUBLISHED AS A TRIBUTE TO LAW LEGENDS OF THE
20TH CENTURY, SOME OF WHOM ARE NAMED HEREIN,
FOR THEIR CONTRIBUTIONS TO RULE OF LAW JUSTICE
IN AMERICA AND JUSTICE IN THE WORLD

MY LAW LIFE JOURNEY IN WORDS
PHOTOGRAPHS AND CARTOON ILLUSTRATIONS

AN

AUTOBIOGRAPHY

BY

CHARLES S. RHYNE

**WITH MOST LOVING MEMORIES,
FOR MY FAMILY PAST PRESENT AND FUTURE.**

I am thankful for the strong work ethic and religious beliefs they instilled which have driven my life and the happy inspiring home life they have provided. My family appreciation could not be at a higher level as I observed with pride this morning the confident look on the faces of our teenagers who loaded with huge heavy backpacks on their small backs took off for their schools. There, I am confident they are learning the basic education which will create wonderful lives for them in our ever more wonderful World of Tomorrow.

DEDICATION

I dedicate this Volume to my friends and colleagues of the legal profession and the non-legal leaders who have cooperated and participated in the law experiences, events and public service programs portrayed herein. The term legal professional as used by me includes lawyers, Chief Justices, Justices, Judges, and law professors. They provided much of the record I describe. Their dedicated co-operative pro bono publico endeavors have helped make ours a better World to live in, a World where there is now almost universal recognition and support for human rights, equal justice, and individual freedoms under law, with peaceful relations within and among Nations, based on an ever-strengthening of the rule of law.

ACKNOWLEDGEMENTS

In the years which have produced this Volume many persons have been of great assistance. These include the publications, records and staffs of the following to whom I state my thanks: Libraries of former Presidents of the United States; National Institute of Municipal Law Officers (NIMLO); United States Conference of Mayors (USCM); American Bar Association (ABA), The American Bar Foundation; The World Jurist Association and Other Associations of the World Peace Through Law Center (WPTLC); the Historian of the United States Senate and the Historian of the United States House of Representatives; Duke University, Duke Law School Dean Pamela B. Gann and Alumni Association; and George Washington University Law School Dean Jack Fredenthal and its Alumni Association.

Throughout my work on this Volume my lawyer son William S. Rhyne, who has shared a major part of my litigation experience, has performed great services on the Litigation Chapter. I am most grateful to his wife Christine. Her career as a school teacher qualified her highly to read and correct, as she did, much of this volume. Her suggestions have been most valuable.

To David J. A. Hayes, Jr. Executive Director of the ABA, I owe special thanks. He has been personally most helpful in checking ABA resources. My special appreciation and thanks to Margaret Henneberry, Executive Vice President of the World Jurist Association of the WPTLC, and staff members secretary Dolly May Taylor, historian Robert Castellani Theiss and information specialist Juergen Kleffner. They have patiently dug up old and recent records for me. Judge Benjamin L. Brown,

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former Executive Director and General Counsel of NIMLO, has been most helpful as has NIMLO Deputy Executive Director, Veronica Kleffner, in digging up current or old NIMLO records. In winding up the project which is this Volume, my law clerk Martha Michael deserves special words of appreciation. She did much of the work on the Index.

I want to make clear that all mistakes herein are mine. I have cited sources in the text where I thought they were needed. Sources have included bound copies of court briefs and records, a large number of speeches and articles, also in bound volumes, plus 19 huge newspaper clipping volumes assembled by ABA over the years and sent to me.

There are many unacknowledged but most helpful information sources. Some of the persons who I have named herein and many more who have shared in my career and who I should have named, and would have done so, but for the limitations of space. I am grateful to all of them. They made my some five years of research, checking and writing much less burdensome than they would have been.

Charles S. Rhyne

INTRODUCTION

"The life of the law has not been logic, it has been experience." Justice Oliver Wendell Holmes, Jr., The Common Law (1881).

I believe the Table of Contents demonstrates where my law career has led. Here I do this introduction to mention some of my experiences and purposes while working with others for "Justice in America and Justice in the World," under the rule of law. I intend this introduction as giving a reader a glimpse of some items of the more detailed account of my career. I use it as a substitute for the usual forward and preface due to the unusual portrayal of so much about so many in my story devoted to the law.

My life has spanned a major part of the 20th century. I was born into a world consumed with the horrors of World War I. My father's farm was near Charlotte, North Carolina. It adjoined Camp Green where thousands of young Americans were given a hurried soldier training then shipped to Europe as "90 day wonders." Daily from dawn to dusk some of them were marched at a fast pace on the road in front of my home singing "over there, over there the Yanks are coming, the Yanks are coming over there." In the soldier rush to catch a train, or a boat, when ordered overseas, my father and mother were often hurriedly given the belongings of many of them with a request to ship those to their homes. Almost instantly it seemed, their relatives sent thank you letters for that act with many letters reporting a horrible death, or serious injury of the soldiers.

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As a child I was exposed to a highly nationally publicized murder trial. The soldier son of our nearest neighbor had married a New Jersey girl while doing army training there. He brought her to the home of his parents. After a quarrel she killed him by cutting his throat with a razor. My father and I, responding to his mother's telephone call, were the first outsiders to arrive at the death scene. We were summonsed to testify at her trial where the death penalty was sought. I was ruled by the judge to be too young to testify but my father did. I was allowed to attend the trial where great lawyers fought for many days. After a highly emotional trial the defendant was acquitted by the jury. I had received my first experience in American justice and had made my decision to become a lawyer.

The "Great Depression" which began in 1929 swept me out of Duke University onto a rather "wild west" ranch in Wyoming. Fortunately for me the unusual ranch library had Blackstone, Holmes and other law books. I read and reread these during the long terribly cold Wyoming winters which bound me inside the ranch house most of the time.

I then married Sue Cotton of Wyoming, and re-entered Duke where I earned my BA degree and one year law school credit. In law school I sat beside Richard Milhous Nixon. Due to a hand injury I spent much of that year in Duke Hospital. I sometimes missed classes because of operations on my hand. Nixon would visit me in the Hospital to brief me on what happened at the missed classes. Thus was born a lifetime friendship with him.

I was lucky while in Washington at George Washington University law school to be employed by a great trial lawyer, the United States Conference of Mayors (USCM) and the

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National Institute of Municipal Law Officers (NIMLO). USCM President Mayor Fiorello La Guardia of New York City was one of the most able and dynamic persons I have ever known. He worked constantly with President Franklin Delano Roosevelt (FDR) on almost all phases of FDR's "New Deal" and World War II programs. He and Paul Betters, USCM Executive Director, unloaded so much work on me I resigned from my trial lawyer assistant job to get USCM and NIMLO work done. For years, I was moving from municipal crisis to municipal crisis during the era of the increasing urbanization of America and increasing Federal controls due to FDR's "New Deal," and World War II with vast defense and related programs which had great impact on municipalities. I drafted model Blackout and Bomb Shelter ordinances, acted as counsel for the Federal Office of Civil Defense and wrestled with a vast multitude of unique legal questions created by the War.

I found myself when just out of law school as counsel for municipalities in an important U.S. Supreme Court case. Not having the required three years experience for admission to the Bar of that Court, I had to be admitted by special motion.

The Court granted me permission to argue the case Pro Haec Vice. The Court then decided it did not have jurisdiction due to a cleverly devised FDR Executive Order eliminating the Bituminous Coal Commission which had been sued by my city clients challenging coal price fixing without required public hearings and other orders.

FDR's U.S. Solicitor General Robert H. Jackson drew up the plan to prevent the "Nine old men," (as FDR called the then members of the Supreme Court) from making a decision on the merits. The Executive Order wiped the

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Coal Commission out of existence. My city clients were happy with the results.

I moved on to represent municipalities and others in cases before the U.S. Supreme Court and other Courts. The Phillips Petroleum Supreme Court case involved billions in rate overcharges by so-called independent producers and gathers of natural gas. I not only won in the Supreme Court but won two White House arguments before Presidents Truman and Eisenhower for vetoes of bills passed by Congress nullifying such Federal rate controls.

I also won for city voters Federal Court enforcement of their constitutional right to equal votes in Baker v. Carr, the decision came after two arguments before the Court with Justice Frankfurter as my chief interrogator. He was vigorously defending his earlier decision denying Court enforcement of equal votes as a "political thicket" courts should not enter. This Court-enforced reapportionment decision required equal population voting districts to create equal votes and thereby remade the Political map of our Nation.

I am proud of my career as a litigation lawyer and hope you will read what I have written about it. It was the foundation which enabled me to spend so much of my career in the pro bono publico public service I portray. Mine has been a travelling career, national and international. Nearly everywhere legal professionals, and others, have said to me that my success in winning landmark U.S. Supreme Court decisions gave me a status nothing else could provide. They admired that Court and they are also amazingly up-to-date on its decisions.

By happenstance, while representing La Guardia, in 1937 I met the great lawyer and

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President-to-be of the American Bar Association (ABA) Arthur T. Vanderbilt. He stated my value to him was my municipal contacts.

Vanderbilt had a very ambitious ABA Presidential program to reform the entire State Court Justice system of America. He had the famous dynamic Federal Judge John J. Parker running his state court program for all state courts except traffic and small claims courts. The latter he assigned to me. He assailed these as disgraceful "courts" where enormous injustice prevailed. A place where political bosses fixed traffic tickets and shared in traffic violation fines imposed by Justices of the Peace, who were their appointed uneducated henchmen. Millions of Americans got their only experience with state court justice in Justice of Peace Courts. By a massive nation-wide ABA "grass roots" program we worked for justice in courts hearing traffic violation and small claims. Great cities and large counties worked hard to win highly publicized ABA Awards for creating justice in these courts. They were then and are now the only courts millions of Americans ever experience. "Fix-less" traffic tickets and law trained Judges were and are the major result. I sadly report in my review herein that ABA's spotlight on justice in these crowded courts, has grown dim as ever increasingly millions pour into these courts.

Having started on my ABA career I now pause in this introductory commentary to set forth facts demonstrating change in ABA as a constantly growing organization. David J.A. Hayes, ABA Executive Director Emeritus in a letter dated May 29, 1995 advised as follows: In 1937, when I became an ABA member, membership was 29,396, and total income was

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\$180,381.47. In 1957, when I became President, ABA membership was 88,396 and total income was \$1,874,163.73. In 1994, the latest year record, ABA membership totalled 370,479 and total income was \$168,257,000. ABA's growth is due to its public services and its services to the legal profession.

My ABA story then moves to the ABA programs in the 1940's to create Federal agency justice. I participated in hearings before Congressional committees, and in the courts, to put an end to the denial of justice by Federal Agency control of their administrative hearing examiner decisions. The Administrative Procedure Act and creation of independent Administrative Law Judges (ALJ) provided a real judicial check on this Federalized blot on justice in America at a time when Federal Agencies moved into life in America in a large way.

I next moved into the international field as Chair of what is now the International Law and Practice Section. There the big need soon after World War II became finding a way to end the "Cold War," to avoid nuclear conflict which could destroy humankind. The Soviet Union had taken over nation after nation and was using its nuclear power to create the threat of conquering more and more of the world. My municipal law field was flooded with "loyalty oath" demands. At this time I was also working constantly with municipalities on elimination of discriminations based on race and color. The law demands on municipal government in other areas also multiplied as did my work for these governments.

As my record shows I was moving up in ABA leadership positions and developing ideas on international as well as municipal, state and national issues and problems. I also won a

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great international law decision McCulloch v. Sociedad, in the U.S. Supreme Court case upholding "law of the flag" control aboard sea vessels.

I opposed the isolationists who for some years attempted to dominate ABA. I developed ideas by a program of speeches dwelling on the public service duty of the legal profession to undertake a leadership role on the great issues of the day. I urged that the increasing and expanding strength of the rule of law as a credible substitute for force was the way to defeat communism.

Anticipating my move up to ABA Chair of its House of Delegates, where I would become chair of the Administration Committee of the Board of Governors in charge of the 1957 London Meeting, I sought the views of others on the program for that meeting, such ideas as the Magna Carta Memorial and the necessity of ABA reaching out to the legal professionals of the World in a world-wide cooperative search for ways and means to use the concept of the rule of law as the path which could end the "Cold War."

My position as Chair of the Administration Committee enabled me to help move the London Meeting to a focus on the then international scene and its issues. Out of these efforts, the ABA was moved to take a giant step in London toward organizing the legal profession of the world in support of World Peace Through Law. This move was made in London in 1957 carefully with Thomas E. Dewey, Chair of a Special Committee, to test the feasibility of the idea.

My success in erecting the Magna Carta memorial, and in creating Law Day USA, with a President Eisenhower Proclamation, was followed up by Eisenhower Presidential speeches in support of the rule of law

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internationally as a substitute for rule of force. The ABA World Peace Through Law Program moved from ideas into action. Here again we moved carefully through ABA United States regional meetings to firm up national support and then through Continental Conferences to test world-wide reaction.

With the unique first of their kind continental conferences providing tremendous world-wide support, that program moved into the also unique and first of its kind Athens World Conference on the law of the world and the sixteen biannual world conferences on the rule of law which have followed.

The support of the legal profession of the world, and the hundreds of Head of State messages of support to the Continental and World Conferences which their law professionals secured, have been a major factor in the world-wide turn to functional democratic rule of law government within nations and the principles and processes of the rule of law in international relations. These conferences and the World Peace Through Law Center and their associations have kept a constant world-wide spotlight on the present and potential future values of the rule of law nationally and internationally.

The summary presentations herein of the lead up to and carrying out of 16 World Conferences indicates the extent of world-wide support of the rule of law. While it will take decades to do the implementation and the required almost constant updates, no one can deny that the work is underway with world-wide governmental and public opinion support. Reform and update of the United Nations (UN) is called for and undoubtedly will come. The rule of law program described herein is not an anti-UN program. This program has emphasized the good which UN has

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achieved and its needs for an update, and reform of, its efforts.

I emphasize that what I have recorded in this volume on strengthening and expanding the rule of law nationally and internationally is essential in a World where human achievements have shrunk nations to neighborhoods, a World where the horrors of even the small wars of our day can be witnessed in the homes of nearly everyone on Earth. Those Television pictures strengthen my belief that the rule of law is not only the road to peaceful life within and among nations, it is the only credible concept which can accomplish this great achievement.

I should report that many of the thousands who have participated in the events, experiences and public service programs I review in summarized fashion have urged me to write this volume as a record of what has been done cooperatively by legal professionals in moving the concept from dream into reality. I hope these co-workers from nearly every nation on Earth will agree that I have performed this task.

In performing this task of which I write on expanding and strengthening the rule of law, I believe I have looked into the eyes of legal professionals from nearly every nation in conferences, meetings and in visits to many of their nations.

I hope I have described in summary form that which has occurred and that which must occur. In sum, each World conference has pushed the World forward toward peaceful nations and peaceful relations. As one major element, these conferences over their nearly four decades have made friends out of strangers in the legal profession world-wide. That profession must take a leading part in developing rule of law. Despite the constant

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work of national governments in World trade and other areas much remains to be done. I do not gainsay that it will require constant ongoing efforts to get a rule of law infrastructure in place in many nations and to create and keep in place an infrastructure internationally.

Those who have worked cooperatively on World Peace Through Law have received many commendatory expressions from all over the World. I want to conclude by quoting a thoughtful and kind letter I received from Sir Moti Tikaram, Acting Chief Justice of Fiji as illustrative. To me his letter indicates that we who have labored to help create peace through the rule of law are succeeding in getting our message out to the World.

CHIEF JUSTICE'S CHAMBERS,
HIGH COURT,
SUVA,
FIJI.

30 October, 1991

Mr. Charles Rhyne
Retiring President - World Jurist Association
Suite 202, 1000 Connecticut Avenue
N.W., Washington, D.C. 20036
U.S.A.

Dear Sir:

I am writing to join thousands of others in expressing my appreciation for the outstanding service that you have rendered to promote peace through law over the past half a century. It is an enviable record of leadership. My only regret is that I have not had the pleasure and the privilege of meeting you personally. I am sure by the time this letter reaches you, you will have been appropriately honored by the World Jurist Association at Barcelona. In the meantime may God grant you peace, contentment and serenity in your retirement and may your guiding hand remain with us for many many years to come.

Yours sincerely,

Sir Moti Tikaram
Acting Chief Justice

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- C. Bowman Transportation v. Arkansas Best Freight System, 419 U.S. 281 (1974): Winning U.S. Eastern Motor Truck Carriers Right to Cross Mississippi River to serve U.S. West
- D. National League of Cities v. Usery, 426 U.S. 833 (1976): Federalism Upheld 5 to 4 Rendering National Labor Relations Act unconstitutional as applied to states and cities. Reversed by 5 to 4 Vote in Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985)
- E. McCulloch v. Sociedad Nacional De Marineros De Honduras, 372 U.S. 128 (1953): International Law of Flag Governs Employment Relations Aboard Sea Vessels
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- G. CSR and wife Sallie with His Majesty Juan Carlos of Spain. Madrid 1979.
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- O. Chinese Cultural Performances. Some of China's most accomplished performers presented folk songs, opera scenes and soloists, acrobatic stars and dancers in a tremendous evening of entertainment. Beijing 1990.
- P. USA commemorative stamp honoring World Peace Through Law Program as workable citing successful mail delivery in all nations under Universal Postal Union as "Prime Example" proof."

CHAPTER 1
EARLY YEARS

Youth on Farm - World War I Impact - High School
Graduation Age 14

I was born on a farm now part of the City of Charlotte Airport in Mecklenburg County, North Carolina, on June 23, 1912, eldest son of Sydneyham Sylvanus and Mary Wilson Rhyne. My sisters and brothers were Ruth, James, Max, Brice, Inez, and Ashby. I grew up working on the farm, milking cows, slopping pigs, feeding horses and mules, planting cotton, corn, sugar cane, wheat and cultivating all of these and other farm produce and harvesting them. When the boll weevil ruined cotton, we raised all kinds of vegetables for sale to grocery stores and others. My Father also Tuesday and Saturday each week sold butter, milk and farm vegetables on a route of private homes in Charlotte. We all worked hard, but had fun doing it. We lived adjacent to Camp Green which had been hastily erected to train World War I soldiers. The soldier training noises, orders and marches began my first lesson in the horrors of war.

The first major memories of my childhood are of squads of soldiers marching around the quadrangle road which came down from Camp Green past our home for about one-quarter of a mile, then up the road to the left to the road which passed my Uncle Henry and Aunt Minnie's home, on up to the Sommerville's house where it turned left again, past the Freeman's, on back to the road to Camp Green. The soldiers, about 4 to 6 abreast, marched very fast singing loud songs in time with their steps, such as "Yankee Doodle", "The Yanks Are Coming Over There" and others.

The marches came very soon after the Army bugler's shrill tune broke the morning darkness. The bugle song would go something like "toot to toot, toot to toot to, toot toot to to", followed by a loud song, usually, "Soldiers!! You are in the Army now. You are not behind the plow. Get up, get up, you lazy bums and eat your Army chow."

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Then came the usual wake up blasts of farm roosters who seemed to resent the buglers. From farm houses all around us, the roosters would crow as loud as they could, seemingly to outdo the bugler and all the other roosters.

These sounds meant it was 4 a.m. and everyone on the farm had better get up and do their assigned chores from feeding mules and horses to chickens and pigs. From about 5 or perhaps a little younger, I would milk a cow or more as I grew older. The penalty for not getting out of bed quickly would be to have my Father throw cold water on you. Once that happened, none of us dared oversleep and get hit by the water.

Across the road from our home, in one of Uncle Henry's prior cotton fields, the soldiers erected their bayonet practice field. Poles were put in deep holes and about 4 foot arms were bolted onto them. Bags or bundles of cut up limbs of trees were tied together and hung from these arms. Soldiers with bayonets on rifles would run about 50 feet or more and stab their bayonets into the bundles.

Soldiers from the North were sent South and Southern soldiers were sent North for training. They were sent overseas after about 90 days of training. We were told their phrase of "90 Day Wonders" came from this short training period.

We made many friends among the soldiers. When the orders came to leave for Europe many soldiers did not have time to wrap and ship personal things to their homes, mostly in New York and New Jersey. Some would bring their possessions to my Father or Mother and they would ship or mail them to their homes. I awoke many mornings to see piles of soldier possessions on our front porch, with detailed shipping instructions attached.

It seemed almost like the same mail bringing letters of thanks for this task, of shipping a soldier's possessions to his home, brought the sad news from relatives that many of the shippers had died or were injured in battle. This flood of war deaths and injuries is indelibly in my mind forever.

One night my Father was counting money received

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that day for cotton on a desk located in the bedroom. I was sitting up in bed when I heard a muffled sound and Dad fell off his chair clutching his head. He had been shot through the window by someone using a muffled gun, I learned later. I screamed, awaking my Mother who was sleeping in another bed in the same room with my sister Ruth. It seemed that the whole yard, and most of the of the area surrounding the yard, was almost immediately filled with Soldiers from Camp Green. My Mother had grabbed the telephone and informed the operator of the party telephone line, which was shared with many of our neighbors, to tell everyone to please hurry and help. An ambulance, from Camp Green's ambulance service, arrived to take Dad to their Soldiers' Hospital. Aunt Minnie and Uncle Henry arrived from their home right across a large field from ours. The General in charge of Camp Green arrived on his beautiful speckled white horse.

The Sheriff of Mecklenburg County and his aides fought their way through the Soldiers, just after they parted as if by magic, to let the ambulance take Dad to the hospital. Rob Thompson, a sharecropper on Dad's other farm near Mulberry Church, and his wife arrived and took charge of us children. Our Mother was taken to the Camp Green Base Hospital to be with Dad. My Grandmother Virginia Wilson and Grandfather James Wilson arrived from their home in Steele Creek. As usual, Grandmother "Vergie" took command of everyone and everything.

Their Commander soon cleared the Soldiers out and informed everyone that Dad had been shot in the temple of his head and that he was alive and would live. The Sheriff and the Camp Green Commander tried to find the person who shot my Dad, but never did. Dad was in the hospital for what seemed to me to be a long time. I heard that Army Doctors took the bullet out of Dad's head and he fully recovered. He did bear an awful scar made by the bullet, until his death many years later.

With the above background, I have always hated war and always hoped and prayed that in some way a method to end war would be developed.

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My World War I experience and my brother Brice's letters of death and wounds, at his posts in the front line in World War II, have been a driving force on me in so much of my efforts chronicled herein, to find a substitute for force that would end war. As my knowledge of law developed, I have hoped and prayed for that glorious day when the Law system would be strong enough to extinguish the War system. I welcome the turn to the law of recent days, due in part to the worldwide efforts through organized cooperative work of legal professionals of all Nations to build a law system strong enough to end wars. I have been at the forefront of that effort and though it has achieved much progress, it has not yet built a law system strong enough to end the countless deaths in countless wars - large and small. I will write of this worldwide effort of legal professionals to cooperatively substitute law for war, as the greatest achievement of the 20th Century later herein.

I started school when I was six years old, walking about three miles to Big Springs School with my Uncle Henry and Aunt Minnie's girls Mabel, Eunice, Alma and Irma. The school, the year of my entering the first grade, had about 80 students in the eleven grades at which North Carolina law required attendance.

Miss Dewell Marshall taught all eleven grades in the one-room schoolhouse. I then went to Mulberry School which had two rooms and two teachers, and graduated in May, 1927 from a new Berryhill consolidated High School, one month before my fifteenth birthday. There, each of the eleven grades had its own room and own teacher. At graduation time, my grades were number 2 in average in the class by 1/10 of 1%, much to the shock and surprise of Nordica Jamison, who was found to be number 1, and everyone else involved. The confusion was caused by the putting together of her grades and mine in prior different schools we had attended, which were finally consolidated into Berryhill. The morning of my graduation day in May, 1927 (the early date was to accommodate farmers who needed their children for

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early farm work) I was told to turn my Valedictory Address into a Salutatory Address. I went out of the classroom, sat on a ditch bank behind the school and did so. Nordica was a brilliant student. She decided not to speak at the graduation exercises, since the last minute notification gave her no time to prepare a Valedictory speech.

My mother died on December 26, 1924, one day after Christmas, from pneumonia when I was 12. When my father remarried, he advised me to get a job as soon as I graduated from High School and move out, as there was no room for me to develop a career on the two farms he owned. I told him I was going to college and become a lawyer. He wished me well but said he had to raise the other children - the five others by my mother and three by his new wife, Essie. He said he could not help me and I accepted that. I began writing to various Colleges and Universities. Duke University was the most encouraging, so I decided to go there in the Fall of 1928, after working in Neal's Grocery and for Western Union as a bicycle messenger boy to earn and save the money needed for tuition at Duke University. I planned to get a job at Duke to earn my food and other essentials.

Entrance to Duke University in 1928: Departure Due to Great Depression

In early September 1928, my Uncle Harry Wilson drove me to Greensboro and I went by bus from there to Duke. When I arrived at Duke I was, along with the other freshmen, welcomed by the football team, who were sitting outside the Union Cafeteria Building as I walked onto the campus. Male freshmen were ordered to "duckwalk" halfway around the campus circle, then at the yell of "Go!" race to see who would arrive last and get paddled by the football players with a large paddle.

Henry Kistler, my cousin, was the Captain and a tackle on Duke's football team. He recognized me and took me to his beautiful room in the new dormitory section next to the Duke Chapel, and later to my

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dormitory, Branson Hall. The freshmen were required to come in one week early and the football team members several days before that. I was only 16 and scared. I had never been away from home before. Pat Rochelle arrived at the dorm that night and asked, "Who are you?" I said, "This is my room," and he said, "It's mine, too. You take the upper bunk." Since he was over 200 pounds and I was about 160, I didn't argue. Both of us had trunks to unpack and get settled.

From photo albums Pat unpacked and showed me, I quickly learned that he was from Charleston, West Virginia, and had been the Captain of his high school football team. His Father was a Methodist Minister. I told him I was a farm boy from Mecklenburg County. Soon Jimmy Dehart, coach of the football team, Kistler and others came in. I learned then that Pat was a "special" recruit - an outstanding football player, baseball player and basketball player. They obviously welcomed his arrival. My cousin Henry Kistler said a few personal words to me about a campus tour he would take me on the next day. He did not know me well but had seen me several times at his Father's hardware store in Charlotte with my Father.

Duke's student body was made up of approximately 1500 men and 100 women when I entered in the Fall of 1928. The University had just received 40 million dollars from James B. Duke and had changed its name to Duke from Trinity.

I also soon discovered that Pat was no student and that he appreciated having what he called a "brain" as a roommate. When he learned that I had started in a country school where Miss Dewell Marshall taught eleven grades in one room, he was shocked and I am sure he downgraded his brain estimate.

When I graduated from high school, we had a basketball team that played on an outdoor court, as well as a baseball team that did well; Pat was not impressed. I went to see the freshmen football team play the Varsity in practice and saw that Pat could beat most of his opponents. He was quarterback, linebacker, and a mean tackler. He was very strong

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and rough. He played both offense and defense, as did all football players then. He was clearly one of the best players on the field and he let everyone know it quickly, by his actions and his confidence in himself.

Duke was full of Choate, Foxcroft and other bright boys and girls recruited from the elite Eastern schools for the new Duke campus, which was to house 4000 men, with approximately 1000 women taking over the "old" campus. Pat and I visited the new campus and new stadium, which Duke dedicated in 1929 in a 52 to 7 loss to the University of Pittsburgh. Pittsburgh went undefeated that year, but lost the Rose Bowl to Southern California. Duke announced the hiring of Wallace Wade, Alabama's great football coach, who had won Rose Bowl games for Alabama. He was to begin coaching in 1930, following the opening of the new campus.

I got a job delivering the Durham Herald. I also got a job in a boarding house, washing dishes for my meals.

Academically, I did well and Pat did poorly. I began to help him and other football players. Duke's first quarter grades had me on the upper part of the Dean's list. Pat was near the bottom, as was Freddie Crawford, later Duke's first All-American. I helped Freddie and other football players with their studies just to be with football players.

I continued to grade high and Pat got "Dumpy Hagler", football line coach, to issue me a uniform. Coach Hagler then told me to go to the end of the football field and learn how to fall on the ground without hurting myself. At Pat's insistence, Freshman Coach Eddie Cameron tried to make me into a football player. Eddie was a great teacher, but in my case he failed as he had the youngest, most inexperienced kid at Duke. I was pushed around in Varsity and Freshman scrimmages.

I heard almost nothing from home. I did "hitchhike" rides in highway cars (the then proper male college mode of travel) home several times, but the relationship between me and home gradually grew apart. When I sent my grades and a photo of myself

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in a football uniform, I expected words of praise that did not come. I buried myself in college work. I started to work part-time in the Duke Union for my food and began part-time work for a contractor, William Muirhead, who repaired Liggett & Myers tobacco factories and warehouses. He also did work on the new Duke campus and roads around the area. I got 15¢ an hour as a laborer and carpenter.

At the end of Duke's first year sessions, I went with a Duke senior, Joe Savage, President of the student body at Duke, to West Virginia to sell Bibles. It was a tough summer, as the Great Depression was in full force and no one wanted to spend money on Bibles. I preached sermons in the backwoods mining villages of West Virginia. I tried to sell Bibles that way. The preachers let me do it in their Churches, but the people were too poor to buy Bibles.

I returned to Duke almost flat broke, but on the basis of my grades, got a tuition loan and worked in the Union for my meals. The football players got free tuition, I believe, but no free food so Pat worked in the Union also.

Pat drank a lot but was a good poker player when sober. I would borrow a few dollars and he would then go up to the "rich boys new dorms" to win some of our food money and did well in that endeavor. A ready source of loan money was Albert Fossa, an Italian whose family had been run out of Italy by Mussolini. Fossa had managed to hold on to some money and lived in Branson Hall. He also gave us free haircuts. I taught him English. Unfortunately, he told me around Thanksgiving 1929, that he was broke. He sold his Italian car and left Duke. Due to the Great Depression, many others were leaving as well, and although my grades were good, I decided that I, too, had to leave Duke. Another good friend, a senior by the name of Vernon Altvater, whose father Fritz Altvater, was Director of Parks and Playgrounds for the City of Denver, Colorado, as well as owner of the York Truck Sales Company, told me that if I could get to Denver, his Father would give me a job. He gave me a letter of introduction to his Father, as well as

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\$15.00 to buy food and get lodging on a hitchhiking trip to his home out in Denver.

I packed my few belongings, sold my books and trunk for \$5.00, and set out for Denver. I was lucky in getting rides and by washing dishes at cafes along the way I earned my food. I spent the night at rooming houses for about 50¢ a night. I did stay at a farm for a few days, or ranch as they called it in Kansas, and worked for my bed and board. I was anxious to save my few dollars, as jobs were practically nonexistent in those days of the Depression.

Arrival in Denver, Colorado: Departure Due to Boxing Defeat

I arrived in Denver in about a week and asked where City Hall was and was directed to it in an old building on Cherry Creek. I walked into Mr. Altvater's office where on the office couch lay the Denver Post for that day headlined "Altvater Resignation Demanded for Selling York Trucks to City." I asked to see him, giving his office receptionist my letter from his son. The receptionist flatly and firmly said no, that he was seeing no one. His office was full of press and other media people, as well as job seekers.

I departed and walked down Larmier Street, where a large sign in front of the old Windsor Hotel said, "\$5 paid for 3-round workouts with boxers. Apply second floor." Having been on the boxing squad at Duke, I went up the stairs. At the top of the stairs was a large room full of typical boxing equipment - and sweat odor. A "busted", scarred face man asked, "What do you want?" and I replied that I wanted the \$5 for a workout. He asked about my experience and I said training under the toughest boxing coach in the World, Duke's Tex Tilson. He said all they had was a workout with George Manley, the second ranked light heavyweight in the World, who was preparing to fight Slapsie Maxie Rosenbloom for the World Championship. He added that Manley had knocked out all his opponents, as well as those stupid enough to work out

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with him, so no one wanted to. I asked Manley's weight and he said about 175 pounds.

I agreed to go three rounds with him, piled my clothes in the corner of the room, and put on a borrowed jockstrap and boxer trunks. I then had Manley pointed out to me. He was warming up on the light and heavy bags and skipping rope. I jumped rope a little and was then told that Manley was ready and my warm-up must end. "Get in the ring now!"

Manley looked at me and had the meanest "killer eyes" I had ever seen. While my knees probably shook, I really felt no fear, as I had worked out with Don Hyatt, Duke's light heavyweight and great football player, who I outran backwards, much to his disgust. I had also worked out with Phil Bolich, a Duke light heavyweight and with Duke's then captain and then middleweight Southern Conference Champion, Johnny Carper, who had won nearly all his fights by knockouts. He had only managed to split the skin above my left eye with a head butt.

An in-house referee called Manley and me to the center of the ring and asked if we were ready. I asked for, and got, a (much) used mouthpiece. Manley said he needed nothing. The referee motioned and yelled, "Fight!" Manley charged at me and I sidestepped him, obviously making him angry. He whirled and I ducked under his round swing and hit his jaw with my left fist and I think I buried my elbow in his stomach. He fell backwards full length, cracking his head on the ring cover. My elbow had knocked the wind out of him. Suddenly, the ring was crowded. Manley got up very groggy and angry. I evaded him for two rounds and was fast on my feet running backwards.

"Reddy" Gallagher, sports editor of the Denver Post, was there at the ring and grabbed me and had my photo taken, saying that it looks like we have found a "good one". He asked my age (I was 17) and my background. He arranged for me to do three rounds with a heavyweight who made a lot of noise blowing through his oft broken nose, but was too slow to catch me. I hit and backpedaled for three rounds. He barely touched me.

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I got my \$10 and as I was leaving, Reddy Gallagher guided me to a rooming house where I bargained for a \$1 room. He then took me to dinner at the Denver Athletic Club where I met Peter Seerie and Frank Hoffman, two great boxing fans, and many other Denver greats. Here I also met Henry Lindsley, a young lawyer and a son of one of Denver's greatest lawyers. They talked about not getting my brains scrambled in the boxing ring, as did others. Seerie was a contractor and Hoffman a contractor and banker, both of whom hired me some 2 years later, as help in their contracting work as truck driver. I met others with Reddy at the older Denver club, who were to play major helpers to me later, like Congressman Lawrence Lewis.

I worked out about six rounds per day with boxers preparing for the big fight program or "card" as they called it, to be held within a few days in the Denver Auditorium. Then Reddy said that if I would work out well for three rounds with "Gentleman" Ham Jenkins (who was said to be the number 3 world middleweight), I would be on the upcoming "boxing card" featuring World middleweight champion Benny Leonard, trying to move up in boxing, against a big heavyweight from Argentina, and Slapsie Maxie Rosenbloom, World light heavyweight champion against George Manley and other ranking boxers. I was told I would be paid \$250 "win or lose" to fight in a preliminary bout. Naturally, I heard many stories of big money made in boxing then and was eager to be a great "fighter".

I was worried about the workout with Jenkins to test me, as I realized it would be a tough one. He was said to have only one good eye, but no one knew which eye was the bad one. He lived up to his reputation as a "gentleman" and for three rounds made a fool of me. I hung on but hardly touched him. I crawled out of the ring, got my clothes and my \$5, and ran down the stairs, refusing to talk to Reddy Gallagher. I knew I had failed. Only a 17 year old boy, who had suddenly seen his sudden dream of becoming a rich boxer wiped out, could realize my embarrassment. I wanted to get out of the Windsor

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Hotel and as far away as I could get, as fast as my legs could carry me.

I packed up my few belongings in the rooming house and walked to Highway 40, the road to the Rocky Mountains. I caught a ride to Idaho Springs, which was about 40 miles up into the Rockies. It was an old Gold Rush village of several run-down houses, a closed bank and a few stores. The hill-side around the town was pocked with failed gold mines and was called the "grave yard". Only a sulphur bath resort type hotel operation seemed to be alive and doing business.

The Westward Ho Hotel Bell Hop: On to Wyoming Ranch Job

At Idaho Springs, I walked up the main street and noted a sign that read, "Westward Ho Hotel needs bellhop." I applied and was hired at \$15 a week, plus tips. I was to sweep up, wait on tables and wash dishes.

Hotel "guests" were few and the owner, who claimed to be an exiled Irishman, had announced that he must close and sell the hotel as so few "guests" were using it.

Arrival at the Grey Butte Ranch

Among the few Westward Ho Hotel guests was a Frank Graham from London, England. He talked a lot to me about the ranch he had an interest in located in Wyoming. Later, I learned there were others who owned or had some interest in the Ranch. When he learned that the hotel was closing, he offered me a job on the Grey Butte Ranch, about 140 miles North of Rock Springs, Wyoming, and some 80 miles South of Yellowstone National Park.

I was to send written reports to Mr. Graham in Denver. I was to be paid \$65 a month, live in the ranch house (not in the cowboy bunkhouse), and eat my meals in the ranch house as well. Graham warned me about the ranch foreman, Pat Drummond, who, like most of the cowboys, had several names and spun wild yarns

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about where they were from and about their past. He was a rough and tough fellow, as I would find all the cowboys to be just as Graham described them to me. He advised me not to believe any stories told by the cowboys. He said he put some of their pay into a Denver bank and sent the balance to their wives, children and others. Graham said most of the cowboys could neither read nor write, and would pretend to be, or actually would be, on the "lam" from the law for crimes committed all over the Country.

The day after Mr. Graham had talked to me about about the ranch, the hotel owner fired me and said he had no money to pay my wages due. Mr. Graham gave me a bus ticket to a post office named "Pinedale", on the road from Rock Springs to Yellowstone Park and a few dollars of "eating" money. I passed through Cheyenne, Laramie and arrived at Rock Springs. I waited two days in Rock Springs for a Yellowstone bus and then went by bus to the Pinedale post office, a few miles South of Jackson Hole, a small but growing town.

The post office was a general store with living quarters and one room to let. I moved in to await someone who would be travelling the rocky, rut after rut, unpaved road, as described by the Postmaster in Pinedale, to the Grey Butte Ranch, then on to the other ranches, clear to Greely, many miles east of the ranch. The closest neighbors to the ranch were said to be about 20 to 25 miles, or a hard day's ride by horseback.

Finally, a man en route to a ranch beyond the Grey Butte stopped at the post office and agreed to let me ride in his topless old Dodge 2-seater as far as the ranch for \$10. I asked his name and he said, "Joe is enough." It was a rather silent 20 plus mile ride except for the noise of the car. The road was all the Postmaster had said it would be.

When Joe turned to me and said, "There's your ranch," I could hardly believe my eyes. The house was old and weatherbeaten, the largest building was the barn, and the bunkhouse for the cowboys looked like it was about to cave in. As far as one's eyes could see there were no other ranch houses.

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When I arrived, Pat, the foreman, and the cowboys were waiting for me. They said that all new employees or "cowboys" of Grey Butte had to prove their ability to ride a horse. I asked them to let me go into the house and change my clothes and said that I would be right out to ride the horse. Being raised on a farm, I had of course ridden many horses. But Pat said, "No, ride him now."

Mr. Graham had told me if I ever had trouble to ring him by phone, but the telephone was in the locked house. Pat, obviously drunk, told the cowboys to saddle up a horse for me to ride. Clearly, they wanted to prove that I couldn't ride a horse. By this time, a cowboy had led a rather nice looking saddled horse from the barn.

I put my little satchel down, put my foot in the stirrups and hit the saddle just right. The horse took a few steps and reared up and dumped me off. I got back on the horse. The same thing happened about seven times, if my memory serves me correctly. But as I started to mount the horse the eighth time, the saddle slipped a bit and I saw a burr which I pulled out from under the saddle and put it in my pocket. It appeared to be prickly wire. Since Pat and the cowboys were laughing so much and rolling all over the ranch lawn in their joy, they didn't notice my capture of the burr. I then got on the horse and rode him at a gallop all around the house and up and down the road. When I came in and dismounted, they said nothing. And I did not say a word. I had never seen a burr before but was young and tough and stubborn enough that if the horse had thrown me many more times, I would have tried to mount and ride him again.

I asked Pat for the key box which, I understood, Pat had sworn he would never open. They had obviously opened the ranch house, as the whiskey they were drinking was evidenced in empty bottles. Mr. Graham had warned me never to let them into the ranch house or the large "drink" cellar filled with liquor of all kinds. He knew I did not smoke or drink.

Chin Chin, the Chinese cook, who was to be my

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housekeeper, came up and was most friendly and helpful. He put coal in the stove to heat water for my bath (a sorely needed one), took my dirty clothes to wash and brought me a good chicken and vegetable dinner from the large store of canned food he was in charge of.

He handed me a bundle of letters addressed to him and various cowboys. Most of them could not read or write. Their letters were from wives, relatives and girlfriends, nearly all asking for money. Chin Chin's wife sent the most doleful letter of all. She was in San Francisco with their nine children and, due to the Depression, she was having a hard time getting by on half of Chin Chin's \$65 per month salary plus what she and the older children could earn. He had lost his job in San Francisco before coming to the ranch. My next days were full of getting acquainted, answering mail and writing letters for the cowboys. Mr. Graham phoned and I told him "all was well", so he said I should put Pat on the telephone. Pat told him of the "joke" played on me, but Mr. Graham was furious and asked why I did not tell him. I said I wanted to prove I could handle things without starting out crying to him for help. He said, "Admirable. Keep it up!" and hung up.

It was below zero at night and winter's first snow blew in. I learned that each of the cowboys were to ride out and throw down hay, from high stacks, to beef cattle only. I rode out with them one morning and nearly froze to death. I, on other such trips out, put on "long johns", of which there was a large supply in the house, and began to settle into the hard life on the range.

Housewarming - Western Style

Pat informed me, that prior to my arrival, they had accepted an invitation to a new housewarming the next day and I could go also. I put on my best, my only suit, and stood in the back of an old truck with the cowboys while we rode over a newly scratched out road through sagebrush, as high as my head, to the

new home of a Mr. Owens. It was packed. A man came over and offered me a drink out of the flask he had in his hip pocket. I politely declined and he sneered at me. Back he came with a young girl about my age and said she wanted to dance. I again politely declined and he "roared", "So you are an uppity Southerner!" I said no, I had simply never learned to dance, which was true.

He then slapped me in the face with his gloves and said, "Meet me outside." There were two doors opening onto a large front porch. I went out one door and he the other. He came at me, staggering and swung both arms, I sidestepped him and he fell on his face. He staggered up and came at me again. I hit him hard under one eye, which spun him around, and I then hit the other eye as hard as I could. He went down and out. By then the porch was full of people. My ranch cowboys lined up behind me. I noticed guns and knives, of which I had neither. The man I had knocked down was trying to regain his feet yelling all kinds of things. My ranch people jerked me away. Someone yelled, "Stop! Stop! The kid is not armed".

After a lot of yelled threats, it was finally agreed by Grey Butte Foreman, Pat, and other ranch foremen and owners, that I would fight a young cowboy from another ranch the following Saturday. No one asked me, but they set up the "show" saying the fight would be great fun.

The fight took place out in the road near Pinedale before quite a crowd the following week. The young cowboy was at least 30 years old, if not older. Despite his more than 200 pounds to my 175, we had a rough - non-stop for rounds - fight before I finally wore him down, knocked him down, and out. The audience had a great time and I had established a reputation, and a little respect among my own ranch household, for the first time.

Life on the Ranch

The temperature was 20 degrees or more below zero most of the winter. All one could do was throw down hay for the cattle, read or play Poker. I

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decided not to play Poker so I read some law books I found in the unusually large Ranch Library. The Ranch Law Book collection had books chiefly written by Blackstone and other English law writers who criticized him. These were great reading for a "would be" lawyer during the long winters on the ranch.

These books also recalled my earlier experiences in observing court trials. My first visit to a trial court came when I was about thirteen years old. Alton Freeman, son of a neighboring farmer, had married a young girl named Nellie who was about 20 years old, Alton being 22. He brought Nellie to live with him at his parents' home. For 3 of their 5 months of marriage he was nice, then he began to drink heavily, planned to steal more liquor and began to abuse her badly. She then said she "lovingly put her arms around his neck" and asked did he love her. He said no he hated her and was going to leave her. She then cut his throat with a razor she had in her pocket for use in shaving her neck, below her bobbed hair. She said she "intended to scare, not kill him." He staggered into his mother's kitchen and died in her arms.

The Freeman's, whose farm adjoined part of my Father's, lived about 1/4 of a mile from us. The Freeman's were our nearest neighbors. Mrs. Freeman called on the telephone and asked my Dad to come at once, saying that her son had been killed. He said I could go with him. Alton was laying on the kitchen floor in a pool of blood when Dad and I arrived. We heard Nellie say he had been drinking, abusing her and threatening to leave her. He had begun to pack his bag. The county police arrived and quickly arrested Nellie, charged her with possible murder, and took her to jail. From that date, May 21, 1926, until the trial was over some two months later, Nellie was written up daily as the "razor girl" usually on the front page of the Charlotte Observer, and other out of town newspapers.

The sparring of lawyers that took place at the preliminary hearing was terrific. Nellie testified fully about what she did, as noted above, and was

later bound over by the Grand Jury for trial without being allowed bail. A corps of psychiatrists were hired by both the prosecutor and Nellie's lawyers. Prosecution and Defense Counsel made almost daily statements about Nellie's possible execution for murder. The Courthouse was packed with spectators and day by day the front page newspaper headlines grew larger as tension grew. To aid Prosecutor John G. Carpenter two of Charlotte's leading lawyers, Frank M. McNinch and J.D. McCall, were personally hired to help the public prosecutor by Alton's "well to do" parents. Jake F. Newell handled Nellie's defense with the aid of Thomas P. Jimison.

There were many witnesses. My Dad was requested to take me to the trial, as both of us were possible witnesses. Judge Michael Schenck first questioned both my Dad and me in his chambers and ruled I was too young to testify, but that Dad could testify. I was allowed by the Judge to listen to the entire trial in case I was indeed needed as a witness. Dad was roughed up plenty by Nellie's lawyer after he testified that Alton's Sister was truthful in her testimony that as Alton lay in his casket, she saw a woman's fingernail imprint embedded in his ear, as Dad had seen the same imprint. The relevancy was unclear to me, as was much of the two month bitter courthouse battle.

When the case went to the Jury it was out for about three days, reportedly by the Observer as being hung 10 to 2 or 11 to 1 for acquittal. Finally the verdict of "not guilty" was presented by the 12 man Jury and Nellie was freed.

I was greatly impressed by the outstanding ability of Jake F. Newell, the chief lawyer for the Defendant, and one of Charlotte's greatest criminal lawyers. He was a colorful lawyer who dominated the Court throughout the trial. In part due to what I saw and heard at that trial, I then resolved to become a lawyer.

While working as a Western Union messenger, during the year between my graduation from high school and my first semester at Duke, I sought and was excused from work to attend a few unique court

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trials. All I had to do, to get excused without pay, was tell Mr. William Brown, my Western Union boss who was very kind and interested, what happened at the trials. Western Union messengers were paid a fixed amount for the delivery or pick-up of each telegram, plus an allowance for the distance travelled, if it exceeded one mile. So I was paid only for what I did.

Frances "Frankie" Neal, sister of my high school classmate and best high school friend, Harold Neal, was Secretary to Mr. Ezekiel "Zeke" Henderson, one of Charlotte's great lawyers and later a great and renowned United States District Court Judge. She would often tell me when a unique case was to be tried in a particular Charlotte Court and I would try to be there for all or part of it.

While out of Duke, during the Great Depression in 1929-31 working on the Grey Butte Ranch in Wyoming, I also read and re-read, from cover to cover, two law volumes written by the then Dean of Trinity (predecessor of Duke University) College Law School, Dean Mordecai. These Mordecai books were given to me by "Red" Saunders, who was a young Durham lawyer and a part-time Freshmen Coach of football, boxing and wrestling at Duke. While I had left the books behind when I departed Duke, I wrote to my friend Vernon Altvater who recovered them and mailed them to me at the Ranch. I was fascinated by both of them. They covered the common law field. Entitled Law Notes, they set forth his views on nearly every law subject then taught at Law Schools. His title page said his Law Notes were to be used in connection with the case books, then taught in Law School.

I still have one Dean Samuel F. Mordecai volume, but the other got lost. They helped me through the long, 40 degree, and more, below zero winters and the hot, seemingly 140 degree, summers at the ranch.

Also prior to the Ranch, when I first arrived in Denver, I met the son of a great lawyer, Henry Lindsley Jr. I went to watch his Father try cases. He was a tremendous and gifted advocate. The son was appointed a Magistrate and I listened to trials in his Court. When at Duke, I met Major McLendon, the

leading trial lawyer in Durham, North Carolina, and had watched some of his earlier Durham trials. He was a dynamic person and greatly admired by his peers and, of course, by me. The above named books and court memories made me more determined than ever to have a law career.

When spring broke suddenly, we drove the beef cattle into the adjacent desert where grass grew quickly and plentifully. The calves were due to be born shortly thereafter, and were born by the hundreds.

The cattle grazed in the desert from Spring until about July, when the desert grass began to brown. Then the young calves were branded and preparations for the great roundups and driving of the cattle to the mountains for the hot summer months took place. Also at this time, the irrigation ditches were opened and the hay, in acres of timothy hay, grew inside mounds of dikes created like large boxes to hold the water in the fields near the ranch house. The grass began to grow and the water from irrigation ditches covered the growing grass. Mowing machines, rakes and hay pilers were readied for the harvesting of the hay. Horses from the range were rounded up out on the desert and trained to pull mowing machines and rakes. Huge haystacks were piled with hay by special machinery to hoist the hay atop these large haystacks to hold it in place for the winter feeding of any beef cattle not sold and for feeding the steers and the cows, who were to father and mother the calves to be born the next Spring.

Cattle Branded then Driven to Rocky Mountain:
Spring and Summer

The cattle were driven by the cowboys up onto the Rocky Mountain. Hundreds of blocks of salt were also moved to the mountain by large horse pulled wagons. The salt made the cattle drink much water and thus get fat quickly for sale in the Autumn. All the cowboys were fully occupied with these tasks, especially standing night watch over the animals against mountain lions, bears, wolves, coyotes and

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other animals, which the cowboys said were up there and anxious to kill and eat the cattle. Everyone carried a rifle and all stood 3 or 4-hour night and day watches, on a rotating basis. We had several cattle killed, the cowboys said, by lions or other animals and some were said to have disappeared. They said Indians, or "mountain men", who lived in caves all around our cattle grazing reserve, which was rented from the U.S. Government, were also killing some beef cattle and drying the beef in the sun to store for winter food. I answered the mail, addressed mostly to the cowboys, which was brought up each week. I wrote and sent such answers as they wanted me to. I also stood four to eight hour watches every day.

After the Summer on the mountain, the fattest and best of the cattle to be sold were driven to Rock Springs by slow daily moves taking about ten days, to prevent loss of weight. Waterholes and large feedings of hay were used along the way also to prevent loss of weight by the cattle. They were sold and shipped via railroad cars to slaughterhouses, chiefly in Denver and Chicago. I took part in these cattle drives.

I attended "Frontier Days" Celebrations in Cheyenne, during my first and second years at the ranch, as did some of our cowboys. Almost without exception, they either lost their money advances, they said, in poker games or with wild women in one or two days. Several were also jailed for various offenses, mostly drunkenness. Unless they were rowdy when arrested or charged with real damage, their fines were not great. The "Frontier Days" shows were excitement indeed. They included horse races, shows for riding competition, trained horse performances, show cattle and many booths selling things the ranchers would buy, including guns of many kinds. These shooting competitions and many of the usual games are found at county fairs in my native North Carolina.

Wild Horses on the Range

There were many bands of wild horses on the range and some of these were rounded up and sold to slaughterhouses for dog food. A roundup of wild horses was always most exciting, as most of the riders used horses roped and taken off the range and "broken" for riding in ranch corrals. These riding horses were related to the wild horses and became more difficult to control as they wanted to run with, not after, the wild horses. I learned very quickly the value of leather "chaps", which some uninformed people make fun of. They kept the sage brush from tearing the legs off cowboys during wild horse drives and cattle roundups. The cowboys drove the wild horses between two hills fenced into a large corral at a narrow place between the hills. The horses were roped and tied together in bunches, usually hobbled, and driven slowly to Rock Springs for sale.

There were no tractors on the ranch, so as stated above, horses taken from the range were "broken", for use in pulling the hay mowers and hay rakes, as well as in pulling the hay stacking apparatus to build the high haystacks.

Return from Ranch to Denver: Work on Construction Jobs

I left the Grey Butte Ranch in 1931 for Denver to accept a job driving a dump truck to haul away dirt from construction work, as an employee of contractor Peter Seerie, the contractor mentioned earlier whom I met through the Denver Post sports writer Reddy Gallagher. The dirt I hauled was dug up for a new storm sewer. Then for higher pay, I left Denver in 1932 to work for Frank Hoffman driving a truck and teams of horses pulling or hauling dirt used in the building and rebuilding of parts of Highway 40 over the Rockies through Steamboat Springs and Craig, Colorado on to Utah.

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Marriage to Sue and Return to Duke

Before leaving Denver, I had met and fallen in love with Sue Margaret Cotton, an art student at Chappel House, then the Art School for Denver University. She was an extremely beautiful and intelligent woman. We had decided to get married and that I would then return to Duke to complete my education to be a lawyer. Sue and I were married on September 16, 1932, by Father Morning in the Roman Catholic Cathedral almost across the street from the Colorado State Capitol in Denver. Her family and friends packed the Church for the wedding and the usual reception and dinner.

We then drove our Ford Coupe, with a rumble seat, to Durham, North Carolina, in about three days, arriving at 4 o'clock in the morning. We spent what remained of the night at a rooming house and found all four tires of the Ford flat when we finally awoke at about noon. I hurriedly pumped the tires up, as it was obvious that someone had let the air out of them as a prank.

We hurried to Duke so that I could get myself registered for a repeat of my Sophomore year, which I had not finished when forced, by lack of finances, to withdraw from Duke in 1929. I got a job with Muirhead Construction Company in Durham, and Sue got one at Baldwins, a Durham department store.

I also went out for football, although my old roommate Pat Rochelle had disappeared and the new coach, Wallace Wade, assigned me to his "All American" squad. That squad's chief task was to scrimmage the Varsity every Monday afternoon. As my football ability was wanting, I never made the Varsity squad, although I did get to dress in a Duke football uniform and attend the opening game with Virginia Military Institute, which Duke won 44 to 0. I also got to dress up in a Duke uniform for home games and got to go with the team to nearby games at North Carolina, Wake Forest and North Carolina State.

Sometime after I arrived back at Duke, Dean Wanamaker summoned me to his office and said, "I hear you're married." I said yes, that my wife and I live

Autobiography by Charles S. Rhyne

in an apartment near your home. He said that they did not welcome married undergraduate students at Duke. I replied that Bill Werber, the All-American guard on Duke's basketball team and All-American shortstop on the baseball team, was not only married but had signed a big contract with the New York Yankees. I said further that Werber and his wife live on campus in the new dormitory for graduate students. He then asked why I dropped the course in German he taught in which I was doing so well. I replied I wanted to take another course in Government History which would help me in my law career. He bolted out of his chair and showed me to the door.

My Accidental Hand Injury in Durham

I dropped football and all sports for the following Fall and entered what was explained as the combined double program of taking your Junior year in college along with courses designed so that my undergraduate Senior year would be my first year in Law School. This would mean my receiving my B.A. Degree with credit for one year in Law School.

In May of 1934, I injured my right hand on a nail and wood splinters, while working for Muirhead Construction Co., building a gasoline filling station at Five Points, a spot in the center of Durham where five streets or roads come together. I was directing a crew hauling wheelbarrows full of concrete onto floor planks covering the rooms above the basement. The concrete was to harden into a floor, but a leak sprung, so concrete was pouring into the basement. I grabbed a hammer and plugged the hole with some broken boards, but in doing so, I drove my right hand down on one of these used planks and a rusty nail entered my right hand. I kept on working, as one could not stop the concrete job before it was finished.

When I completed the concrete job, the architect came by, observed my hand, and said I should go up Durham's Main Street to the tall office building and see the company's insurance doctor, Doctor Sweeney. I did, and after a long, long wait

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finally was taken in to see the Doctor. Dr. Sweeney hurriedly looked my hand over, washed the wound out with something, wrapped up the hand and rushed out. In two days my hand was badly swollen, so I went back to see him. He said I had a high fever and the hand was clearly infected. He probed around in the hole made by the nail and put some medicine on it and re-wrapped the hand. The next day, I called and told him that my hand was hurting and swelling. He told me to go to Watts Hospital. There, a Dr. McPherson looked at the hand and said I had blood poisoning and swelling spreading over my hand and arm. Dr. Sweeney looked in on me infrequently. By then, I was hurting very badly. He ordered me into the operating room, where he cut a large wound in the hand and gave me more medicine. Dr. McPherson came by and said I was in awful shape.

Vernon Altvater and Duke Hospitalization

Vernon Altvater, mentioned earlier, who had meanwhile graduated and become Manager of the new Duke Hospital, while I was out West, came by to see me. Sue and I had often been babysitters for the children of Vernon and his beautiful wife Peggy. He said that I needed more than Watts Hospital had to cure my hand, although he was not a Medical Doctor. At Duke they had Dr. Shands, a nationally renowned wound and bone specialist. But he said he dared not move me from Watts to Duke, as there were unfortunate bad feelings between Watts and Duke over Duke's famous medical staff. Dr. McPherson came by and I asked if he would send me home. He called Dr. Sweeney and turned to me and said yes, Dr. Sweeney said there was nothing more he could do for me. Sue picked me up and took me by our apartment to get some clothes and go on to Duke Hospital. By then, I had lost some 30 pounds and the blood poisoning was obviously spreading. Dr. Deryl Hart, Chief Surgeon and Head of Duke Hospital, took me as his personal patient and Dr. Shands and others began to work on me. They discovered that I had osteomyelitis, a bone infection from the blood poisoning. Almost daily, they cut out

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diseased bone and my hand was swollen several times its normal size. They ordered me out of bed to walk and walk each day around the hospital. Later I walked outside with Sue. She was wonderful. Her daily visits were then the highlight of my life.

Duke Law School for One Year: Largely Living at Duke Hospital

Sue and I and Vernon Altvater, with the personal encouragement of Dr. Hart, worked on getting me ready for law school. I learned to write with my left hand. While I had been accepted by Duke for the Law Class of 1937, the law school was not enthusiastic about my going to classes in 1934-35. Law School Dean Justin Miller had departed to head the Criminal Law Division of the United States Department of Justice, taking his assistant, Gordon Dean, with him. Both had been my chief contacts in getting accepted before my hand injury. The new Dean, Horack, was unknown to me, but Dr. Hart was a towering figure on campus and when he talked to Duke President Robert Flowers (a much beloved President) and to Dean Horack (also a kindly and respected person), I was told that I could attend classes but Duke would be tough even if I was well, so I should not be upset if I flunked out. Duke's Law Faculty, assembled by Dean Miller and chiefly recruited from leading law schools all around the Nation, was reputed the toughest of all law schools. They were determined to make Duke the best law school in the Nation, even if it was one of the smallest.

The Challenge of Elite Students and Professors

My memory, of the class of 1937's Freshmen Law School year, was that it was about 39 in number and mostly Phi Beta Kappa students carefully chosen from all over the United States. Professor Douglas "Blunt" Maggs was supposed to have earned his middle name by uttering, "Look to the right of you and look to the left of you and be damn sure only two of you three will be back next semester." Richard M. Nixon,

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a highly intelligent student, from Whittier College in California, was my classmate during my one year at Duke Law School. He and I sat next to each other because, I believe, Duke law students were seated alphabetically. Sue got me all the required textbooks at the campus bookstore, and other books which the very kind and helpful Law Librarian Mrs. Mary Covington provided. The kindest-to-me Law Professor was Lon Fuller and the roughest was Maggs. For example, in torts class, Maggs made a comment on some aspect of the famous McPherson v. Buick, 217 N.Y. 382, 111 NE 1050 (1916), case on automobile manufacturer-dealer accident defect liability. I raised my hand and said, "You are wrong." He walked down the middle aisle and erupted, to put his many words into one, at my "dumbness". In fact, I was right. Our textbook had printed only part of the court decision and I had read the full text. He said he did admire my "guts" in challenging him and such challenges of other lawyers in the Courts was the life of the legal profession. The next day he softened his statement about my "dumbness", saying that after rereading the full text, mine was a "possible" interpretation.

I lived in the Duke Hospital, which was next door to the Law School, most of my only year at Duke Law School. I recall some eleven diseased bone removal operations during that time. The competition in class was tremendous, as was to be expected under the circumstances of our selection and that of the Faculty. The only member of the class who visited me during my absences due to operations was Dick Nixon. He was very quiet and studious. He would come over to the hospital and brief me on what had happened in classes that I had missed. His notes were extensive and his oral expansion on Professors' questions most helpful. I soon learned that Nixon's notes were almost word for word what had been said in class. Nixon would also help around the law school. We had ping-pong tables on the third floor and he would play me left-handed, for example. This began a friendship which lasted to his dying day. I would write down as much of his notes as I could and write out briefs of

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cases in our textbook for each law course. Sue, a gifted and talented artist, who had never used a typewriter before, quickly became a typist and typed those up for me using her own "hunt and peck" system on a borrowed typewriter. Her typing quickly improved, so I was always up-to-date in each law course. I still have some of my notebooks, as Sue was so proud of them she preserved them as mementos. Sue also carried numerous books to me in the Hospital which Mrs. Covington, the Law Librarian, loaned to her for me.

Mr. William Muirhead, the contractor on the job where I hurt my hand, insisted his insurance company pay the Hospital and medical bills, and they did. He has been a great friend and the insurance payments really got me through my year in Duke Law School financially. Years later, when I was ABA President and he was President of the American Contractors Association, Mr. Muirhead proudly introduced me as a speaker at the National Convention of that Association, over which he presided. A tough man of Scottish ancestry, I will never forget the tears in his eyes as he gave me an emotional introduction holding up my crippled arm as he concluded.

My First Law School Course Examinations

Our first law class examination came, as I recall, at mid-semester. By then, Vernon Altvater had loaned me a typewriter belonging to the hospital and using one hand I could slowly "hunt and peck" words out. I asked Dean Horack if I could use a typewriter and have a little more time on each examination. He agreed and all Professors but Maggs carried out that agreement. The Professor for Legal Literature and History, William R. Roalfe, gave me an oral exam. I was assigned an empty classroom to type my answers. I had just finished two of ten questions when Maggs burst into the room and snatched my two answers from my desk saying that no Dean could tell him how to conduct an examination. Naturally, I ran to see Dean Horack. He was obviously upset and said he would talk to Maggs. Maggs quickly graded

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all exam papers and handed them out and said he would talk to anyone getting a grade below 66. My paper had a large "66" scrawled on it. I was tempted, later, to mail Maggs a copy of my Certificate of Election to the George Washington University Law School Chapter of the Order of the Coif, an honor requiring graduation with grades in the highest 10% of your Law Class, but decided that was not a kind thing to do.

The Decision not to Amputate my Arm

Being in the hospital and being the only married law student, I did not get to participate in many of my class activities. I was elected to the Iredell Law Club and with Sue attended some football, basketball, baseball and other games. The University of North Carolina was our big rival in every sport. With Wallace Wade as its new coach, Duke was soon nationally ranked and a participant in two "Rose Bowl" games.

Before the North Carolina game, which Dr. Hart would not let me attend due to an operation on my hand, I learned there was to be a doctors' medical conference on what to do about me, according to my good friends the Duke interns and medical students who had a meeting room next to my hospital room. My hospital and medical expenses were being paid by the Muirhead Construction Company's insurance company and I was told that an insurance company doctor, a Dr. Winkler from Charlotte, would attend the conference. I was told where and when it would be held just before the Duke - North Carolina football game. I hid in a closet of the conference room. At the conference, Dr. Winkler pointed out that the bone infection was going up my right arm past the wrist and "for my own good" my arm should be amputated. Dr. Hart exploded. He said he believed that he and Dr. Shands, Head of the Bone Disease Section of the Hospital, had the bone problem under control, it had ceased spreading and so long as he was my doctor, my arm would not be amputated. He said they would continue to remove diseased bone in my hand, wrist

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and arm, that I was doing well on their rehabilitation program, and then poured forth some kind words about my law school abilities. That ended the conference. My hand and arm improved slowly and my hand is somewhat crippled by shrinkage or elimination of diseased bone, but both have served me well throughout my life.

On to Washington

Having no money to remain at Duke after my first year in law school, Sue and I decided that we must move to Washington, where we had been told I could work for the Government and go to law school at night.

Sue was working at Baldwin's Department Store and doing a few portraits for small commissions. I had been carrying a morning Herald paper route from the time I got out of the hospital, but we clearly needed some more income. I contacted my cousin, an elderly Confederate Colonel named Bullwinkle, who had represented the Congressional District, which included my native Mecklenburg District and adjacent Gaston County, in Congress for years. He said he could not help me.

He recommended I should get a Federal job in Washington by taking a Civil Service Examination. I learned quickly that would take months or years. But a response to a similar letter to Lawrence Lewis, the Congressman from Denver, who I had met in Denver through Mr. Frank Graham and contractors Peter Seerie and Frank Hoffman, brought a friendly and positive response. Both North Carolina Senators advised me in their responses not to come to Washington.

Sue and I decided she would stay in Durham and keep her job, as the Depression was still in full sway. I would take our meager funds and drive to Washington in an old Chrysler we had acquired. En route I had a flat tire and no spare. I walked several miles to a gas station and bought a second-hand tire, much smaller than the other tires on the car, plus an inner tube for \$1. I put the tire on and made it to Washington about noon the next day after having slept in the car's back seat.

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Denver Congressman Lawrence Lewis and Mrs. Margaret Marquis

I went to Colorado Congressman Lawrence Lewis's office. He was a friend of my lawyer friend Henry Lindsley, Jr. His Secretary, Mrs. Margaret Marquis, a most kindly lady, immediately took me in to see the Congressman. He and his Secretary made several telephone calls which led to an appointment for me with the Undersecretary of the United States Treasury, Josephine Roache of Denver, who owned Rocky Mountain Coal Company. She was a close friend of Lindsley, Frank Hoffman, Peter Seerie and other friends of mine in Denver. She was most gracious and kind. She called Julian Friant, a high Official at the Department of Agriculture, and asked him to give me a job. After a brief conversation with Julian Friant about me and law school, I was asked if I would take a job at \$1800 a year at the AAA (Agricultural Adjustment Administration) as a crop contract auditor. I said yes. Mr. Friant then asked when I would like to go to work. I said, "Immediately." So he said to wait for a few minutes. He then told me I could go to work on the AAA 4 p.m. evening shift that very day in June, 1935. I was to hurry down and report in at the old Post Office building on Pennsylvania Avenue, in the center of Washington.

I called Sue at Baldwins in Durham. She was elated over my new job. I then located the old Post Office building and found out that my supervisor, Byron Hirst, was a young man from Cheyenne, Wyoming, who was also going to George Washington University Law School, hereinafter (GW). He has become a great lawyer and my friend for life. I began work checking AAA aid contract applications from farmers from 4 p.m. to midnight and attending day classes at GW.

Entrance to George Washington University Law School

I entered GW in September, 1935. I found that GW had an excellent Law School Faculty. The law

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classes were much larger than those at Duke, but they were excellent in substance. They followed the case book method with which I had grown familiar at Duke. My right hand, though crippled, produced readable briefs, notes and examination papers. GW had accepted me for their class to graduate in 1937. The law students at GW were largely older than the students at Duke. GW students in their day law school classes usually did not work, but all the students in their night classes held jobs, usually Federal Government or Congressional patronage jobs, given to Senators and members of the House of Representatives for allocation to their supporters. There were jobs as policemen, elevator operators and clerical staffs of Congressional Committees.

The Governmental jobs paid higher salaries than the Congressional jobs, usually. The GW students were, as a group, not only older than Duke students but were usually ambitious persons trying to get ahead in life by adding a Law Degree to other Degrees that got them the Congressional or Governmental positions they already had. Nearly all Departments and Agencies of the Federal Government had employees at GW Law School, both day and evening classes. All branches of the Military, for example, assigned young men to GW to get a legal education as part of their military duties and paid all of the costs of that legal education. Associating with GW law students gave one a broad education in what the Congress and the Federal Government were doing.

I was elected an Editor of the GW Law Review and assigned to write a full length article for the Fiftieth Anniversary Edition, dedicated to the Interstate Commerce Commission. I wrote on the Railroad Bankruptcy Act. My article was lengthy because I talked to the Congressional author of the Act and spent hours with the Hearing Examiners and Commissioners, who were deciding case issues under the Act and recorded their expertise.

Sue came up from Durham by bus and we found a small apartment near GW. She got a job at Garfinckel's Department Store. At the same time, she applied for a job at the Corcoran Art Gallery.

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Several weeks later, Corcoran asked her to come in for an interview. They hired her to do filing and classifying of the paintings given to the gallery as gifts, some small, some large. She started copying and restoring some old paintings in her spare time. Soon someone noted she was a most gifted artist and painter and she was assigned most of her time doing either restoration of old, damaged paintings or doing portraits of Government Officials and others for small, but helpful commissions.

When I began law classes at GW Law School in September 1935, I attended day classes while working nights at the Agricultural Adjustment Administration (AAA). Sue and I thought we were all set, as far as getting me through law school was concerned. We did a lot of sightseeing for the first time and were very happy.

Then, sometime that Fall, Law Professor Walter Moll came out of his office into the GW Law Library, where I was working on some research, and asked me to come into his office. He said he was impressed by a paper I had written on the law of trusts, the subject he taught. He told me that a GW alumnus had just called, asking him to recommend a law clerk to do research on cases being tried in District of Columbia Courts.

Dow, Lohnes & Albertson as Part-Time Law Clerk

I went for an interview with Homer McCormick at the law firm of Dow & Lohnes. He was clearly a very able lawyer and said he did nothing but try cases. He asked if I would be interested in the research job. He described some of his cases and said he needed a researcher to find cases to back up his law points in courts. He said I could go to Court with him when he was trying cases. I said I would like nothing better. Then he told me that the pay would be \$50 a month.

I was making \$150 a month at the AAA, which at that time was a lot of money. I told Mr. McCormick that I would have to talk to my wife. He said that I should get back to him quickly, as he needed help at

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once. I talked to Sue and told her that I could probably learn more in court in a month than I could in several months at law school. We both agreed that I should take the law clerk job and I did. She enthusiastically agreed with me that the days in court, helping with actual trials, were worth missing a few law classes and losing a few dollars. Sue had news of her own. She had been given a new job posing for artists at Corcoran Art Gallery, with a promise that she could also do and sell some of her own paintings there. Sue was, above all, very beautiful, sweet natured and intelligent and with her Western outgoing personality, she had quickly become acquainted with the staff, art workers, and supervisors of Corcoran Gallery.

I resigned my AAA job and was in court with McCormick the next day. And, I should add, I spent the entire night in the Law Library carrying out his research instructions. He was a hard driver. McCormick was so respected by the Bench and Bar, he was often asked by other lawyers to try difficult cases.

McCormick was a tremendously intelligent trial lawyer. He believed those working for him should work day and night. I freely admit that I was pleased that GW Law Professors did not keep attendance records, as I missed a lot of classes. Although this worried me greatly, classes at GW were large and attendance records nil. I did manage, however, to keep up with my classwork and when the grades came in, I had done extremely well. This was both good and bad, as the Professors began to call on me and thus to miss my presence. I switched some of my subjects to evening classes, and also attended summer school, to assure my graduation in 1937.

The first case I worked on was an alleged copyright case. Lohnes and McCormick represented movie producer Howard Hughes and film actress Jane Russell. The suit sought an injunction to prevent movie theatres from showing "The Road To Glory", claiming Hughes used a manuscript sent to him by its author, without permission or payment. The claim against Russell was she dressed lewdly by the way she

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showed her over-sized breasts. Both Hughes and Russell welcomed the media attention, to the alleged lewd showing of Russell, as they said it would "fill the theatres". Russell said her breasts were large but fully covered and thus not lewd. Meeting such prominent persons was a great experience. The Court denied the injunction to prevent the showing of the movie.

While I was supposed to work "part-time", I often worked all day and most of the night hunting, in the District of Columbia Bar Association Library, housed in the Courthouse, or in the Congressional Law Library, of which I write later herein, for court decisions to support the cases McCormick was trying in court. Sue would bring us sandwiches for dinner and help. Her Duke law training came in handy.

Alphonse Freeman, an almost life long friend, was Law Librarian. He once said I spent more time there and knew more about the books in the library than he did, which was quite a compliment. If not busy, he would help me in my research. He was a black law librarian, unique in his field in those days, and a wonderful, intelligent law researcher, deeply devoted to his work. Many judges and lawyers of that Court knew what an able law researcher he was and relied upon his aid.

At the same time, I was learning from Fred W (He insisted no period) Albertson, of Dow, Lohnes & Albertson, about how to try administrative law cases. He was a brilliant and skillful Federal Communications lawyer who was also a graduate, in both law and engineering, from the University of Michigan. With him also, a law career meant hard work. He believed it was good for me to work day and night for McCormick. His outstanding ability not only soon made him a partner, but his name was included in the Firm name of Dow, Lohnes and Albertson. A lot of Albertson's wisdom rubbed off on me. He has one of the quickest, incisive minds I have ever encountered. I was best man at his wedding and he and his beautiful, wonderful wife, Catherine, remain two of my best friends to this day.

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Moot Court Partner William E. Doyle: Law School
Studies in U.S. Senate Elevators

One of the greatest and most beloved friends of my life is the late William E. Doyle of Denver, Colorado. He was my constant law studying companion during my two years at GW Law School and my moot court partner in winning our assigned case before Judge Austin Latimer. He earned his law school education by operating an elevator in the Capitol and that was where we did much of our studying. We used the Congressional Law Library in the Capitol and he helped me research many cases for Homer McCormick. Due to my contacts at the Clerk's office of the United States District Court for the District of Columbia, Bill and I found the exact case we had been assigned in moot court. We also discovered that Judge Latimer had tried and lost that case. The full transcript of Pleadings, Testimony, Briefs and Arguments was in the Court record. That gave us a boost, as Judge Latimer clearly liked to have his arguments made back to him.

Bill and I did not tell the Judge that we had found the case record nor did we tell our opponents, Bernard Margolis and Herman Uhles. We kept that fact secret until the case was over and we had persuaded Judge Latimer to decide the case he lost in our favor. Judge Latimer asked us how we managed to get our material. We then revealed our secret and all had a hearty laugh.

Bill went from law school into law practice and politics in Denver. He was most successful in both. After a short time as Assistant District Attorney, he was elected to the Trial Court in Denver and quickly thereafter was elected a Supreme Court Judge of Colorado, from which office he was appointed, by President John F. Kennedy, to be a United States District Court Judge. He was then appointed a Judge of the United States Circuit Court of Appeals for the Tenth Circuit. In all of these capacities he served with great distinction.

Since my wife Sue was from Denver, we often visited Bill and his wife Helen, who was a classmate

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of ours at GW. As a much travelled lawyer, I often went through Denver every time I could just to see Bill and his family. We stayed in close contact all our lives until Bill's untimely death on May 2, 1986.

I am so very proud of him and his distinguished career as a lawyer and Judge.

Mayor La Guardia, the Mayors Conference and the Beginning of NIMLO

In the late Fall of 1935, I was selected or elected to the staff of the GW Law Review, of which Professor John McIntire was Editor in charge. He taught Municipal or Local Government Law. I took his night class on this subject. One night, he asked me to wait after class so we could talk. I was afraid that he might want to talk to me about having missed too many classes, but it turned out that he had been asked to edit a Municipal Law Journal for the United States Conference of Mayors. He wanted his name on it but wanted me to do the work, for "about \$100" a month, as he was too busy teaching and writing a municipal law case book to edit the Municipal Law Journal. I was to help mayors by keeping their lawyers informed on what was going on in both Federal and municipal law, all over the Nation. I accepted his offer and went to meet the Mayor's Conference Officers to whom Professor McIntire sent me.

I went to 730 Jackson Place, the old mansion of U.S. President Garfield, where the Mayors Conference, of which New York City Mayor Fiorello H. La Guardia was President, was located. Paul V. Betters, Executive Director, and his assistant Sherwood Reeder, neither of whom were lawyers, talked to me. I told them that I was doing part-time law research work for a law firm and, at his request, I would assist Professor McIntire in editing the Municipal Law Journal. They said that was fine with them as long as I got the Municipal Law Journal out. They also made vague mention of the fact that municipal lawyers were organizing and they asked if I would do a research report on the validity of the new apparatus known as parking meters, which had just

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been offered to cities and urban counties. I compiled a questionnaire to be sent to cities to gather information not already in the Mayors Conference Library on city experience, nationwide, with parking meters. When I finished the report, Betters liked it so well that he said it would be issued in his name. Sherwood Reeder was listed as the Editor of the Municipal Law Journal, along with the name of Professor McIntire.

Reeder, a nationally renowned Municipal Government expert, as was Betters, said he was leaving to become a city manager and did not want to run the new city lawyers organization, later to be named the National Institute of Municipal Law Officers (NIMLO), so McIntire was asked to do that and agreed to do it also. NIMLO was to be a vehicle of informational law cooperation, primarily among large municipalities on a national basis. I was to become informed on litigation and legislation impacting cities, acquiring that information from reports to the Mayors Conference by several hundred city attorneys, pursuant to suggestions of their Mayors. McIntire asked me to take on NIMLO also, as he was too busy teaching and writing his case book on Municipal Law and did not have time.

My first meetings with city officials of the Mayors Conference included Mayor Fiorello La Guardia, Mayor Harold Burton of Cleveland, Mayor Frank Murphy of Detroit, Mayor Richard J. Daley of Chicago, Mayor Hartsfield of Atlanta, Mayor Maury Maverick of San Antonio, and later, Mayor Hubert Humphrey of Minneapolis, and many other large city Mayors. They largely used the beautifully furnished basement of 730 Jackson Place as their meeting place, across Pennsylvania Avenue from the White House. They also had an ornate meeting room with a long table and costly overstuffed chairs on the first floor and on the back of each chair was the name of the Mayor who had donated the chair. All Mayors were looking for Federal funds from President Franklin Delano Roosevelt, but the Mayors Conference had the advantage of the easy entree there that Mayor La Guardia enjoyed.

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They discussed, among themselves, the problems of the Great Depression of the 1930's and its impacts on city interests. They also talked about aviation service, money for airports, natural gas price regulation, public housing money, Bituminous Coal pricing, the tidelands litigation and other subjects. They gave their assessments of FDR and other major political figures of the day.

The Mayor's Conference was newly formed and was dominated by a few large cities. At first, they sought only Federal financial aid, but soon they were also reaching out with joint efforts on a multitude of their common legal problems, including the subjects I have just identified and others. I found that I could not work for Homer McCormick of Dow, Lohnes and Albertson and do the Mayors work too, so I resigned from my job at the Law Firm. The best book on the Mayors Conference and its accomplishments is Federal-City Relations in the United States (1990) by John J. Gunther, its long-time great Executive Director and General Counsel. His book covers the work of the Mayors Conference from its creation until 1988.

Upon one occasion in one of our basement discussions, Mayor Burton in particular made a long statement about the importance of my becoming so well known personally in the legal profession that when he called cities to recommend that they should hire me in certain cooperative municipal litigation they would not ask, as some evidently had, "Charlie Rhyne? Who's he?" He detailed the career of his mentor Newton D. Baker, leader of the Cleveland Bar, who went from Cleveland City Solicitor to President Wilson's Secretary of War, during the years of World War I. Burton praised Baker's meritorious public service leadership and said Baker's life demonstrated the kind of public service the Mayors were expecting from me. He extolled Baker's Government and Bar Association activities and his status as "the greatest lawyer ever" in Cleveland as a role model for me, saying that he had followed that model most successfully himself. This meeting and lecture opened up a whole new world of law to me, as I

pursued the path to leadership in the Bar and as a lawyer in Court.

La Guardia and Burton, both lawyers, as were most of the Mayors, soon sought cooperative legal assistance and the Institute of Municipal Law Officers was formed to develop it. The Institute later had "National" added to its name and became The National Institute of Municipal Law Officers (NIMLO). Burton, then Mayor of Cleveland, had been Cleveland's Director of Law before he was Mayor. He then was elected a Republican United States Senator from Ohio. That he was most broad minded and effective is proven by the fact that later he was appointed a Justice of the United States Supreme Court by a Democratic President, Harry S. Truman.

I was present when the Mayors, in discussing financing of the new NIMLO, laughingly agreed that city councils would not appropriate much money for an Association of Municipal lawyers, so the NIMLO name, while vague, would be best. This was not the first or last I was to hear about the unpopularity of lawyers. From the outset, the organization, as finally put together by city lawyers, was a municipal law gathering of information which was then given back to city lawyers at their individual request or in printed reports. The cities themselves were and are the actual members so that city money could pay its costs, with each city lawyer representing their city as NIMLO member and reporting to his mayor and city council. In one discussion of changing NIMLO's name, one knowledgeable city official presented a list of more than 20 different titles of municipal attorneys from Corporation Counsel to City Attorney to Municipal Counselor, Director of Law, Borough Attorney, City Solicitor, etc., so the name has never been changed.

La Guardia, My First Client

La Guardia told me at one meeting, that neither the Mayors Conference nor NIMLO had any money to pay a lawyer the deserved salary. He said I was to get, in addition to a small salary, what I earned from

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each city I "helped" in a particular case through a specific contract with that city.

He said, for example, that Mayor Burton had told him that I had worked for a law firm specializing in radio law. He said he was hiring me, on an hourly basis, to keep his radio station, WNYC, on the air, despite his alleged "violation of FCC Law and its Rules". He said the Federal Communications Commission (FCC) was trying to put him and his radio station, WNYC, off the air.

La Guardia admitted that he was probably violating the FCC's rules on the air time limit for his radio station but argued the limit was unconstitutional and void. He chuckled as he said that he was up for re-election and the "kids of New York" were then his political organization, as he read the "funny papers" to them over his radio station, WNYC, when the newspaper employees were on strike.

La Guardia often bragged that he had been thrown out of both the Democratic and Republican Parties, so he had to run as an "Independent". He was going to form a new party by the name of the "Union Party" or some such name, and he would get on the voter ballots by voter signatures on nominating petitions. His reading of pages from funny papers to kids over his radio station, when newspapers were on strike, had indeed endeared him to kids. He asked the kids to make their Fathers and Mothers sign his nomination papers and vote for him. They did, and he was overwhelmingly re-elected. I cannot over-emphasize the facts that he was extremely able, honest and worked hard, for long hours, solving almost unsolvable problems, during the Great Depression that existed throughout his tenure as Mayor.

La Guardia told me to hurry over to the FCC and find out "immediately" who President Roosevelt should talk to, to stop them from taking WNYC off the air. I called the FCC for that information and was told the President should talk to FCC Chairman Fly. I then went in to tell La Guardia to have President Roosevelt contact James Lawrence Fly, Chairman of the Commission. La Guardia was off to the White House,

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almost on the run. Later, he returned and said the President had called Mr. Fly and the matter had been placed on "hold". He asked me to go over to the FCC and find out what was going on and to call him if anything was about to happen. One had little opportunity to get a word in with La Guardia. I had wanted to tell him that I was not yet a lawyer but still in law school, so he should hire the Law Firm of Dow, Lohnes & Albertson who I had worked part-time for, but before I got the chance La Guardia had taken off for somewhere.

I quickly learned from the FCC that WNYC was licensed to operate a 250-watt station from sun-up to sundown, St. Paul time, on a clear channel of 50,000 watt frequency licensed to WCCO and owned by CBS. Here my lifelong friend Fred Albertson, the greatest of all FCC lawyers, came in handy. He educated me in a hurry. La Guardia had WNYC on the air many nights until midnight, although his license required it be off the air at sundown St. Paul time, claiming that emergencies so required. I had become acquainted with T.A.M. Craven, former Engineering Commissioner of the FCC, by working on his divorce case with McCormick, so I called him about the WNYC matter. He said that WNYC was operating with only 250 watts and, with such low power, could not possibly interfere with WCCO in St. Paul. He suggested that La Guardia should hire a lawyer and a radio engineer (him) and demand a Hearing. When I told La Guardia, he said he did not need a lawyer, he had several hundred in the New York City Law Department, but he would hire the engineer Mr. Craven. He said I should call New York's Corporation Counsel, William C. Chanler, and tell him that I was calling for him (La Guardia) and that "he should get on this and work with me on it". I did as I had been told, as I had met Chanler who was active in NIMLO then and later its President.

Chanler had Frank Blaustein, one of his assistants, (later a New York Supreme Court Judge) call me, and together we drew up the Hearing demand and filed it, signed by Chanler as Corporation Counsel of New York City and Blaustein. I did not sign it as I was not yet admitted to the Bar, as I

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had so informed Chanler and Blaustein. However, the Hearing was delayed for various reasons, during which delay I finished law school and was admitted to the Bar and hired by New York City to represent La Guardia and WNYC. Seymour Simon, New York's Director for WNYC, T.A.M. Craven and others helped prepare the case for La Guardia and WNYC.

When the WNYC case came up for Hearing before the full Commission, I moved for La Guardia's admission as WNYC's lawyer, as he wanted to do the argument. La Guardia was at his best explaining about the many emergencies requiring WNYC to stay on the air many times after sunset St. Paul time. He also spoke of the great services to St. Paul provided by New York in advertising enumerated articles made by St. Paul's residents and sold in New York City, as well as the public service WNYC rendered to his own area listeners.

Chairman Fly of FCC, belittled La Guardia's arguments as being worthless and based on facts not in the record before La Guardia could get to engineering facts. Fly also then asked sarcastically about La Guardia's reading the "Funny Papers" to children, giving La Guardia's own imitation of each character or animal. The Mayor jumped on him with a full scathing attack for his lack of appreciation and compassion for children. La Guardia and Fly exchanged a few angry words and Fly declared the end of the Hearing. The matter was referred for a fact finding Hearing.

WNYC remained on the air pending the outcome of the Hearing. In fact, Fly had retired as Chairman of the FCC and was hired to represent CBS at the hearing before Elizabeth Smith, the Administrative Judge who decided the case against CBS.

I represented WNYC at the Hearing. The case was later heard before the FCC and WNYC was allowed to continue on the air.

Mayor La Guardia and Mayor Burton of Cleveland were largely responsible for my being hired in the case of the City of Atlanta v. National Bituminous Coal Commission of which I will write more later.

In the Courts on my Own

By the time cities needed me as a litigating lawyer, rather than an information assembler and source, I had graduated from Law School and had been admitted to the Bar. I was paid a small salary as General Counsel of NIMLO, but my chief income came from trial, or help in trial, of cases or arguing cases in Appellate Courts for municipalities. In those days, cases against Federal Departments and Agencies were required to be filed in Washington, D.C., so I was local counsel for many cities. Now there is a statute which allows suing of the Federal Government in any Federal Court throughout the Nation. Each city case I worked on usually involved a separate contract approved by the City Council of the city involved.

In order to gain broader court experience, I sought and received appointments by the United States District Court for the District of Columbia Federal Court Judges to defend indigent Defendants pro bono publico or took over unpaying cases from other lawyers for trial. I handled many divorce cases for Mabel Benson Sakis, a lawyer who specialized in divorce cases and liked to say she was too busy getting more cases to go to court for the short hearings required in uncontested divorce cases or for the contested cases.

I also tried automobile accident and airplane accident cases which other lawyers turned over to me, as I became more and more experienced. I was hired in the aviation route cases because I had acquired knowledge in the aviation field by working for United States Senator Pat McCarren of Nevada and Congressman Lawrence Lea of California on the Civil Aeronautics Act of 1938.

My First Case Before the United States Supreme Court

The City of Atlanta, in cooperation with many other cities, hired me to sue the new Bituminous Coal Commission created under the Bituminous Coal Act, which President Franklin D. Roosevelt had Congress

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pass to replace the "Guffy Coal Act". The Guffy Act is the statute which the "nine old men" of the Supreme Court, as allegedly nicknamed by President Roosevelt, had held unconstitutional in Carter v. Carter Coal Co., 298 U.S. 238 (1936). Atlanta and the other cities contended that a regulation issued by the Bituminous Coal Commission, created by the new Act, limiting their coal storage to 30 days supply, was illegal as it endangered hospitals and public utilities which the city had, of necessity, the duty to operate. They also attacked the constitutionality of the new Act on the same grounds the Supreme Court had held the "Guffy Coal Act" unconstitutional.

A three-judge Federal District Court, of which former Duke Law School Dean Justin Miller, in his capacity as a Judge of the United States Court of Appeals for the District of Columbia, was acting Chief Judge, said it assumed it had jurisdiction and upheld the new Act, (26 F. Supp. 606). The cities ordered me to appeal the decision directly to the United States Supreme Court.

Shortly before the case was to be heard by the Supreme Court, Robert H. Jackson, then United States Solicitor General, sent the Court and me a cleverly contrived, Presidential Executive Order abolishing the Coal Commission and transferring power under the Federal Reorganization Act to the Secretary of Interior, Harold Ickes. He also filed a 59-page brief (plus a 24 page Appendix) contending that the Act applied only to coal producers and that since my clients, in the Government's view, could not be hurt until Mr. Ickes fixed coal prices, they had no standing to challenge the constitutionality of the Act itself at this time.

Supreme Court rules at that time required three years of experience before a lawyer was eligible to be admitted to argue cases before that Court. I did not have 3 years of experience, so I learned that I had to be specially admitted pro haec vice to argue the case. Such a motion was made orally when the case was called for argument by Charles Murphy, Atlanta's assistant city attorney and a member of the Supreme Court's Bar, before my written motion was

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placed on the Court's calendar for that day. When the Court convened, the Chief Justice, Charles Evans Hughes, asked the usual question, "Are there any motions?", which usually refers to admission motions only. Mr. Murphy then made his motion that I be admitted pro haec vice to argue the case. Obviously taken by surprise by the oral motion, or that such a motion was not at that moment before the Court in writing, the Chief Justice said that the Court would act on the oral motion at its 2 o'clock luncheon recess and announce its decision when it returned from that recess. Mr. Murphy and all my clients, and myself, were rather upset. I had written all the briefs and was the only one prepared to present the cities' arguments.

When the Court returned from its luncheon recess, the Chief Justice very graciously announced the granting of the motion to allow me to argue. The Case was then called for argument. With shaking legs, I approached the podium. The Chief Justice asked whether I had received the Executive Order of President Franklin D. Roosevelt abolishing the Bituminous Coal Commission and conferring its price fixing powers upon the Secretary of the Interior, Harold Ickes, and the Brief of the Government urging that since my clients could not be hurt by the Act before Ickes fixed coal prices, the Court had no jurisdiction of the case.

I replied that I had received both. He asked what specific harm to my clients could now exist under the Act as it did not now apply directly to consumers, only to producers of coal, prior to the fixing of prices by Mr. Ickes. I argued that Congress did not, in the Reorganization Act, empower the President to so reorganize Government agencies so as to give Mr. Ickes power to make new law in the form of reviving the abolished Commission's regulation prohibiting possession of more than a 30 day supply of coal before prices were fixed by Ickes. I argued that the Executive Order wiped out 3 years of work by the Commission and gave Mr. Ickes a clean slate to work on, unimpaired by the Commission's mistakes, but Ickes could, and in all

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probability would, issue a new regulation applying the defunct Commission's 30 day coal supply order to cities without the required reasonable notice and public hearing. The Chief Justice blustered through his beard, "Not while this Court sits!" I understood that to mean, if Ickes ever applied a 30 day supply limit to cities, without fixing prices and without notice and hearing as had the abolished Commission, the Court would act quickly.

I further argued that the now abolished Commission had, without the required reasonable notice, not afforded to interested parties an opportunity to be heard as required by Section 2(a) of the Bituminous Act of 1937 in issuing orders fixing coal prices on December 16, 1937 on a per ton basis, without regard to heat producing content. The City of Atlanta and other Appellant cities had filed Petitions asking the Commission to void those price orders, as they bought coal on a heat producing content standard with the low bidder chosen on a cost per million, B.T.U. basis. The Commission denied said Petitions. On February 11, 1938, the Commission revoked said orders but still contended they were in effect for 72 days, costing Appellants millions of dollars if enforced.

The Chief Justice then quoted the Government's Brief, page 36,* which stated in part as follows:

"It should be noted that Appellant is not itself subject to the Bituminous Coal Act. The Act applies only to producers of coal..."

The Chief Justice stated further that he was not sure about the validity of the Government's argument in its brief that the heat producing content was immaterial and that the state and local government tax immunity cases, relied upon by Appellant cities, did not apply to the plenary power to regulate commerce as argued by the Government, but those questions about sales on a heat content basis and the immunity and the commerce power and other questions could come up and be decided in a fact trial on another day when coal prices were actually fixed, on some basis, by the only official now empowered to do so, Mr. Ickes.

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Obviously, the Court recognized the President's Executive Order as a move to deprive it of jurisdiction to hold the new Coal Act unconstitutional and did not want to base its jurisdiction on the speculative facts in our complaint, but wanted stronger proof of actual injury by the official then in charge, Mr. Ickes. I suggested to Mr. Murphy that we rest our case and he agreed. It was well known that President Franklin D. Roosevelt did not want the new Act's constitutionality passed upon by the "nine old men" who had held the "Guffy Coal Act" unconstitutional.

When I sat down, Solicitor General Jackson stood up and said that "the Government would stand on its brief and would offer no oral argument".

The Court recessed for the day and later issued an order dismissing the case for lack of jurisdiction, 308 U.S. 517 (1939). My clients were happy with the results of their joint effort, as they interpreted the Court's decision as that the Act could not impact cities until coal prices were fixed by Ickes and city purchasers of coal could fight then to force sales of coal on a heat producing basis, or B.T.U. basis, or the Act was unduly vague and unconstitutional. They estimated that it would take Ickes years to fix coal prices, and it did. Afterwards, Solicitor General Jackson came over to me and very kindly said he had seen my knees shaking, but if ever they should stop shaking when I stood before the Supreme Court, I would "be in real trouble".

The list of Government Counsel who signed the briefs in this case is interesting, in that they demonstrated how badly the President did not want the Act's constitutionality decided at that time by the Court, as then constituted. They were Solicitor General, Robert H. Jackson; Assistant Attorney General, Thurman Arnold; Special Assistants to the Attorney General, Robert L. Stern and Warner W. Gardner plus Abe Fortas, General Counsel, Bituminous Coal Division of the Department of the Interior.

The big lesson I learned from the case which

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started out as Atlanta et al. v. National Bituminous Coal Commission, but became Atlanta v. Ickes, 308 U.S. 517 (1939), is the overwhelming importance at the outset of any case filed there of proving beyond question that the Court has jurisdiction, as of the time the Court is called upon to decide its merits, and that the Supreme Court would not decide fact disputed issues. The Court guards its jurisdiction with care. My clients considered that they had forced the old Commission out of existence and that achievement was a victory, as Ickes could, and would, take no action against them before he fixed prices and if he did not, on a heat producing basis, to fight on the Act's unconstitutional vague basis of no standard for sales prices. They congratulated me although I considered the outcome rather uncertain. But Ickes never did try to enforce a 30 day supply limit on cities or producers.

It took Ickes four years to fix coal prices and by that time cities welcomed price controls due to the tremendous inflation that had arisen.



Mrs. Eleanor Roosevelt at the Office of Civil Defense Luncheon Conference Session with Charles S. Rhyne

CHAPTER 2
General Counsel
National Institute of Municipal Law Officers (NIMLO)
NIMLO - Municipally Owned Municipal Lawyer Operated

Throughout most of my career, I have been Attorney or General Counsel of the National Institute of Municipal Law Officers (hereinafter NIMLO), the municipally - owned municipal lawyer - operated organization, and I will refer to it often. NIMLO, with some 2,000 members, is one of the largest direct membership organizations of municipalities in our Nation. Those member municipalities include cities, counties, towns, boroughs and other local government agencies incorporated as a separate municipality. I want to report on my creation of its municipal law services cooperative programs, in cooperation with its members' lawyers, for the use of municipalities on a national scale. After participating as guests for many years, Canadian municipalities may now participate as members. Quebec City and Edmonton have served as host cities for NIMLO Annual Meetings. For many years, Tel Aviv, Israel has been a member. I expect NIMLO to become ever more international in the years ahead.

As soon as I became a member of the Bar, I was elected as attorney and shortly thereafter as General Counsel of NIMLO. I served in that capacity for over 50 years. I have already made reference to my early days when I worked part-time for both the United States Conference of Mayors (hereafter USCM) and on NIMLO's first publications.

NIMLO came into existence as the Institute of Municipal Law Officers on November 15, 1935. Six of the chief law officers of municipalities were attending a meeting of the USCM, when they decided, after some "urging" by Mayors La Guardia of New York, Burton of Cleveland, Hoan of Milwaukee and others, that there should be an organization of municipalities, acting through their chief legal

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officers, to serve as a National clearinghouse of legal information and cooperation on municipal legal matters. These six, who were present, were each elected an officer of the new organization and a committee was named to draw up a Constitution and By-Laws.

The first officers elected for 1936-37 were: Henry E. Foley, Corporation Counsel of Boston, President; Max Raskin, City Attorney of Milwaukee, Vice President; E. Barrett Prettyman, Corporation Counsel of Washington, D.C., Treasurer; Sherwood L. Reeder of the USCM staff, Executive Director. Joe W. Anderson, City Attorney of Chattanooga; Mark Beauchamp, Director of Law of Louisville; and, Raymond J. Kelly, Corporation Counsel of Detroit, were elected as Trustees.

In 1937, Barnet Hodes, Corporation Counsel of Chicago, was elected President. The NIMLO Constitution was changed to add the "National" to its name of "Institute of Municipal Law Officers"(NIMLO). Under NIMLO's Constitution, only municipalities can be members although specialists in municipal law may be associate members.

The member municipalities (cities, counties, boroughs, special agencies and authorities, etc.) are represented in NIMLO by their chief legal officer whose title varies from Corporation Counsel to City Attorney, Director of Law, City Solicitor, County Attorney, Borough Attorney, Port Authority General Counsel or some twenty other different titles.

Mr. Reeder resigned his NIMLO and USCM positions to become a city manager. Paul V. Betters, the dynamic Executive Director of USCM, urged that Professor John McIntire, the part-time Editor of the monthly Municipal Law Journal, take over the NIMLO positions vacated by Reeder and McIntire agreed. I was then a law student and part-time researcher for NIMLO and USCM. Professor McIntire soon found his duties as a Law Professor, NIMLO Executive Director and work on a new case book on municipal law were too much and resigned from his NIMLO positions. Betters was not a lawyer and did not want the responsibility of NIMLO. He urged that I become Executive Director, Attorney and Editor of NIMLO publications.

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By then, NIMLO could afford to hire some staff and the staff grew to meet the challenge of the information and other demands of an ever increasing NIMLO membership.

Answering the hundreds of requests from member cities for municipal law information, drafting model ordinances and providing them copies of ordinances of other cities on new and old subjects alone was a big job. Most municipal legal problems begin with changes in the lives of their residents, from horse and buggies to trucks and automobiles, for example. The later on automobile and truck change brought on new problems, such as parking. The parking meter arrived and with it many legal problems. For Los Angeles to learn of some low level Court deciding that parking meters were lawful as a public purpose, according to a New York Court decision, was most helpful. And to get a copy of New York's brief was most helpful. And from those days in the 1930's to date, there have been hundreds of Court decisions on hundreds of different new subjects which sweep across the Nation as advances in education, U.S. Supreme Court decisions on equality of Americans and other new developments and subjects create new legal problems for municipalities. It has been NIMLO's mission to get this essential information to city lawyers in publications and by answers to individual city lawyer requests. NIMLO has grown to meet this challenging task.

NIMLO Unique Municipal Law Library

NIMLO requests each of its member municipalities to provide its charter, applicable statutes granting it other powers, its code of ordinances and all new ordinances or amendments to existing ordinances for its library. That library soon became, and remains, the largest ever assembled of city charters, state constitutional provisions, statutes applicable to municipalities and municipal ordinances. To these are added copies of municipal attorney opinions and briefs, unreported municipal Court decisions, municipal law books and publications, U.S. Supreme

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Court and other Court decisions. NIMLO thus built the largest specialized municipal law library in existence. NIMLO's collection of Federal, state and city law regulations is exhaustive indeed. In the beginning, Betters also gave me most of his information requests from mayors to answer and any legal material USCM received.

USCM and NIMLO, in the beginning, were located together in President Garfield's old mansion on Jackson Place across Pennsylvania Avenue from the White House, so it was easy for a while to help each other and we did. But USCM grew and so did NIMLO. NIMLO was forced to move to the adjacent International Bank Building, then to the Hill Building and has been at 1000 Connecticut Avenue since.

Congressional Testimony Aide For City Officials

Work in their cooperative fields began to flow very fast for NIMLO and USCM. USCM was created largely to serve big city needs for Federal help, usually money for streets and roads, hospitals, airports, welfare, and other city services. USCM President Mayor Fiorello La Guardia was spending a lot of time testifying before Congressional Committees, as did other mayors, on federal legislation which impacted municipal needs. While this was USCM's chief field of effort, I was soon assigned to write Congressional testimony for both Mayor La Guardia and other mayors on airports, natural gas and other President Franklin Delano Roosevelt (hereinafter FDR) "New Deal" Legislation that was moving through Congress at a very fast pace. Mayors were accustomed to having their lawyers write their testimony, so I had a lot of help from that source, but I wrote much of it as Washington Government agencies, members of Congress and Congressional Committees were chief material sources.

NIMLO lawyers for members often testified before Congressional Committees when the mayors did not want to do so or when the subject was too technical for the mayor to master, such as natural gas legislation

and the "tidelands controversy". See United States v. California, 332 U.S. 19 (1947), holding that the Federal Government had title to the three mile belt of submerged lands off the coasts of California, Texas and Louisiana, where oil had been discovered. The Submerged Lands Act of 1953 ceded to the States mineral rights to lands lying offshore between the low tide mark and the States' historic boundaries, which stretched to between three and ten and one-half miles from shores. The U.S. Supreme Court upheld this Act overturning the case of U.S. v. California, supra, in Alabama v. Texas, 347 U.S. 272 (1954). This matter was thoroughly discussed at NIMLO Annual Meetings in 1947 through 1954. The yearly Volumes entitled Municipalities and the Law In Action cover that controversy and all municipal law problems through Committee reports and presentations on new, unique or other legal questions by the municipal attorneys involved in them.

La Guardia As A Witness Before Congressional Committees

When La Guardia testified before Congressional Committees, he would read beforehand what I or his Corporation Counsel had written for him. He would then not read it to the Committee, but submit it for the record at the Congressional Hearing when he testified. He would bounce up when called to testify, put his glasses on top of his head, and put on what he called his "act" extemporaneously. I do not recall him ever reading anything to anyone. He taught me there was no substitute for eye to eye contact.

As a former member of Congress, La Guardia thought reading to members of Congress was a waste of time. He said that put them to sleep. He believed he could get cities, particularly New York City, what it was after if he "looked them in their eyes". He loved questions and joked and joshed with Congressional members when testifying. He was one of the most brilliant men I have ever known so his answers were usually excellent, entertaining and

helpful. He enlivened Congressional Hearings so Committee members liked to have him as a witness. I will refer to him many times in this Volume since I learned much from him on presenting subjects to other people.

Before I leave La Guardia and Congressional Testimony, I will cite one incident that typifies him. I had worked hard on his testimony before the Interstate and Foreign Commerce Committee on the proposed Natural Gas Act, of which he said, initially to me, he knew nothing. La Guardia followed his usual method in presenting such testimony. He presented what I had written for the record and then spoke extemporaneously, appealing to the Committee to approve the proposed Act to prevent gas pipeline producers and distributors from overcharging the gas consumers by millions, if not billions, of dollars. He never exaggerated and was never, in my presence, caught in a mistake by a member of Congress. One of the members of that Committee asked him a question I knew he could not possibly answer. I jumped up and started to whisper the answer into his ear. He whirled around, nearly knocked me off my feet and screamed, "Leave me alone. When I reach the point I cannot answer questions from this bunch of bums (waving a hand at the members of the Committee), I will be in my grave. Go sit down."

The Committee members roared and La Guardia smiled back at me and did not answer the question. He blasted away at the necessity of the proposed Act as the only way to be fair to natural gas consumers. The Chairman of the Committee called me to come forward and speak with him when La Guardia's testimony at the Hearing ended. He said, "La Guardia is so mad at you that you are bound to get fired. I'll help you get a new job." I said thanks, but he will be laughing at me all the way to the Airport about my "butting into his Act". And he did, but hastened to say the written testimony was all that "counted" among those who will "mark up" the Bill and write the Report. La Guardia said, "I believe I scored big on the billions that millions of consumers will pay if this Bill does pass." I agreed with him and he departed in an "upbeat" mood.

New York Meetings: La Guardia and Corporation
Counsel Chanler

William C. Chanler, Corporation Counsel of New York, was a great lawyer and a President of NIMLO. La Guardia and Chanler assembled what he often called his "brain trust" of dynamic young lawyers in the Corporation Counsel's office. I enjoyed Chanler's handling of La Guardia. They were usually reputed not to be "speaking to each other". For a long time, I was required to fly up to New York on a fixed, almost weekly, schedule during which I would meet with La Guardia on USCM or City Mayor legislative or Federal Department or agency matters. Then I would go across the street from City Hall to the Municipal Building to meet "Willie", as he called Chanler.

Usually Chanler and I discussed my meetings with the Mayor, NIMLO business and City legal matters, such as the City's radio station, WNYC, or the developing Idlywild Airport (today, Kennedy Airport). On trips to New York, I usually took an airline to Newark Airport where a City car picked me up and took me to the Waldorf-Astoria Hotel to register for a room and waited to take me on to City Hall after I checked in. My wife, Sue, sometimes accompanied me and the Mayor, knowing this, would give us tickets to "hit" shows. Sue went shopping while I took care of my city matters.

When Idlywild Airport was dedicated in 1939, La Guardia came to the Waldorf to lead a motorcade of cars, filled by Mayors from all over the Nation, Canada and Mexico, to the event. His car was followed by the many cars taking Mayors of other cities and other High Dignitaries to the ceremony. The cars travelled at high rates of speed that scared Sue, but I knew La Guardia enjoyed that immensely. Someone, probably La Guardia, had promoted a ticker tape shower from the tall buildings in downtown New York. La Guardia is quoted to have said to those in his car, "Look at those Mayors following us, they are probably amazed at their tremendous reception by the ticker tape shower and thousands of people pouring out of the office buildings. They probably think all

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those people are coming out to see them. Actually, they are just going to lunch." He explained that most such "parades" were purposely staged at lunch time so the sidewalks and even the streets were crowded.

Organizing Cities To Litigate Cooperatively

I have already written of the Bituminous Coal Act Litigation. I will write of the Civil Aeronautics Act of 1938 and the Natural Gas Act of 1938 later herein. It was organizing cities to fight together on litigation involving the Bituminous Coal Act that taught municipal lawyers that in a group they had greater strength than going it alone and that ever expanding view, in many important cases, strengthened NIMLO cooperative action on issues of common interest tremendously.

NIMLO Briefs Amicus Curiae

In 1942, NIMLO filed its first brief amicus curiae in the Supreme Court of the United States in the New York City case of Valentine v. Chrestensen, 316 U.S. 52 (1942). The issue involved was whether or not New York City could prohibit the distribution of pamphlets on its streets advertising visits to a submarine which was privately owned and exhibited for a fee. I sat with New York Corporation Counsel William C. Chanler as he argued the case. Justice Frankfurter, one of Chanler's Professors at Harvard Law School, asked him, "Is not this case moot since the submarine has moved to Albany?" Chanler responded sharply, too sharply I thought, saying among other things, that the submarine was indeed in Albany but would tie up at a New York City wharf next week and did he want other "testimony" proving the case was not moot? Frankfurter smiled but made no response. I handed Chanler a note saying that one who violates the law cannot wipe out the violation by moving out of town. After the argument, he regaled me with stories of how sharp Frankfurter was as a Professor, in sum saying he went after Frankfurter

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the way he and successful Harvard Law students did in his law classes. That case held that "commercial speech" was less protected than non-commercial speech under the First Amendment by holding New York's prohibition was not a violation of the First Amendment. The Court later limited the reach of this decision in Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, 425 U.S. 748, 765 (1976). From that time until now, NIMLO has filed many amicus curiae briefs at the request of its member municipalities. NIMLO has labored to make such briefs of the highest caliber, short, but supplying facts and law not contained in the city party's briefs, on most important issues of nationwide interest to all municipalities.

NIMLO President, J.W. Anderson and I had met with the then Solicitor General of the United States, Charles Fahy, a former city attorney in a small New Mexico town and a frequent attendee and speaker at NIMLO meetings, who praised NIMLO's amicus curiae idea before we launched it. He gave us copies of amicus curiae briefs his office had filed in the Supreme Court to use as models. All lawyers who know about the outstanding briefs of U.S. Solicitors General in the Supreme Court, will, I believe, agree with my view that they are generally the best the United States Supreme Court and other Courts receive. That I did not usually agree with those filed against me is true, as it made me work hard to rebut their excellent preparation of the other side of the cases. The Solicitor General's office is small in staff, but generally acknowledged to be the hardest working Federal Law Office. It supervises over a thousand Federal cases per year, in one way or another.

Assistance To Municipal Lawyers On U.S. Supreme Court Arguments

One of my duties as General Counsel of NIMLO was to assist municipal lawyers, who so requested, with their briefs and arguments in the U.S. Supreme Court. In some cases, this involved many hours of

work and in all instances I did what the municipal lawyer requested in writing and research on briefs and then usually went over the case with them when they arrived in Washington for their last preparations for the argument. I gave such advice as was requested at these pre-argument preparation sessions.

An appearance in the Supreme Court is usually a "once in a lifetime experience" for a municipal attorney and usually he or she wanted to argue any case there for his or her municipality. I never signed briefs or took part in any argument in cases where I helped prepare the brief or argument unless the municipal attorney specifically requested me to do so. I could understand why, as a matter of personal and political pride, they wanted to have only their name appear in the case.

One of the first cases in the Supreme Court on which I put in a lot of effort, with Judge Ray L. Chesebro, City Attorney of Los Angeles, John O'Toole, City Attorney of San Francisco and many other California municipal attorneys was the tidelands or submerged lands case, United States v. California, supra. Another was McGoldrick v. Berwind-White Coal Mining Co., 309 U.S. 33 (1940), upholding New York City's sales tax on transactions admittedly in interstate commerce. I collected experience of other cities imposing such a tax under various titles of "use tax", gasoline and other taxes for New York City's use in defending their sales tax. Corporation Counsel William C. Chanler had many municipal lawyers from all over the Nation present when he argued this case, and I was there also. Chanler's adversary was John W. Davis. Chanler leaned toward Davis when he arose and said "I admit this tax is on interstate commerce and insist that commerce is not entitled to the services of my city for free." Both received a lot of questions. Chief Justice Hughes and other Justices posed very rough questions. Chanler, when answering the Chief Justice and Justice Frankfurter, was very aggressive in his answers. Frankfurter, a very recent member of the Court then, (and a former Harvard Law School

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Professor of Chanler) seemed to get tough with Chanler but Chanler answered him very affirmatively, as he had in Valentine v. Chrestensen, supra.

Later, he again said that was the kind of answer Justice Frankfurter taught him in law school as effective in law classes or in Courts. John J. O'Toole of San Francisco addressed this case in his report as Chairman of the Committee on Taxation and Revenue in Municipalities and the Law in Action (1940) pp. 103-105 and Mr. Chanler gave an address to the NIMLO Annual Meeting on this case which is printed at pages 123-135 of the same Volume.

U.S. Supreme Court Justices and Federal Officials At NIMLO Meetings

Robert H. Jackson had once been Corporation Counsel of Jamestown, New York. He became acquainted with me and NIMLO in its early days when he was Solicitor General. He invited NIMLO members to call on him when in Washington and he personally attended some NIMLO meetings. When he moved up to Attorney General of the United States and Associate Justice of the Supreme Court, he continued to attend NIMLO meetings. He became my good personal friend and developed much appreciated friendships with city lawyers at NIMLO meetings and by receiving them as Solicitor General, Attorney General and Justice of the U.S. Supreme Court. He once said that in back of every successful Mayor we would usually find an outstanding lawyer. I have often thought that had he run for President, as some suggested, he would have had very large nationwide support of city lawyers and I am aware that he was very much admired not only by me but by the legal profession of our Nation.

NIMLO's importance grew and its Annual and Mid-year meetings grew in importance. In its early days, both meetings were held in Washington. Now only its Midyear Seminar is held there. Photographs of its early years included members of the then President's Cabinet, Supreme Court Justices and high-ranking members of the Senate and House of Representatives who came to renew old acquaintances.

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Nearly all city lawyers are active politically, usually using their city lawyer position to climb higher in the government service field.

Chief Justice Fred M. Vinson was proud that he started out in law as City Attorney of his home town of Louisa, Kentucky and City Attorney and Commonwealth Attorney of Ashland. He told me often that he liked to be in the company of municipal lawyers as they were in touch with down to earth local law problems. He became so beloved by his local lawyer contacts in Washington that they created the famous "Vinson Club" in his honor. I was, and am, proud to be a member of that Club. It held "off the record" dinners for lawyers chosen by the Chief Justice.

Chief Justice Earl Warren was proud of serving as District Attorney of Alameda County, California. He enjoyed telling me wonderful stories about how he and his beloved wife, Nina, raised their children on the small salary he received as District Attorney, Attorney General and Governor of California. I had many opportunities to sit beside him at banquets and to lunch with him as we planned World Peace Through Law Conferences in his chambers at the Supreme Court. Aside from Nina and his children, sports events and World Peace Through Law, we never got around to talking about the Court and its decisions. Justice Harold Burton was Director of Law and Mayor of Cleveland. There too, after he moved up to U.S. Senator and Justice, he attended NIMLO Meetings often and renewed his city lawyer friendships at these meetings. The list of Supreme Court Justices who were once municipal attorneys, mayors or other municipal officials is indeed large.

NIMLO Publications And Research Reports

As NIMLO grew and its members' legal problems grew, the Municipal Law Journal, published on a monthly basis, could not adequately cover their burgeoning municipal law information needs. It was then supplemented over the years by three new publications. These were entitled The Municipal

Attorney (MA), which was primarily a personal item, municipal law and legislation news reporter; Municipal Law Court Decisions (MLCD), which reviewed nationally reported court decisions of interest to NIMLO members month by month; and the Municipal Ordinance Review (MOR), which reviewed new ordinances adopted and municipal legal opinions supporting them, written by municipal lawyers. NIMLO received these ordinances and opinions from municipal members and, as stated above, sent copies to all who requested them.

The Municipal Law Journal (MLJ) contained some digests of opinions and briefs of municipal lawyers, unreported court decisions, Federal rulings and regulations, and Federal legislation of direct concern to municipalities. These subjects were divided among the three new publications so as to cover news, Court Decisions, ordinances, Federal Legislation, and Federal Regulations of interest to municipalities in more depth. Along with these three monthly publications, an attempt was made to publish special research reports on approximately a monthly basis because there were many new subjects, such as parking meters, mechanical amusement devices, peddlers, various specialized merchants, blackouts in war time and other war time subjects which were requiring regulation by cities all across the Nation, before, during and after World War II, with many of them being challenged in the Courts. The loyalty oath craze, which swept the Nation during the "Cold War", was especially difficult on the local level. Changes due to the ever-increasing human rights needs required much municipal action and municipalities who failed to act found themselves in Court in an ever rising tide of cases. The reports on these subjects, especially those on current subjects, were and are of great value to municipal lawyers, as municipalities rarely have precedents to follow in new fields. And no municipal attorney is allowed to forget that municipalities can only exercise those powers expressly authorized by law. One should add to that basic rule of law "and those powers which are implied" as intended to be authorized by law which do

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not conflict with State or Federal legal powers. These limitations, specifically those claimed as implied powers, create a lot of litigation over municipal powers and actions and the often conflicting Court decisions present a prickly varied legal path for a municipal lawyer to lay out for his municipal council and municipal officials.

NIMLO Members Organize For Joint Interest Litigation

NIMLO's membership continued to grow and its successful participation in organizing groups of cities to work together in joint massive litigation continued to grow. For example, in United States v. County of Allegheny, 322 U.S. 174 (1944), NIMLO's President Anne X. Alpern, City Solicitor of Pittsburgh, was allowed to participate in the argument in the Supreme Court of the United States because of the brief amicus curiae which NIMLO had filed setting forth the national interest of municipalities in the issues involved. Solicitor General Fahy, to whom I referred above, gave NIMLO President Anne X. Alpern 15 minutes of his time to argue against the Government's position!

NIMLO member cities participated in the Tidelands litigation, United States v. California, 332 U.S. 19 (1947), and the Federal legislation growing out of that battle at the same time, under the leadership of its then President, Senator David Proctor of Kansas City, Missouri. NIMLO was also participating in the first formative cases involving the regulation of natural gas rates under the Natural Gas Act of 1938 by the Federal Power Commission. Kansas City, Milwaukee, Detroit and other cities organized a group to attempt to overturn the decisions of the Federal Power Commission and some Courts holding that the rates charged by so-called "independent producers and gatherers of natural gas" were not intended to be controlled by the Federal Power Commission under the Natural Gas Act. The case of Phillips Petroleum Co. v. Wisconsin, et al., 347 U.S. 672 (1954)(hereafter Phillips), reviewed.

by me under the litigation part of this Volume, grew out of that successful cooperative municipal and state effort.

This Phillips case was mammoth and it finally ended in the Supreme Court. It involved sales estimated in the billions of dollars to millions of consumers, on whose behalf NIMLO members carried the major burden of the battle. I participated in the argument in that case along with Wisconsin's Attorney General Thompson, Stewart Honeck, Counsel for Wisconsin's Public Service Commission; Harry Slater, Assistant City Attorney of Milwaukee; James Lee, Assistant Corporation Counsel of Detroit, and others. The Phillips case was a complete victory for the position which NIMLO members had taken. I discuss this landmark case further in the Litigation part of this Volume.

When General Electric, Westinghouse and the some 27 other similar companies were indicted by the Federal Government for Anti-Trust Act violations, involving bidding on city contracts for energy and electrical supplies, NIMLO, chiefly under its then President John Melaniphy, Corporation Counsel of Chicago, organized some 500 cities into a participation group which played such a major role in assembling facts and resources that all 500 cities had their cases settled by the energy and commercial supply defendants for the full damage amount suffered, plus attorneys fees. I discuss this case also in the unreported case part of this Volume.

The list on the subject of the many municipal cooperative litigation cases and briefs amicus curiae of NIMLO is too long, so I will not list them all here, but in the "one-man, one-vote" or more properly "one person, one full vote" case, Baker v. Carr, 369 U.S. 186 (1962), NIMLO's participation must be mentioned. The decision was, and is, highly important as it gave city voters equal voting power for members of all state legislatures, the Congressional House of Representatives and in all municipal elections. That case, in fact, re-made the political map of the United States so that in elections for Federal, State and local issues or

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officials, each voter is entitled to a reasonably equal vote. This decision was intended to end gerrymandering and ensure equal legislative representation, thus ending the rural domination of State legislatures. I cover that case in the Litigation Chapter of this Volume.

Responding To Information Requests

Down through the now nearly 60 years of its existence, perhaps the greatest service which NIMLO has rendered is the day by day answering of a tremendous number of requests from municipal attorneys, and their assistants, for law information from its library of city codes, municipal attorney opinions, ordinance files, collection of unreported and reported municipal law cases, and other legal material from municipal attorneys all over the Nation. I soon learned that the same legal questions arose in many cities all across the Nation at the same time. Most are unique questions due to some new invention, such as parking meters, traffic controls for automobiles, which were phasing out horse and buggy transportation, or they are due to a scientific discovery requiring local controls before the State or Federal Governments got around to regulation, or they seek assistance in alleviating State and Federal programs thought to infringe on municipal powers. Sometimes these requests require contacting U.S. Departments and agencies, as only they have the desired information.

These information requests come by telephone calls, telegrams, letters and in person. I again emphasize with pride that the NIMLO library of city codes and municipal law experience is the largest collection in our Nation, and NIMLO files on current city law problems are the most up-to-date and comprehensive that exist. In these days of constant fast moving events, the place that most new experiences first arise, in our Nation, is in municipalities. Knowledge of these new experiences is crucial to municipalities, and NIMLO is the place that makes this knowledge available to them.

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I emphasize this service, as my successor, Judge Benjamin L. Brown, has just initiated a new 24 hour per day "munifax" system that can transmit NIMLO legal information to NIMLO members in seconds or minutes. This is indeed keeping up with the computerized age in which we live. I think that proof of NIMLO's value is the fact that it has experienced a gradual growth in membership until it now has approximately 2,000 member municipalities in the United States and Canada. Many are special municipal or state authorities such as the Port Authority of New York and New Jersey, and others who are specialists in the municipal field who can be associate members, plus legal Counsel for State Leagues of Municipalities. Almost from the beginning, Canadian city attorneys have attended NIMLO meetings and received its publications and much municipal legal information. Recently, Canadian cities are joining NIMLO as members, as many of our problems are the same as theirs. Counting assistants to chief legal officers of members, it is estimated that some 18,000 lawyers take part in NIMLO's cooperative municipal law information and cooperative litigation work.

Both chief municipal attorneys and their assistants serve on NIMLO Committees and as members of its Sections. The reports of these Committees and Sections, at NIMLO Midyear and Annual meetings, tell the story of municipal law in action, year by year, both in reported cases and in unreported cases, as well as opinions of municipal lawyers. NIMLO Sections and meeting panels at NIMLO Midyear Seminars (always held in Washington) and its Annual Meetings (held all over the Nation and in Canada) offer still another opportunity to secure even more current information in this day of fast changes.

The Constant Federalism Battle

The Constitution of the United States, as amended, has as basic principles the separation of Federal powers into Legislative, Executive, Judicial, and the principle of Federalism. The Constitution also creates Federalism, which means that the Federal

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Government is one of express delegated powers with reservation of those not thus expressly delegated to the states and to the people. With the speeding up of life within our Nation, and the ever-increasing international relations, the Federal Government has expanded its powers to meet these speedy changes, so many of which reach beyond state and municipal legal reach capacity. While the U.S. Supreme Court has utilized its constitutional power to curb Federal "Federalism" excesses in the past, it has recently swung the other way. Such is the message in one of the most recent Federalism cases, Garcia v. San Antonio Metropolitan Authority, 469 U.S. 528 (1985).

In Garcia, the Supreme Court reversed, by the same vote, a 5 to 4 decision in National League of Cities v. Usery, 426 U.S. 833 (1976), which I won, that the Federal Department of Labor could not constitutionally regulate the working conditions of state and city employees. Thus, the Court put the Department of Labor bureaucrats into the regulation of municipal employees who receive the largest item, eighty-five percent (85%), of budgets of municipalities. My 5 to 4 victory seemingly was rejected by using the very argument Justice Frankfurter made in his dissent in Baker, supra, that the decision of this kind of Federalism case was too much of a burden on the Court, so it bowed out pointing to the Congress as the only road municipalities could follow to eliminate Federal controls of 85% of their budgets. In Garcia, Justice Blackmun changed his vote for National League embracing Frankfurter's dissent in Baker v. Carr of too much burden on the Supreme Court to decide. The majority opinion, written by Blackmun, stressed the burden of multiple cases arising under National League. I will comment further on this in the Litigation section. The Chief Justice of the United States, William H. Rehnquist, in his dissent in Garcia, predicted U.S. Supreme Court reversal of Garcia, as he considered Garcia a direct repudiation of our Federalism system of Government. I agree with the Chief Justice. The Supreme Court should never refuse to carry out its duty under the Constitution

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just because it would, in the view of a one vote majority, find that a decision might possibly cause it to do more work. See infra, pps. 113, where I set forth Chief Justice Earl Warren's quote of Chief Justice John Marshall.

Importance of Assistant City Attorneys

I have referred to the 2,000 members of NIMLO as one of the largest direct membership national organizations of municipalities. I would add to my reference the assistants to chief legal officers. These some 18,000 assistants have been of enormous help in doing the work of the many NIMLO Committees and Sections on law subjects of continuing municipal lawyer concern. NIMLO can thus call on 18,000 municipal lawyers for help in doing its work. In litigation, I have worked for and with, not only chief legal officers, but many city lawyer assistants who sometimes specialize in particular subjects for their entire career, especially utility rate cases. James Lee of Detroit, Harry Slater of Milwaukee, Spencer Reeder of Cleveland, and Jerome Joffe of Kansas City, Missouri are outstanding examples of assistants who have devoted their entire legal careers to representing municipal consumers in utility rate cases.

Information Cooperation Of Municipal Lawyers Through NIMLO

I am proud of NIMLO's growth, I am proud of the direction it undertook in developing cooperative group municipal participation in litigation. The expanded liabilities of municipalities through court decisions interpreting federal and state constitutions and federal and state statutes make it absolutely essential that municipalities equip themselves by pooling their legal resources to fight for their powers and to fight for the rights of their residents, as that is the only way they can continue to exist and perform their important functions. Litigation is costly and difficult but when municipalities band together they can assemble the

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funds to hire the experts to factually back up their legal claims and fight on an equal basis with the Federal Government or with big businesses, as they did in the General Electric and other Anti-Trust cases and in natural gas cases like that of Phillips v. Wisconsin, et al.

With the Supreme Court of the United States and the Supreme Courts of the States extending the area of municipal liability to unnecessary violations of the Anti-Trust Act, to Federal environmental and Federal labor controls, and Federal controls over other subjects, the whole field of municipal law for municipal lawyers on the firing line of local government with which municipalities must cope day by day is constantly expanding. The actual fact is that many major municipal cases now shape themselves as a Constitutional or Federal Statutory question for the Supreme Court of the United States. Overall, one who practices in the municipal field must focus upon the effort and knowledge which must go into the winning of that type of case. The supreme courts and appellate courts, state and federal, will take care of the law if they are given the facts. Frankly no one city, large or small, can generally act alone and do this fact collection job adequately. That is why NIMLO exists, to help municipalities to help each other collectively.

Research Reports

Throughout its history, NIMLO has continued the program of research reports, which I mentioned at the outset, and it has now published some 200 research reports on then current subjects ranging from airports to zoning. Some of these are only a few pages and some are several hundreds of pages in bound hardcover books. The unfortunate fact is that almost the moment such a report is published and sent out to NIMLO members, there are new court decisions changing the law or adding to it; consequently, it is very hard to keep up with the law in this fast moving, ever expanding, dynamic, and complex field of local government legal operations.

Annual Conferences

The Annual Conferences of NIMLO are great occasions where municipal lawyers get an opportunity to exchange information formally through speakers and questions to the speakers, as well as to seek out colleagues who have similar problems and get helpful and informal information that is never published and often almost impossible to find. I find that many lawyers for cities tell me that the informal personal meetings between municipal lawyers at NIMLO conferences and seminars are among the most valuable services the organization performs.

Oftentimes at NIMLO seminars and Annual Meetings, one can talk to the lawyer who handled, or is handling, an actual case similar to one another municipal attorney has. As I have said on many occasions, the actual happenings in cases are sometimes far different than appear in the newspapers and what appears in the written opinions of Courts. The full surroundings of facts and law are most helpful when related by the municipal lawyer who presented or defended a case.

These informal talks at meetings and seminars are, therefore, a most valuable asset which NIMLO furnishes to its members. Those who miss the annual and midyear conferences may miss a lot of valuable information which could save them much time, particularly on new problems which have not yet reached the reported Court decision stage.

The reports of Committees are too voluminous to be read in Seminar or Annual meeting sessions. They are usually printed and distributed for discussion. This allows members to seek out the Chairman or Committee and Section members or write to them and raise questions about the law in any specific field in which they have a particular immediate interest.

While many Federal officials speak at NIMLO Mid-year seminars and at Annual Meetings to explain their various programs, the emphasis at NIMLO Annual Meetings is generally on what cities themselves have done, are doing and plan to do.

In my over 50 years as NIMLO General Counsel, as

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I have said before, I have often seen the same question asked NIMLO by municipal lawyers of many cities on the same day. They all get the same answer from NIMLO's highly qualified staff and its distinguished General Counsel Benjamin Brown, who succeeded me, but my point is that the same question sweeps the Country at the same time. The so-called "open meeting" idea swept the country several years back. There again, all cities were asking the same question about how far they had to go in opening what meetings to the public and, particularly, to the media. And on "open meetings", cities have difficult and different problems and experiences to exchange through NIMLO. There are hundreds of similar problems which arise at the local level of government in which NIMLO experience files are helpful, if not decisive.

Municipalities And The Law In Action: The Municipal Law Review

The proceedings of the Annual Meetings of NIMLO, beginning in 1938, were published under the first of the above titles until 1953, when the title of the Annual Proceedings volumes was changed to The Municipal Law Review. The Municipalities and The Law in Action Volumes contain from 300 to over 600 pages per year. Those pages record Messages from the President of the United States, Speeches on the great public issues as of the time of the meeting, Reports of some 20 or more Committees, texts of Panel discussions on major municipal problems, such as those arising under the Civilian Defense Program of World War II, sales taxes by cities on interstate commerce, public housing, telephone rate proceedings, loyalty checks of city employees and a very long list of other subjects upon which municipal attorneys exchanged views on the always many changing and sometimes unchangable municipal legal problems of their current concern. If one wants to review the kind of legal issues that have arisen in the municipal field over any one year, or over many of the past years, this information is found in the

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Volumes containing the proceedings of the Annual Meetings, stated in the above changed heading. In recent years, reports and presentations at Annual Meetings are in printed form and given to all registrants at those meetings. Lists of these are prepared for each meeting and copies offered by NIMLO for a small fee.

Loose-Leaf Model Ordinance Service

I have not discussed the loose-leaf model ordinance service of NIMLO. I should not conclude this part of this volume without describing this additional service of NIMLO, which I originated many years ago. I personally have written hundreds of model ordinance provisions and found the cases to uphold them if any existed, or suggested decisions whose principles upheld their provisions. Cases are cited in annotations of the loose-leaf binders in these volumes of NIMLO model ordinances so that a municipal lawyer can evaluate an ordinance provision with regard to possible court tests if his city adopts the whole, or any one of the parts, of any NIMLO ordinance. This service has loose-leaf, replaceable pages because so much municipal law changes so quickly due to court decisions or legislative power changes. NIMLO prints and furnishes the revised pages and mails them to its members.

Comments on Law Books Authored By Me

Title: Civil Aeronautics Act of 1938 Annotated
(1939)

This book annotates sections of the Act similar in principle to sections of the Motor Carrier Act, the Interstate Commerce Act, as amended, court cases, Congressional testimony and articles on Sections of the Act. United States Senator Patrick McCarran, one of the authors of the Act, wrote a "foreword" for this book. When this Act was under consideration by Congress, I worked for inclusion of a provision giving cities airport money. This was one of my

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first lobbying efforts for USCM and NIMLO. I helped NIMLO municipal attorneys, the Mayors Conference, and lawyers for airlines who wanted this Act to provide Federal money for airports. I worked largely for Senator McCarran, co-author of the Act, and Congressman Clarence Lea of California, the co-author. I worked with Federal Administration lawyers Stuart Tipton, Clinton Hester, John Hunter and the lawyer for the Air Transport Association Howard Westwood, and others. The states fought for control of the airport money. Due to this intramural battle, all cities finally won in the Act was a study of Airport needs, under Section 302 (C) of the Act. But this work led directly to the Airport Act of 1946 and gave me an insider's view of how Congress works. McCarran was Chairman of the Senate's Judiciary Committee which, at that time, handled one-fourth of all Congressional legislation in one way or another. He was also a member of the Senate Commerce Committee and the Appropriation Committee. Having a staff of only 4 paid for by the Senate, he "borrowed" workers from Federal Government Departments, usually the Department of Justice, of whose budget he was Sub-Committee Chairman. He also used lawyers like me, who needed his help, to work without cost, to help him in drafting legislation, committee reports and other work. I did work on speeches on the new Act for Senator McCarran, for example. Since I was being paid by NIMLO, he got me "for free" and worked me just as hard - I often thought harder - than the staff he paid out of Senate funds. We, i.e. his staff, Eva Adams, Jay Sourwine, Calvin Cory and I, often wound up our work around a table at the Senator's home late at night.

Title: Airports and the Courts (1944)

In this volume, I collected all cases involving airports up to 1944 and gave conclusions, as to airport legal questions, based on Court decisions. It covered the beginning of airport construction nationwide and expenditures of city funds for that purpose and other legal questions unique to airports. I participated, with City Attorneys, as Counsel for cities in some of the cases reviewed in this Volume.

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Title: Labor Unions and Municipal Employee Law (1946): Mayor La Guardia and the War Labor Board

Herein I compile, in one printed volume, all legal information available in this then 1946 expanding field: court decisions, constitutional and statutory law, opinions of State Attorney Generals, city experience including Municipal Attorneys opinions, policies and statements of Federal Officials including Presidents, U.S. Attorney Generals, Tennessee Valley Authority and other Federal agencies, and opinions of Labor Union Lawyers and non-governmental organizations and writers. This material was collected for a brief I presented to the National War Labor Board at a hearing; it had called and invited municipalities and major Labor Unions to appear and express their views to help it determine whether it had jurisdiction over city labor relations in war time. Its decision of December 23, 1942 held that it had no jurisdiction over disputes between municipalities and Labor Unions. This opinion written by Senator Wayne Morse of Oregon for the National War Labor Board, was adopted by both the Public and Labor Union Members of the Board. For full text see pages 226-241 of Labor Unions and Municipal Employee Law (1946).

The Board, appointed by President Franklin D. Roosevelt, had outstanding public leaders and leaders of Unions as members. The Board heard arguments from Joseph A. Padway, General Counsel for the American Federation of Labor Unions; Lee Pressman, General Counsel of the C.I.O. and other Labor Union representatives and from the chief legal officers of many NIMLO member cities. The Board accepted my voluminous brief which was later revised and printed as this 583 page bound book. It developed that the hearing was packed with Labor Union representatives who, by their questions from the floor and their Counsel's statements, were there to "boo" Mayor La Guardia when he appeared to testify in response to the Board's invitation. His failure to honor the Board's invitation and appear to discuss his view that the Board had no authority to act in a

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dispute between the New York Transit Authority and its Labor Unions was to be the highlight of the hearing. During a recess the Board Chairman, William H. Davis, called me before him and asked could I get La Guardia to appear. I said I would find out. I knew the Mayor was at the U.S. Conference of Mayors Washington Office but did not so inform the Chairman at the luncheon recess. The War Labor Board Hearing in the U.S. Chamber of Commerce Building was just across the street from the Mayors Conference Headquarters.

At the luncheon recess, I gave the Mayor a briefing on what was happening at this much publicized hearing. La Guardia said that under the circumstances he would not appear, and he left for New York where he was in the midst of a re-election campaign. He instructed me to so advise the Board Chairman and I did. The Chairman suggested we, from our side at least, should have someone say they regretted the Mayor's failure to appear before the Board. I conveyed this information to the NIMLO Municipal Lawyer group. William E. Kemp, City Counselor of Kansas City, Missouri, volunteered to express his regrets that Mayor La Guardia was not present. He stood up and stated that, but added that the gentlemanly thing to do was to show respect for the Board by accepting its "invitation" as so many cities had. Kemp was quoted in the media as saying La Guardia had "none of the attributes of a gentleman". I frankly did not hear Kemp say that.

The next morning the lead story in the New York Times said many critical things about La Guardia's absence, quoting Kemp. I called and asked La Guardia had he read it and he said, "Yes, but surely Kemp could have thought of more bad things to say about me, as the story will help me win the election." He instructed me to find Kemp and tell him the Mayor thanked him for his great contribution to his re-election. He also said if any of the media got in contact with Kemp, for Kemp to "pour on as many bad adjectives as he could think up as that would play well for me in media headlines in New York City." Evidently, the Mayor was right, as he was re-elected by a "landslide" vote.

Title: Aviation Accident Law (1947)

This volume grew out of international aviation accident cases that I tried or settled. In it I collected and discussed all reported aviation accident cases up to the date of publication including those involving the Warsaw Convention, limiting all damage recovery cases to which the Convention, as of 1947, applied to \$8,300. Since then, there have been successful efforts to eliminate the recovery limit. I settled some of my cases for sums above the limit when I claimed the carrier could not rely on the limit in cases of willful misconduct causing the accidents. This area of law is unclear and its application uncertain. One should check with their air carrier on foreign travels with regard to current limitations and insurance.

Title: Airport Lease and Concession Agreements (1948)

This volume contains a review of agreements of municipalities then in effect. It describes New York Port Authority, Dade County Airport for Miami, Los Angeles and other contracts. It considers general legal principles, problems and the few court decisions that existed when the book was published on airport lease and concession agreements.

Title: The Law of Municipal Contracts (1952)

This volume reviews applicable legal principles developed in case law relating to municipal contracts.

Title: Municipal Law (1957)

This volume is a then current restatement of the basic principles of law applicable to modern cities in the United States. The need for such a volume was evident to me in my office as General Counsel of NIMLO, where my staff and I answered an ever increasing number of requests from municipal lawyers. These questions related to the great increase in municipal duties, services, responsibilities and activities in the years preceding publication of the book, which was the first one volume handbook covering then current municipal law since Dillon's Municipal Corporations, 5th Edition, published in 1911. In fact, it is a

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case or court decision summary of the impact of the growth and changes in municipal law due to the tremendous increase in area, population and stature of urban areas.

Title: Airports and the Law (1979)

This volume collects and discusses reported court decisions up to the date of its publication relating to airports.

Title: The Law of Local Government Operations (1980)

The Municipal Law volume of 1957 was quickly out of print. This volume, though it bears a slightly different title, suggested by my son, lawyer William S. Rhyne, is really an update of Municipal Law. It stresses the many new Court decisions on the outreach of municipalities and their constant growth in area and population, new services and changes in old services. The ever growing limitations and burdens on municipalities by the extended Federal legislative restrictions, as upheld by new decisions of the U.S. Supreme Court, allow the Federal Government to exercise power over both State and Local Governments beyond powers previously thought to be provided in the Doctrine of Federalism and the Tenth Amendment.

Title: Police and Firefighters: The Law of Municipal Personnel Regulations (1982)

This volume was prepared in response to requests for more detailed coverage than was given in Municipal Law and The Law of Local Government Operations in regard to police and firefighters, which are the most visible functions of municipalities whether large, small, urban, suburban or rural. The applicable personnel law often varies according to size of the municipality. Police and firefighters also are usually subject to the most comprehensive personnel regulations of municipalities and the result is a massive outpouring of court decisions which are reviewed in this volume.

Title: Municipal Attorney Law (1984)

This surprisingly small volume covers the very few court decisions on appointment, election, qualifications, tenure, powers, duties, liabilities and conflicts of interest of city lawyers and outside municipal counsel. It is surprising to some that

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there are rather few court decisions on this subject, since all functions of municipalities must be authorized, or implied, by law the municipal attorney plays a large role in local government and every function or service it undertakes.

Title: Mayor: Chief Executive Law (1985)

The Mayors of cities and the chief elected executives of counties are named as defendants in nearly all suits against municipalities. This volume brings together court decisions on local government chief executives and their election, powers and applicable limitations when they are city mayors, executives of counties, boroughs, school districts or other forms of local government performing a wide variety of powers. State Constitutions and Statutes create and state the powers of many kinds of local government agencies like airport districts, sewer districts and a vast collection of such municipal agencies under many different names to perform special services. The volume covers these districts and agencies also.

Title: 1985 Update: The Law of Local Government Operations

This Update brings the original volume, published in 1980, up to February 1985 by citing new cases to page and column references of subjects in that volume. The update adds new U.S. Supreme Court decisions and Federal Statutory Citations of new Federal Statutes applicable to municipalities with reference to drug paraphernalia, Civil Rights and abortions.

Statement by the Former Presidents At The Celebration Of NIMLO's 50th Anniversary In 1985

"The former Presidents of NIMLO wish to share with the members some of their thoughts as to this great anniversary of the organization. They wish to be heard because of their previous services and the belief that they probably have had more and closer experiences with its benefits and accomplishments than any others who are not in its employ during its fifty years of labor on behalf of local governments.

The past Presidents, in reviewing and discussing NIMLO's existence and success under Charlie Rhyne's

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leadership, direction, planning and great legal skills, found they combined since his efforts were so pervasive. They concluded that recognition of the combined action was essential to any fair and understanding consideration of the remarkable growth, development and accomplishments of NIMLO.

During the meeting to prepare this report, the past Presidents started at the beginning. They reflected on what it would have been like and how hampered they all would have been in discharging their various duties if they had to do it all without the help of NIMLO and Charlie Rhyne. Even considering the possibility of having to start or assist in developing such an organization that was equally effective seemed such a forbidding enterprise. There also were speculations on where such a leader could have been obtained, how the necessary funds have been secured from municipalities, as well as the necessary staff developed to supply the services all needed and used.

Furthermore, all agreed that it would require many years to provide similar assistance to local government lawyers. And, it was generally observed that Charlie always worked with and assisted those who NIMLO helped and did not try to take over the matters as his own and personal domain.

Thereafter, the review of all the various NIMLO services proceeded and the little cost for the benefits received was noted. All had, from time to time, obtained assistance with ordinances. The library for ordinances and municipal information was called upon regularly and the publications and special reports of local government actions and activities furnished innumerable ideas and suggestions for application to similar puzzling problems. All were invaluable services.

The most glamorous NIMLO actions were thought to be the major litigations. The success experienced in those actions were truly remarkable. All agreed that such successes were the results of Charlie's organization, legal scholarship and skills in presentation of the cases. And, with the passage of time, Charlie took advantage of his unusual and

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concentrated experience in the field to become the acknowledged expert in municipal law and one of the greatest constitutional lawyers, as is proven so remarkably by his record in winning Baker v. Carr and so many other landmark cases in the United States Supreme Court. Charlie is truly one of the greatest U.S. Supreme Court advocates.

Particular benefits were found to flow to many municipalities from the coal litigation, the natural gas decisions, the General Electric anti-trust claims, the activity to preserve local control over airports and litigation to prevent imposition of wage and hour levels on local governments by the Federal Government, which was involved in the National League of Cities litigation. Vast sums were either secured or saved by these famous litigations and many others in which Charlie was our Chief Counsel.

Then in the reapportionment cases, incalculable financial and other benefits to municipalities was the result, as the position of local governments in the political structure was revolutionized and their impact increased. This litigation also materially increased the effects of their efforts to secure badly needed legislation to solve serious problems that otherwise could not be resolved. It made the necessary political power available. What a great record it all has been, and again we hail Baker v. Carr as the most important equality decision of the 20th Century, due of course to Charlie's advocacy.

And now we have Garcia to deal with. We have to reestablish the strength of Federalism, give the protection to the Tenth Amendment which the Supreme Court has denied in Garcia, and prove our forefathers who wrote that Amendment did not write in vain. The entire constitutional scheme, must be recaptured, its protections for local governments which Federalism embodies and upon which National League of Cities was based. There, Charlie reached beyond the Tenth Amendment and relied on the entire Constitution and its "Federalism" basis and won. In Garcia, San Antonio Counsel relied only on the Tenth Amendment and lost. The citizens of cities must be protected

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against the intrusions and encroachments of the over-reaching of Congress. Garcia denies the Supreme Court protections of Federalism embodied in the Constitution. It tells states and cities that the Court has abandoned them to the Congress and made Congress judges of its own power and mandates. Nowhere in Constitutional history is support for such Congressional self-judging and Supreme Court abandonment of power to be found. This issue presents the fundamental conflict that strikes at the heart of the federal system. NIMLO will continue to insist that under the Constitution, Congress is not free to judge for itself whether its legislation invades an area reserved to state and local governments and the people. Again and again, it will have to be urged and hopefully maintained that Congress' power and its exercise thereof is subject to court review as to any such overreaching - indeed, this present contest will again call upon all of the skills that NIMLO and Charlie have evidenced to win National Cities all over again. Let us hope we can make the Garcia dissent, by Chief Justice Rehnquist, again the law of our Nation.

Obviously, NIMLO and Charlie did not achieve all these successes by themselves. Past Presidents and other officers and members contributed notably. The liaison that Charlie initiated and maintained with other local government organizations such as the National League of Cities, the United States Conference of Mayors, the International City Management Association, State's Attorneys Generals and others, like State Leagues of Municipalities, contributed substantially. A recognition of the need for mutual assistance has been consistently maintained.

Though this review is more of a recital than a description of what happened during the fifty years now being celebrated, NIMLO has a record deserving of prideful commemoration. However, such a celebration could not be enjoyed to its fullest without public recognition that NIMLO and all governments are deeply indebted to Charlie Rhyne for his original ideas, his inspiration, the resulting achievements and his

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generous personal assistances that have been received from him over the entire fifty years."

This statement was adopted by NIMLO at NIMLO's 50th Anniversary in Philadelphia, October 19, 1985, along with a Resolution stating:

"NIMLO honors Charles S. Rhyne for 50 years of Outstanding Service as General Counsel. With his assistance and guidance NIMLO has grown from 5 to more than 2,000 members. His many accomplishments include:

- * Success as an Advocate on behalf of America's cities and towns before the U.S. Supreme Court
- * Founder of Law Day
- * Past President of American Bar Association
- * Founder and President of World Peace Through Law Center

October 19, 1985

Adopted by

NIMLO ANNUAL CONVENTION"

Commendatory Messages From Presidents Of The United States

All Presidents of the United States, beginning with Franklin D. Roosevelt who told me, when I accompanied Mayor La Guardia to a meeting in the Oval Office at the White House, that he did so to thank and encourage NIMLO for its World War Civilian Defense work, have sent Commendatory Messages to NIMLO mid-year Seminars and Annual Meetings. The first two from President Franklin D. Roosevelt and the most recent message from President William J. Clinton are now reproduced below. I also include a letter from President Ronald Reagan congratulating me on my career as I retired in 1988.

Presidents Johnston and Nixon received NIMLO members and their families in the White House and President Ford received NIMLO members in the Rose Garden. Over the years, I have attended White House meetings with Presidents while accompanying municipal and state officials on matters of great importance to municipalities. Examples are the Veto Hearing conducted by President Truman, and President Eisenhower's Veto Hearing on Natural Gas Bills to

NIMLO

which I refer herein in the Litigation Chapter, with relation to the Phillips Petroleum Decision of the Supreme Court (pps. 115-118).

Text Of Message From Franklin D. Roosevelt

THE WHITE HOUSE

WASHINGTON

November 28, 1942

Dear Mr. Chanler:

To you and your fellow-members of the National Institute of Municipal Law Officers, many of whom are old friends, I am pleased to send greetings upon the occasion of your War Conference. The Attorney General has informed me of the excellent level of cooperation on wartime legal problems that has already been attained among the public servants of our Federal, State, and Municipal offices. This fine teamwork must be maintained; if possible further developed.

Both in the prosecution of the war and the readjustments that are inevitable later, the Nation will call heavily upon the abilities of men such as are represented by the membership of your organization. It is my hope that your conference will profit the cause for which we fight, not only in assisting in your field towards the goal of military victory, but in laying a base for work in that field on the great reconstructive tasks to follow.

With best wishes.

Very Sincerely Yours,

(Signed) Franklin D. Roosevelt
President

Mr. William C. Chanler
President,
National Institute of Municipal Law Officers,
Hotel Commodore,
New York, N.Y.

Autobiography by Charles S. Rhyne

Text Of Message From Franklin D. Roosevelt

A MESSAGE TO THE NATIONAL INSTITUTE OF
MUNICIPAL LAW OFFICERS FROM THE PRESIDENT
OF THE UNITED STATES
FRANKLIN D. ROOSEVELT
(By Wire)

November 30, 1943

Horace H. Edwards
President, NATIONAL INSTITUTE OF
MUNICIPAL LAW OFFICERS
Hotel Stevens
Chicago, Illinois

My cordial greeting to you and your fellow members at your Annual Conference in Chicago. Your fine work has been of material aid in the war crisis. Cooperation and understanding among Federal, State and Municipal public servants, so ably furthered by your Organization, must continue to develop. Many great and difficult problems lie before us which we must solve as friends together.

(Signed) Franklin D. Roosevelt

Message From William J. Clinton

THE WHITE HOUSE
WASHINGTON

September 17, 1993

I am delighted to extend greetings to everyone gathered in Nashville, Tennessee, for the 58th Annual Conference of the National Institute of Municipal Law Officers.

In over 1,500 municipalities, the more than 18,000 members of NIMLO are building active partnerships with community officials. Your legal assistance and guidance have resulted in city

NIMLO

administrations that are more responsive to the concerns and problems of our citizens.

America's greatest strength is the community spirit of our people. Each of us must seize the opportunities offered to us to serve the common good. The unselfish service of those who participate in NIMLO is part of the legacy of this spirit of generosity. We have learned in this nation that we can accomplish almost anything when we work together. I commend the members and supporters of NIMLO for helping to provide the necessary legal services for our nation.

Best wishes for a successful and enjoyable Conference.

(Signed) Bill Clinton
President of the United
States of America

NIMLO Resolution Adopted Upon My Retirement

WHEREAS, Charles S. Rhyne has served the National Institute of Municipal Law Officers as General Counsel since 1937 and is recognized as one of America's outstanding lawyers, particularly in the fields of litigation and municipal law; and

WHEREAS, the World Peace Through Law Center is a leading force for respect for law among all nations of the world and may be the instrument through which world peace is obtained and maintained; and

WHEREAS, Charles S. Rhyne is looked upon as the father of the World Peace Through Law Center and is now serving as its President; and

WHEREAS, Charles S. Rhyne is a Past President of the American Bar Association and enjoys the distinction of being the youngest President ever to serve that great organization; and

WHEREAS, Charles S. Rhyne is the founder of Law Day - USA, and World Law Day, national and world programs to remind us and our fellow Americans of our priceless heritage of freedom and equal justice under law; and

Autobiography by Charles S. Rhyne

WHEREAS, Charles S. Rhyne was awarded the American Bar Association Gold Medal at its 89th Annual Meeting in Montreal in August 1966; and

WHEREAS, the American Bar Medal is the highest honor the American Bar Association can bestow; and

WHEREAS, the work of Charles S. Rhyne and the recognition he has received reflects to the credit of NIMLO and has contributed much to the respect it enjoys as the nation's largest and most active association of municipalities acting through their attorneys;

NOW, THEREFORE, BE IT RESOLVED that the National Institute of Municipal Law Officers, on this the occasion of its Annual Conference, congratulates Charles S. Rhyne upon his many outstanding achievements and expresses its appreciation to him for his untiring work in furthering the success of the National Institute of Municipal Law Officers.

Adopted Unanimously by the
NIMLO Assembly in Charleston,
South Carolina on November 2,
1988

Message From Ronald Reagan

THE WHITE HOUSE
WASHINGTON

September 30, 1988

Dear Mr. Rhyne:

I want to join mine to the many voices congratulating you as the members of the National Institute of Municipal Law Officers (NIMLO) salute you for your 53 years as General Counsel.

Your devotion to municipal law has left a lasting legacy in NIMLO's remarkable achievements over the past half-century. You've helped make sure that members are fully aware of continually changing municipal legal information. Moreover, under your leadership, the organization has become a leading

NIMLO

advocate of the rights and duties of local government. It is no surprise that so many public and private institutions have recognized the outstanding job you've done at NIMLO and as President of the American Bar Association. You can surely take pride in your distinguished career.

Again, congratulations, and best wishes for continued success and every happiness. God Bless you.

Sincerely,

(Signed) Ronald Reagan
President

Mr. Charles Rhyne
Washington, D.C.

My Successors, Benjamin L. Brown: Henry W.
Underhill, Jr.

Last, but not least, let me say how happy I was to turn NIMLO over to Benjamin Brown, one of our Nation's most distinguished lawyers. As City Solicitor of Baltimore, he was one of NIMLO's most active participants for many years. As a result, he was elected to every office to which NIMLO could elect him, and he was one of its outstanding Presidents. I should add that he was a Judge of the Supreme Court of Baltimore, prior to his move to City Solicitor and NIMLO. He has been voted all the honors NIMLO could bestow on a Municipal Attorney, including his prestigious "Outstanding Municipal Attorney Award". He took part in much of the NIMLO group litigation during his tenure as Baltimore City Solicitor, and in the cooperative work which has made NIMLO so successful. Electing him as my successor was also a recognition by the NIMLO Board of Directors of his contribution to NIMLO for many years, wherein their Chief Legal Counsel represents his municipal members. He has brought new ideas, new vision and great leadership to the position he now holds in the unique municipally owned and operated organization known as NIMLO.

Autobiography by Charles S. Rhyne

At NIMLO's 1993 Annual Meeting in Nashville, Tennessee, Judge Brown gave notice of his retirement as of the end of 1994. A nationwide search was conducted to select his successor. At its 1994 Mid-year Meeting, NIMLO's Board of Directors unanimously adopted the Search Committee's recommendation that Henry W. Underhill Jr., long time City Attorney of Charlotte, North Carolina, be elected as Judge Brown's successor. Henry is a past President of NIMLO who served with great distinction. He has held many other NIMLO offices and positions, always being a great achiever. I am sure he will carry NIMLO to ever greater accomplishments in the years to come.

NIMLO Presidential Photographs



HENRY E. FOLEY
Corporation Counsel
Boston, Massachusetts
1936-1937



RAYMOND J. KELLY
Corporation Counsel
Detroit, Michigan
1937-1938



BARNET HODES
Corporation Counsel
Chicago, Illinois
1938-1939



JOSEPH W. ANDERSON
City Attorney
Chattanooga, Tennessee
1939-1940



WILLIAM C. CHANLER
Corporation Counsel
New York, New York
1940-1941
1941-1942

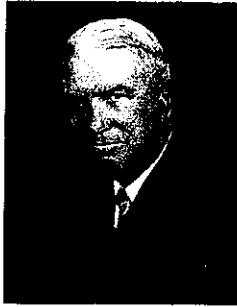


HORACE H. EDWARDS
City Attorney
Richmond, Virginia
1942-1943

NIMLO



RAY L. CHESEBRO
City Attorney
Los Angeles, California
1943-1944



FRED T. VAN LIEW
City Solicitor
Des Moines, Iowa
1944-1945



WILLIAM E. KEMP
City Counselor
Kansas City, Missouri
1945 (Elected Mayor)



WALTER J. MATTISON
City Attorney
Milwaukee, Wisconsin
1945-1946



HERMAN C. WILSON
City Attorney
Greensboro, N. Carolina
1946-1947



ANNE X. ALPERN
City Solicitor
Pittsburgh, Pennsylvania
1947-1948



ALEXANDER G. BROWN
City Attorney
Portland, Oregon
1948-1949



ROBERT D. MORRISON
City Attorney
Lynchburg, Virginia
1949-1950



WILLIAM H. EMERSON
Corporation Counsel
Rochester, New York
1950-1951

Autobiography by Charles S. Rhyne



THOMAS N. BIDDISON
City Solicitor
Baltimore, Maryland
1951-1952



DAVID M. PROCTOR
City Counselor
Kansas City, Missouri
1952-1953



A. C. VAN SOELEN
Corporation Counsel
Seattle, Washington
1953-1954



HENRY B. CURTIS
City Attorney
New Orleans, Louisiana
1954-1955



DION R. HOLM
City Attorney
San Francisco, California
1955-1956



BARNETT I. SHUR
Corporation Counsel
Portland, Maine
1956-1957



J. ELLIOTT DRINARD
City Attorney
Richmond, Virginia
1957-1958



RALPH S. LOCHER
Director of Law
Cleveland, Ohio
1958-1959



ROGER ARNEBERGH
City Attorney
Los Angeles, California
1959-1960

NIMLO



JOHN C. MELANIPHY
Corporation Counsel
Chicago, Illinois
1960-1961



HENRY P. KUCERA
City Attorney
Dallas, Texas
1961-1962



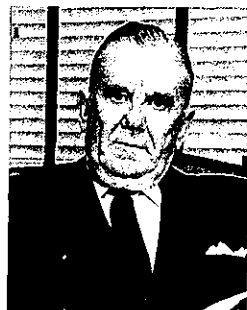
LEO A. LARKIN
Corporation Counsel
New York, New York
1962-1963



FRED W. ALEY
City Attorney
Wichita, Kansas
1963-1964



JOHN J. FLEMING
City Attorney
Milwaukee, Wisconsin
1964-1965



GEORGE E. MURPHY
City Attorney
Beaumont, Texas
1965-1966



WILLIAM M. MADISON
City Attorney
Jacksonville, Florida
1966-1967



ROBERT REESE
Corporation Counsel
Detroit, Michigan
1967-1968



THOMAS M. O'CONNOR
City Attorney
San Francisco, California
1968-1969

Autobiography by Charles S. Rhyne



HERBERT C. HOFFMAN
City Counselor
Kansas City, Missouri
1969-1970



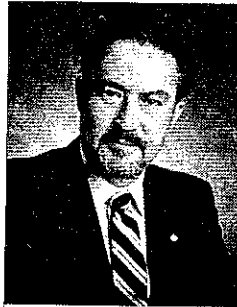
J. LEE RANKIN
Corporation Counsel
New York, New York
1970-1971



A. L. NEWBOULD
Corporation Counsel
Seattle, Washington
1971-1972



ROBERT T. ANDERSON
City Attorney
Hercules, California
1972-1973



MARVIN J. GLINK
Corporation Counsel
Naperville, Illinois
1973-1974



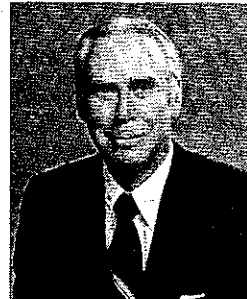
N. ALEX BICKLEY
City Attorney
Dallas, Texas
1974-1975



EUGENE N. COLLINS
City Attorney
Chattanooga, Tennessee
1975-1976



CONARD B. MATTOX, JR.
City Attorney
Richmond, Virginia
1976-1977



T. EMMET WALSH
City Attorney
Spartanburg, S. Carolina
1977-1978

NIMLO



SAMUEL GORLICK
City Attorney
Burbank, California
1978-1979



AARON A. WILSON
City Attorney
Kansas City, Missouri
1979-1980



JOHN DEKKER
Director of Law
Wichita, Kansas
1980-1981



JAMES B. BRENNAN
City Attorney
Milwaukee, Wisconsin
1981-1982



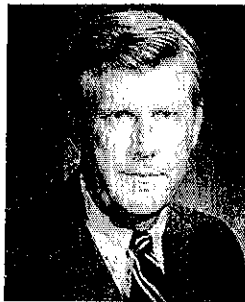
HENRY W. UNDERHILL, JR.
City Attorney
Charlotte, North Carolina
1982-1983



BENJAMIN L. BROWN
City Solicitor
Baltimore, Maryland
1983-1984



J. LaMAR SHELLEY
City Attorney
Mesa, Arizona
1984-1985



John W. Witt
City Attorney
San Diego,
California
1985-86



Roger F. Cutler
City Attorney
Salt Lake City,
Utah
1986-87

Autobiography by Charles S. Rhyne



Roy D. Bates
City Attorney
Columbia, South
Carolina
1987-88



William H. Taube
Corporation Counsel
Chebanse, Illinois
1988-89



Marva Jones Brooks
City Attorney
Atlanta, Georgia
1989-90



William I. Thornton,
Jr.
City Attorney
Durham, North
Carolina
1990-91



Analeslie Muncy
City Attorney
Dallas, Texas
1991-92



Robert J. Alfton
City Attorney
Minneapolis,
Minnesota
1992-93



Joseph I. Mulligan
Corporation Counsel
Boston and West Tisbury,
Massachusetts
1993-94



Robert J. Mangler
City Attorney
Orland Park, Illinois
1994-95

NIMLO

Those pictured above are NIMLO Presidents, my close friends and my co-workers in developing law to urbanize America for more than 50 years. We worked together to eliminate ills and troubles in the ever-expanding urban life, sharing experiences and knowledge.

CONCLUSIONS: THE FUTURE

NIMLO from its creation in 1935 has successfully organized municipal lawyers to carry out cooperative programs to solve municipal legal problems. But NIMLO cooperation endeavors do not end there. It cooperates with ABA on traffic court and other problems too many to list here, and with State leagues and their lawyers on State-municipal problems. In the the Federal-Municipal area NIMLO has carried out extensive efforts. This cooperation began with FDR's many "New Deal" programs where that cooperation was essential to success on programs aimed at the "Great Depression." It moved quickly into civil defense programs when FDR sought to gear up the United States for the threatening World War II.

In the litigation area U.S. Solicitor Generals have been helpful. I report this in the Litigation chapter herein. Over the years U.S. Attorneys General have appeared before many NIMLO meetings to urge NIMLO members to help on many Federal programs. U.S. Attorney General Janet Reno recently addressed NIMLO's mid-year seminar on the current crime problem. She emphasized the rising tide of juvenile street and other crime. Since she has spent much of her career as a municipal attorney President Mangler introduced her as "one of us". She earned a great standing ovation as the photograph I produce demonstrates.

NIMLO indeed has a proud record of cooperative public service through its cooperative endeavors. Based on that experience, I am certain that it can, and will, do its part in solving other municipal problems of our day and those of the future.

Autobiography by Charles S. Rhyne



The Attorney General of the United States, Robert H. Jackson (center) at the Annual Meeting of NIMLO. Photographed with him are (left to right) Fred Ice, City Attorney of Newton, Kansas; Edward M. Curran, United States District Attorney for the District of Columbia; C. Wesley Killebrew, City Attorney of Augusta, Georgia; and Joe W. Anderson, City Attorney of Chattanooga, Tennessee NIMLO Past President. 1940.



Attorney General Janet Reno, NIMLO President Robert J. Mangler, Henry W. Underhill, Jr., Benjamin Brown, CSR and Neal M. Janey. 1995.

CHAPTER 3

MY CAREER AS A LITIGATION LAWYER: A SUMMARY REVIEW OF DECISIONS AND COMMENTS THAT ILLUSTRATE ITS SCOPE

(I discuss only a few important cases, but write extensively of them and include some observations and reactions which I hope will be of interest. By not discussing other cases, I do not mean to down-grade their importance, as all cases are important. A list of additional reported cases, in which I have participated, is included herein as Appendix A at the back of this Volume. I do not list the cases which were settled, as no printed report generally exists but the Court records of all cases are publicly available in the files of the Courts where the cases were heard and decided or settled.)

I have had a busy career as a trial and appellate court lawyer since 1937. Above all, I have been fortunate to have had substantial clients who have paid me well for my efforts on their behalf, so I could spend liberally of my time in my professional life, pro bono publico, to help upgrade the rule of law through law reform programs at the municipal, state, national and international levels. Effort in impact litigation and cooperative landmark efforts with legal professionals to upgrade and expand the rule of law, in our Nation and in the World, are the defining goals of my career; I have been able to pursue both goals simultaneously.

My primary public service goal has always been to help create the cooperation of lawyers, Judges, law professors and others who believe in the rule of law to bring about the reforms and reach which that rule requires to meet the needs of human rights and the needs of new economic, scientific, engineering, and other enormous achievements of our day. Through my pro bono efforts, I have, first and foremost, worked toward legal updating reforms that would make ours a better Nation and the World a better place to live in.

I have travelled my Nation heavily, having visited all states and their major cities several

Autobiography by Charles S. Rhyne

times, in carrying out the NIMLO, ABA and international efforts that I describe herein. I have represented individual states, great and small cities, great corporations, labor unions and others in major litigation in the U.S. Supreme Court and other Courts. I have also visited more than half of the Nations of the World, chiefly pursuing the World Peace Through Law Program of substituting rule of law for rule of force internationally. I have become acquainted with the law leaders of nearly every Nation on Earth, at various worldwide meetings. Usually, through them, if I visited their Nation, I met their Head of State, whether President, King, Emperor, Prime Minister or other title, and received their enthusiastic support of the rule of law program I was pursuing to the utmost of my ability. These travels and meetings had a major impact on the turn of the World to the rule of law and away from the rule of force. This is the almost universal goal of humanity. It is the 20th Century's major concept for peaceful nations and a peaceful World.

Throughout my career, I have been involved in municipal, state and national, as well as international, litigation and law reforms. The worldwide turn to the rule of law, to enforce human rights, individual equality and peace, has been the hallmark of our day and, I believe, the greatest accomplishment of the 20th Century. The cooperative contributions of legal professionals, both American and of other Nations, to create this turn to the rule of law deserves much of the credit, and a special appreciation, in any commentary by me on the strides the rule of law has achieved in this Century. It is only through their dedication to selling the concept of rule of law government and international relations to their respective government leaders, Heads of State and people that this progress has been possible. Through national law reform programs and the World Peace Through Law Program internationally, the law leader cooperative efforts, which I will discuss in more detail later, produced many law professionals from all Nations who produced the rule of law reforms of which I write.

Litigation Lawyer

It is with participation in 20th Century law developments as the background experience that I have carried out my career as a litigation lawyer. Legal professionals have been the most instrumental in bringing about this dramatic turn to the rule of law, which this background records. There have been no other volunteer private initiatives working nationally or globally, by individual legal professionals, to bring about this revolutionary turn to the law, or which could lay claim to bringing the results of which I write to fruition. I also believe that, since I have been privileged to have a leadership role in this turn to the rule of law, I have an obligation to summarize the great contributions of the American and the international legal community, as I do in this Volume.

I have also carried out law reform roles in cooperation with leading law professionals within municipal, state and Federal Governments of my own Nation, as well as in the international field. One obvious example of a law change that impacted all levels of American Governments, and all Americans, is my winning of the U.S. Supreme Court case of Baker v. Carr, 369 U.S. 186 (1962), the "one person, one equal vote" decision. That decision caused the rewriting of reapportionment statutes and municipal charters and thereby remade the political map of our Nation. It upgraded the political power of individual Americans at all levels of government.

The right to vote is the greatest right of all Americans. To help make that right an equal right is indeed a major contribution to the constitutional equality right of American citizens. In winning that case, I had a lot of help from two great U.S. Solicitors General, J. Lee Rankin who prepared a brief for the U.S. Government supporting my position and then left it on his desk for his successor, Archibald Cox. Solicitor General Cox filed a brief for the United States, amicus curiae, and made a tremendously outstanding oral argument in the Supreme Court.

In other Nations, I have helped plant the seed, aided by legal professionals from nearly every

Autobiography by Charles S. Rhyne

Nation, which grew and flourished into the recent universal demand and claim of all persons of good will to the democratic right to rule of law government, including that of an equal vote, to exist all over the World for all people in all democratic governments.

I have caused to be mailed to Heads of State, the conclusions of all World Peace Through Law World Conferences, Continental Conferences, and other meetings calling for rule of law government, stronger legal protection of human rights, plus the Committee and Section Reports, Declarations, Resolutions, Speeches and other writings on needed law reforms presented by participating legal professionals from around the World at those Conferences. Add to this, the bi-monthly "World Jurist" reporting on the constant progress of our rule of law program and the printing of many books on the law, the Courts, and the judicial systems, of the Nations of the World, plus directories of national law professionals and other information which has been printed and distributed globally. These conferences, meetings, publications and cooperative efforts have turned strangers and antagonists into friends unified by the common rule of law concept and a unified purpose towards which to work. I note it here because it had a decisive impact on my presentation of cases in Courts.

Legal professionals have, in the rule of law, a "common bond". A bond which helped build the turn to law in the 20th Century into a worldwide event of great magnitude. They deserve great credit for what they have done to strengthen that bond.

I want to stress again that in working to promote the great goal of strengthening and expanding rule of law government, locally, nationally and internationally, I have never worked alone. It was the legal professionals in states and municipalities, in my Nation, who carried out the law reforms chiefly born in the great minds of law leaders like ABA President Arthur Vanderbilt, other ABA Presidents and great law leaders, like NIMLO President Henry E. Foley and his successors, already referred to

Litigation Lawyer

herein. I must include also, the State Attorneys General and the many outstanding legislators, Chief Justices, Justices, Judges and professors of law who brought those reforms about.

I started law reform work under Vanderbilt and Foley, but could and should, if not so limited by pages in one volume, name hundreds of law reform leaders that I have personally worked with since the beginning of my law career. Vanderbilt, Foley and U.S. Circuit Court of Appeals Judge John J. Parker got me initiated, as my career began, into law reform as a lawyer's greatest pro bono mission, and I have followed that vision throughout my career. This broad background has helped me immensely in my law practice and is the reason I mention it here before I discuss cases I have litigated.

Through essential law reform programs and ideas, it is the law leaders of the current and future generations who will continue to focus the attention of all people on their need of, and reliance upon, law principles and institutions. By so doing, these leaders will keep the rule of law current with the needs of all peoples, in all Nations, who are fortunate enough to live under those principles and its institutions.

Through the creation of "Law Day - USA", "World Law Day" and similar programs and events, I have tried to contribute to this cause. These programs create occasions when and where legal professionals can address essential updating of their existing law systems. By providing an opportunity for focus upon reform programs, they have led to current law adapted to the needs of the present and the future, caused largely by new economic, scientific and other advances. I sincerely believe that since rules of law in a democracy are in ultimate thrust, usually an expression of crystallized public opinion, we of the law community bear a special mission to help make these rules of law so equitable, so reasonable and so morally right, that the public will respect them. Then, the legislative institutions which must enact them and the Courts which enforce them will try to ensure equal justice to all.

Autobiography by Charles S. Rhyne

The above words about cooperative efforts expanding the rule of law gave me a sense of mission or purpose in my litigation career. I believe that without that purpose and mission I could not have achieved so much in that career. For example, my last major address was to NIMLO's Annual Meeting in 1993 in Nashville. I spoke, at NIMLO's request, to provide my ideas of how to persuade the U.S. Supreme Court to overrule the case of Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985), holding, by 5 to 4, that Congress was the ultimate judge of the Constitution's Federalism guarantees rather than the U.S. Supreme Court. So my litigation career has gone hand in hand with my pro bono missions to uphold the Constitution of the United States. I feel strongly that our great Chief Justice, John Marshall, was right in enunciating the power and duty of the Supreme Court to carry out its role as enforcer of the Constitution in Marbury v. Madison, 1 Cranch 137 (1803).

In discussing court decisions, I will review in some detail only a few of the cases in which I have participated, which I believe are of unique interest and importance, and which illustrate the types of litigation in which I have been involved, rather than attempt to review all such cases.

Naturally, I will highlight some of those United States Supreme Court cases I have argued before our highest Court. In Appendix A, I list cases in which I have participated by brief, argument or in other ways, and identified their subject matter, again to illustrate the scope of my litigation career.

As I have travelled our Nation and the World, many law professionals have queried me on the course of U.S. Supreme Court review, so I say a few words on that subject here. Many cases filed there, for review, are usually preliminarily considered by the Court and their decision to hear cases is made in a few words. "Probable jurisdiction noted" or "certiorari granted" means that a review is granted but jurisdiction is always the first issue upon that review. When review is denied, the Supreme Court usually states the title of the case, makes a

Litigation Lawyer

reference to the Court for whose decision review is requested and whether by "appeal" or "certiorari". The Court can then dispose of it in one word, "denied", or several words, "Appeal dismissed for want of jurisdiction", or "Dismissed for want of a substantial Federal question". Such summary disposal enables the Court to now dispose of some 5,000 cases during each one year term of the Court. Dissents and comments of Justices on such summary or short decisions are noted, and reasons for dissents and the dissenting Justice's name are then stated, if the dissenter so desires. Naturally, there may be slight variations in disposing of cases by a few words, but those quoted above are those usually used. "Appeal dismissed" or "Certiorari denied" are self explanatory. The general curiosity on this review process exists abroad, as well as in the United States.

In all cases, as I quickly learned by experience in my first case, City of Atlanta v. Ickes, 308 U.S. 517 (1939), jurisdiction is always the first issue considered by the U.S. Supreme Court. As many have said, the Supreme Court is extremely jealous of its jurisdiction and guards it carefully. The few word denial decisions are not usually argued orally, but are decided on the written jurisdictional statements in appeals or on the petitions for a writ of certiorari and the answers thereto. The Court hears arguments orally in about 150 cases each term out of the some 5,000 filed per their yearly term, from October to the following June of the next year, that are filed for review, in an appeal, or petition for writ of certiorari, or in some other way.

I have stated the above also to indicate the fact that though summary disposal, or a few word decision, may indicate to some that such action is unimportant, that impression is not usually correct. In many cases, the preparation of the Jurisdictional Statement in an Appeal, or Petition for Certiorari, requires a tremendous amount of lawyer research and analysis in these attempts to get the Supreme Court to hear these cases. Brevity in the Jurisdictional Statement or Petition for Certiorari is essential

Autobiography by Charles S. Rhyne

even though the lawyer for the appellant or petitioner often must, to be successful, distinguish prior applicable decisions of the Supreme Court or convince at least four Justices that a prior decision should be overruled. It is my understanding that if four Justices vote to set a case down for hearing, the Court will do so.

I agree with a comment to me by my distinguished, departed, great friend, former U.S. Supreme Court Justice Arthur Goldberg, about the members of this great Court, "We work like slaves and live like monks." With the glory and responsibility comes many hours of inescapable hard work and inescapable, difficult decisions.

SOME EXAMPLES OF CASES I ARGUED IN THE UNITED STATES SUPREME COURT:

BAKER v. CARR, 369 U.S. 186 (1962)

UPHOLDING CONSTITUTIONAL REQUIREMENT OF EQUAL VOTES FOR ALL VOTERS IN ELECTING MUNICIPAL, STATE AND NATIONAL REPRESENTATIVES

Measured by its impact on our Nation in the 20th Century, and its people, no decision of the United States Supreme Court exceeds Baker v. Carr in importance. No right exceeds that of each citizen's equal vote. It empowers voters to control governments.

To give readers a feel for what happens in the Supreme Court of the United States when it hears oral argument in cases, especially when it heard the reargument of this, one of the most important cases in the Court's history, I here set the scene as I remember it at the opening of the reargument. The Courtroom was packed as the sense that a great occasion was unfolding prevailed.

United States Solicitor General Archibald Cox, who was to argue as amicus curiae, and I were seated together at the counsel table immediately below the long Court bench, at the right of the podium. The Attorney General of Tennessee, George F. McCanless, and Tennessee Assistant Attorney General Jack Wilson

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were on the left side of the podium at their counsel table. Archie Cox said to me, "Felix (referring to Justice Frankfurter) has had all summer to get ready to tear into me." I replied, "He has an hour to tear into me first. I'll bet I will not get beyond 'Mr. Chief Justice' before he levels his first question." The usual salutation is "Mr. Chief Justice, and may it please the Court."

At that moment the Court Marshal said, "All Rise" and we all rose as the Court came in. Then, the Marshal said: "Oyeh, oyeh, oyeh. All persons having business before the Honorable, the Supreme Court of the United States of America, please draw near and give your attention. The Court is now in session. May God save this Honorable Court and the United States of America." The Chief Justice of the United States Earl Warren said, "Are there any motions?" The Clerk read off, one by one, the names of attorneys who had applied for membership in the Supreme Court's Bar and a member of the Court's Bar moved their admission. At the conclusion of each oral motion, the Chief Justice stated that the motion was granted and the applicant could go to the Clerk's desk and take the oath required for admission. The Clerk then administered the oath to all the new members as a group.

The Chief Justice then said, "Will the Clerk please call the first case." The Clerk announced, "Baker et al. v. Carr et al." The Chief Justice then turned to me as Counsel for the Appellant and said, "Mr. Rhyne."

I arose and gave the then usual opening salutation of "Mr. Chief Justice, and may it please the Court." The questions began as I started to give a brief statement of the case, but Justice Frankfurter quickly took over to say, in substance, Mr. Rhyne, when we consider the constitutionality of any Statute or Governmental action we take into account certain considerations. He then proceeded to list considerations the Court had to resolve to decide the jurisdictional question, as to whether a constitutional, jurisdictional or a political question was involved in the case. The tension, at

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that time, indicated Justice Frankfurter was obviously "up high emotionally" as he rattled off a host of subjects. Finally, he paused to catch his breath after saying to me, "Mr. Rhyne, I have asked you a number of questions, none of which you have answered."

My memory is that I most respectfully and carefully replied, "Justice Frankfurter, I will answer all of your statements in one word." He said, "Preposterous. If you are going to make an argument make it."

Chief Justice Warren then leaned over toward Justice Frankfurter and most respectfully said, "Mr. Justice Frankfurter, Mr. Rhyne said he would answer you with one word. Why don't you let him give us the word?"

Justice Frankfurter pushed his chair back from the Bench and seemed to agree with the Chief Justice so I quickly said, "The word is 'equality'".

I then argued it is the duty of members of the Supreme Court, in this voting rights case, to uphold the equality requirement of the Fourteenth Amendment. I further argued that under that requirement, each American voter is entitled in every election to an equal vote, not a part of a vote, with other voters having the equivalent of several votes.

The tension existed because the Court was being asked to depart from a long history of non-involvement in the manner in which state and local legislators and Federal Congressional Representatives were elected. The Court, in a decision written by Justice Frankfurter, had, in 1946, held that such elections were a "political thicket" over which the Court had no jurisdiction. Colegrove v. Green, 328 U.S. 549 (1946).

Baker v. Carr arose in Tennessee; Charles W. Baker was Chairman of the Shelby County Court, the local governing body in Memphis, and Joe C. Carr was the Secretary of State of Tennessee, charged with the enforcement of the state election laws. The Tennessee Constitution of 1870 initially apportioned the members of both houses of the state legislature among the counties according to population; it

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required a reapportionment every 10 years, following each Federal Census. Although the legislature had been reapportioned in 1881, 1891 and 1901, all legislative proposals to reapportion after 1901 had failed to pass. Over the next 60 years, the counties containing the cities of Memphis, Nashville, Chattanooga and Knoxville grew enormously in population, but their share of the Tennessee House of Representatives and Senate did not change at all. As a result, a single state senator representing Shelby County, which includes Memphis, represented over 100,000 voters while his counterparts in the rural counties represented only half as many voters. Otherwise put, Shelby County had seven representatives under the 1901 apportionment when its 1960 population entitled it to 15. Similarly, Davidson County, including Nashville, had six representatives when its population entitled it to ten. In consequence, 40% of the population of the state controlled two-thirds of the members of each house of the legislature.

The National Institute of Municipal Law Officers, in its brief as amicus curiae, showed that the legislative districts in other states were similarly malapportioned; the degree to which voters in New York City, Los Angeles, Baltimore, Philadelphia and many other cities, large and small, were underrepresented, was demonstrated.

The malapportionment of the state legislatures insured that the rural interests never could be forced by simple politics to change the composition of the legislatures to insure equal voting power for each voter. The refusal to recognize changes in population was carried over into the formulas used to distribute state tax receipts back to the people. In Tennessee, funds for building roads and schools, which consisted of state taxes paid by every state resident, were distributed equally to each county (or sometimes according to a scheme which gave rural counties a priority) rather than according to population. So, city voters who contributed their taxes equally with rural voters - and far more than equally when the taxes were based on the value of

real estate or the purchase of gasoline - were not given their fair share in state-funded services.

This made a compelling case based on fairness. But, a legal obstacle, the Colegrove decision, stood in the way of the Federal Courts' ordering the state legislatures to be reapportioned fairly, according to current population.

In that earlier decision authored by Justice Frankfurter on the same issue, as I have stated above, the Court had held reapportionment of voting districts within states was a non-justiciable "political thicket" over which the Federal Courts had no jurisdiction. Justice Frankfurter's expressed fear was that the Federal Courts could not develop standards and could not create and enforce remedies for highly politicized Government decisions, even if the decisions treated citizens unequally or unfairly. That was simply too much of a burden for the Supreme Court to undertake.

The doctrine of non-justiciability of political questions, relied upon by Justice Frankfurter, had been used to justify the Court's refusal to get involved in questions of the President's conduct of foreign relations, competition among rival State Governments in the early years of the Nation, and a Governor's refusal to extradite a criminal defendant to another state.

The same doctrine had been applied by Justice Frankfurter's Colegrove decision to claims that voters were being unfairly represented by the malapportionment of their state legislatures and congressional districts. Some 15 cases had been filed on this issue since Colegrove. Each time, the Court declined even to accept the case for briefing on the merits, oral argument and a fully-explained decision. Baker was the first time since Colegrove in which the Court granted full review and decided to re-examine its policy of non-involvement in voting cases. In a 51-page opinion for the six-Justice majority, Justice Brennan reasoned that Federal Courts have jurisdiction and have the power to declare an apportionment which treats voters unequally to be unconstitutional. Justice Brennan's opinion for the Court in Baker concluded:

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"We conclude that the complaint's allegations of a denial of equal protection presents a justiciable constitutional cause of action upon which appellants are entitled to a trial and a decision. The right asserted is within the reach of judicial protection under the Fourteenth Amendment." 369 U.S. at 237

Mr. Justice Frankfurter wrote a 64-page dissent (joined by Justice Harlan), refusing to change the view he had held since Colegrove. In the end, the passage of time, the change in the spirit of the times, and - I think - the compelling case for simple fairness and equal voter rights which we made, overtook that narrow and legalistic view. Justice Douglas, in his concurring opinion, quoted a lower Court opinion which we had cited and which summed it up well:

"The whole thrust of today's legal climate is to end unconstitutional discrimination. It is ludicrous to preclude judicial relief when a mainspring of representative government is impaired. Legislators have no immunity from the Constitution." 369 U.S. at 249

It is quite possible that the appeal to a sense of fairness prevailed where other, more purely legal, arguments would not have fared as well. Justice Douglas, for example, had voted with Justice Frankfurter in a 1939 case, Coleman v. Miller, 307 U.S. 433 (1939), holding that the method used by Kansas officials to count the votes in favor of ratification of a constitutional amendment was non-justiciable. Something brought Justice Douglas to the opposite view by the time of Baker. I think it was the facts demonstrating the unfairness of Tennessee's system to its citizens.

Within a month of the Supreme Court decision in Baker, the U.S. District Court in Nashville held a hearing to determine the constitutionality of the Tennessee election system. The State Attorney General declined to defend the 1901 apportionment. The legislature quickly passed a reapportionment,

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which the District Court disapproved as to the Senate because it still was not based on population. In this way, the state finally was forced to give every Tennessee voter an equal vote.

Baker has remade the geographical map lines of all elected Governments in the United States (except the United States Senate, where the U.S. Constitution provides each state shall have two Senators). It is the most important decision on voter rights ever made by the Court because it guaranteed a judicial hearing for the myriad of particular voting rights claims to come. The decision paved the way for the Voting Rights Act of 1965, which provided a mechanism for the review of the fairness of state election systems by the U.S. Justice Department and the Federal Courts. Many of those decisions made upon reviewing state and local election systems have been controversial, and I have participated in the defense of some election systems which were challenged, in cases such as City of Richmond v. United States, 422 U.S. 358 (1975) (defending the reasonableness of an annexation which incidentally changed the racial composition of a city electorate), and City of Mobile v. Bolden, 446 U.S. 55 (1980) (defending the city commission form of government against a claim that its at-large method of election was established and maintained as a purposeful discrimination). However, Baker insured that in each challenge and each review, the meritorious and the controversial, would be heard by neutral Judges with only the Constitution and Statutes, not political self-interest, to guide them.

The importance of Baker extends far beyond voting. Insuring the fairness of election systems helps insure the responsiveness of elected governments. Responsiveness, in turn, affects how tax dollars are spent, how openly or secretly governments behave, and the relative importance of the views of citizens and of lobbyists in gaining the ear of officials. I repeat that an American citizen's constitutional right to an equal vote is that citizen's most important right, since it is by these votes that the voters control all the decisions

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made by democratic governments such as the decisions that are made under the United States Constitution.

The oral argument in Baker also illustrates how important it can be to communicate to the Court a sense of the importance of the case it is called upon to decide, and of the advocate's conviction of the rightness of his or her position in the case. I tried very hard to do this and Solicitor General Archibald Cox, in his tremendous amicus curiae argument, most certainly did. He was one of our greatest U.S. Solicitor Generals, as was J. Lee Rankin, his predecessor, who wrote the brief to which I have referred.

My statement of a "duty" of the Court to enforce the Constitution rankled Justice Frankfurter. He replied, "Do not tell me my duty, get on with it." I then went into detail urging "unequal could never mean equal", quoting Thurgood Marshall in arguing the school desegregation cases, Brown v. Board of Education, 347 U.S. 483 (1954) and 349 U.S. 294 (1955), and the Court in those cases held that "the equality required by the Fourteenth Amendment could never mean unequal". I tried to communicate that this principle was equally applicable to voting as to education. I urged that "one person, one vote" - the media used "one man, one vote" - or "one person, one full equal vote", was the very clear meaning of the Fourteenth Amendment's requirement of equality which the Court must uphold. I also added that Justice Frankfurter's "cliche", in the Colegrove case, calling reapportionment a "political thicket", was in error since the fair division of members in the U.S. House of Representatives and the apportionment of state legislatures and all elected city, municipal and county governments was a Federal Constitutional question for the Supreme Court of the United States to decide, not a political question for legislative bodies. I argued as forcefully as I could that the Constitution was the Supreme Law of our Nation and the members of the Supreme Court had taken an oath to uphold that Constitution, including the "equality" mandate.

Justice Frankfurter tried several other avenues

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of attack on my "equality" stand but I stood by the constitutional equality requirement. If I had given in to the persistent, careful, and intellectual intimidation which the Justice had developed over long years as a professor at the Harvard Law School, it might have suggested to other members of the Court that I did not believe in my case, or that it was merely a parochial dispute between urban and rural interests in Tennessee. It is important to develop the confidence which comes only with preparation and the mastery of a case on the facts and the law, and to communicate that confidence and mastery in answering hard, even hostile, questions from the Bench.

This decision calls forth a lot of words from me since it is, beyond question, my greatest victory in our highest Court and I am proud of it.

There are many comments by others on Baker v. Carr. I will not attempt to list or summarize them all. An "inside the Court" view is that of Kim Isaac Eisler, A Justice for All: William J. Brennan, Jr., And the Decisions that Transformed America (1993) pp 11-14, 169-177, wherein quoting extensively from the private papers of Chief Justice Warren and Justices Brennan, Douglas, Harlan and Black. I also should cite The Memoirs of Chief Justice Earl Warren (published in 1977, three years after his death, with some editorial revision of his uncompleted text). At pp 306-311, the Memoirs repeats the Chief Justice's oft-quoted statement that Baker v. Carr is the most important decision handed down during his tenure as Chief Justice and states his reason. His reasoning always was that Baker gave all Americans a full vote, the most important constitutional right of Americans.

The Chief Justice's Memoirs also strongly support the Court's decision that it had jurisdiction to grant the relief asked for in Baker. At page 433 of the Memoirs the Chief states:

"As the defender of the Constitution, the Court cannot be neutral, whether it is judging litigation between individuals, between the government and an individual, or between

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branches of the government. The Court sits to decide cases, not to avoid decision, and while it must recognize the constitutional powers of the branches of Government involved, it must also decide every issue properly placed before it.

Over a century and a half ago, Chief Justice Marshall said of the function of the Supreme Court:

'It is most true that this court will not take jurisdiction if it should not; but it is equally true, that it must take jurisdiction if it should. The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the Constitution. We cannot pass it by because it is doubtful. With whatever doubts, with whatever difficulties a case may be attended, we must decide it if it be brought before us. We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the Constitution.'

These words have not been successfully challenged, and I have tried to live within their concept."

The quoted words of Chief Justice John Marshall are from Cohens v. Virginia, 6 Wheat. 264, 404 (1821)

Over the years of my acquaintance with Justice Frankfurter, in arguing cases before the Court and in rare personal or social contacts, he was always most kind to me. He believed he was right in Baker v. Carr and fought for his position, for which I respect him tremendously. When I was President of the George Washington University Law School's Order of the Coif chapter, I called upon him personally to invite him to speak at the Coif Banquet. He very graciously accepted, made a most interesting speech on the Supreme Court and, of course, of most interest to me, he uttered words of praise about my arguments in cases before the Court, not naming any particular cases. He, during some arguments, sent me little

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notes about my ABA activities which I treasured. On other occasions also, he praised my Presidency of the American Bar Association, Law Day - USA, the Magna Carta Memorial and the work I was doing for World Peace Through Law. He was a great man and one of our greatest Justices. He stuck by and fought for his principles in Baker, as I did mine. In the few times I met him after Baker, neither of us mentioned the case but he was his usual cordial and gracious person.

I admit, for the benefit of my dear deceased friend Justice Thurgood Marshall, that Marshall indeed "paved the way for my victory", as counsel in the school desegregation cases. Justice Marshall, during his years on the Court, travelled the World with me and Chief Justice Warren. He was a wonderful salesman for our Nation, but also a great jokester and teaser. Often when we were in Africa, in particular, where they worshipped him, he wrapped his story around how he made a Supreme Court lawyer out of me by winning the Brown v. Board of Education case.

This memory causes me to recall an incident at a reception in Montreal during an American Bar Association meeting in 1966. Marshall and I were engaged in a loud - very loud - argument over who made the best arguments in the Supreme Court, who gave the best answers to the most questions, and similar subjects, both enjoying our rather loud shouting to the utmost. Suddenly, we realized that we were surrounded by Canadians who were listening to us. I was speechless and a little embarrassed. Thurgood, who was then U.S. Solicitor General, and who never in his entire life, I believe, was either speechless or embarrassed, said calmly to the Canadians, among whom were a number of Canadian Supreme Court Justices, "We lawyers from down below you come to these Bar Meetings to have fun." In typical Thurgood fashion, he then said some kind words about our long personal friendship and added that our Constitution, after all, guaranteed freedom of speech, including yelling. But he added our yelling at each other never took place during a court

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session. "We were just letting off a little steam," he said. The whole incident ended with everyone laughing.

In one of the few times any Justice of the Supreme Court ever mentioned a decision of the Court, in a case in which I had participated, Justice Black, some months after Baker was decided, called to me in a Washington parking garage saying he had a question to ask me. He wanted to know when I guessed or knew I had won Baker. I told him it was several months later, when I argued a tax case for the City of Mobile, Alabama. The case involved whether the City tax on oil transported from one port to another within Mobile was invalid as a tax on interstate commerce. I told Justice Black that Justice Frankfurter was unduly sharp in his questions in the tax argument, so I guessed I had won Baker and he had lost. He replied, "You did a great job in Baker. You saddled Felix. I am glad we won." The City of Mobile case I referred to was United Gas Pipeline Co. v. Ideal Cement Co. et al, 369 U.S. 134 (1962).

PHILLIPS PETROLEUM COMPANY v. STATE OF WISCONSIN,
CITIES OF KANSAS CITY, MISSOURI, DETROIT,
MILWAUKEE, ET AL., 347 U.S. 672 (1954)

FEDERAL CONTROL OF SALE PRICES OF SO-CALLED
INDEPENDENT PRODUCERS AND GATHERERS FROM
"BOTTOM OF WELLS TO BURNER'S TIP"

Saving Billions for Consumer Millions

This decision saved millions of dollars for my clients' natural gas consumers, under the Court's Natural Gas Act interpretation, where it held that the Federal Power Commission had jurisdiction over rates charged by so-called independent producers and gatherers of natural gas.

This case was a multi-party massive litigation proceeding. Its purpose was to determine whether the sale rates of so-called independent producers and gatherers of natural gas, who sold gas to interstate pipelines, were subject to the rate control provisions of the Natural Gas Act under the Federal Power Commission (FPC). The Court held the independents' rates were subject to FPC control.

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My clients, the Cities of Detroit, Kansas City, Milwaukee, the State of Wisconsin, and others, were major parties representing consumers located in their jurisdictions. Their principal opponent, Phillips, produced gas and purchased gas from so-called independent producers and gatherers in 14 states and resold it to pipelines into cities. Nearly all users of natural gas were impacted by the ever increasing prices. I was employed to coordinate the consumers' side of the controversy, and worked with counsel for the cities and states who were active participants.

The media had hyped the case as involving millions and billions of dollars in excessive rates to natural gas consumers.

We hired natural gas experts like the firm of Van Scoyoc and Wiscop to prepare exhibits and testify in support of Federal Power Commission jurisdiction to regulate the unjust and unreasonable rates. The Commission held against us and we appealed successfully to the U.S. Court of Appeals for the District of Columbia. Other consumers also lost their cases on this issue before the FPC and appealed to various U.S. Courts of Appeals throughout the country, and the cases were soon before the Supreme Court. I argued that the intent of Congress set forth in the Natural Gas Act was that FPC did have jurisdiction to regulate rates charged for natural gas "from the bottom of the wells to the tips of the gas burners of all consumers".

When questioned by Justices Clark, Minton and others about many FPC decisions against our contentions, I argued that "repeated error was still error". The Court, in affirming the Court of Appeals decision in our favor, said in reference to the FPC consistent decisions against us that "even consistent error is still error". 347 U.S. 672, 678, footnote 5.

As is usual in such major cases, the Supreme Court's hearing room was jammed with lawyers. And as usual, tension was high. At least I felt it.

A new Solicitor General, Simon Sobeloff from Baltimore, Maryland, making his first argument before the Supreme Court, presented the chief argument for

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the Federal Power Commission and with Warren E. Burger, Assistant Attorney General, and Willard W. Gatchell, General Counsel of FPC, filed a brief for FPC. Dan Moody, Governor of Texas, presented an oral argument as counsel for oil and gas producers and with John Ben Shepperd, Attorney General of Texas, Mac W. Williamson, Attorney General of Oklahoma, Richard H. Robinson, Attorney General of New Mexico, filed a brief urging the Court of Appeals' decision be reversed.

I argued the case orally for consumers, as did Stewart G. Honeck and William E. Torkelson for Wisconsin, Harry G. Slater, Assistant City Attorney of Milwaukee, and James H. Lee, Assistant Corporation Counsel of Detroit. They each were signers with me of a joint brief urging affirmance of the Court of Appeals' decision reversing FPC, along with Vernon W. Thomson, Attorney General of Wisconsin, Paul T. Dwyer, Corporation Counsel of Detroit, David M. Proctor, City Counselor of Kansas City, Missouri, Walter J. Mattison, City Attorney of Milwaukee, and Jerome Joffe, Assistant City Counselor of Kansas City.

Arguing for Truman and Eisenhower Natural Gas Bill Vetoes in White House Oval Office

Senator Kerr of Oklahoma had previously introduced a bill which the Congress speedily passed exempting natural gas producers and gatherers from FPC jurisdiction. President Truman vetoed that bill on April 15, 1950, after a hearing in the White House Oval Office at which I, invited to speak for consumers, urged such action.

The Truman veto did not deter the oil and gas moguls. They rushed through the Harris-Fulbright Bill to accomplish the same objective and to overrule the Phillips decision. When the Congress passed the bill, I again was invited to appear at a crowded White House Oval Office meeting and urged President Eisenhower to veto the bill, and he did on February 17, 1956.

When I went to London in 1957 as Chairman of ABA

House of Delegates and ABA President-Elect and took office in London as ABA President, the media hammered me saying my chief accomplishment was winning the Phillips case which involved billions of dollars. It seems that in England, the fees received in such cases by the Barristers, who argue all Court cases there, are never secret. Several Barristers, Law Lords and the media asked me what my fee was and when I said such facts are not usually disclosed in the United States, they thought I was being unusually silent. I did say that since I represented cities and states, they paid me under contracts which were a matter of public record, and the states and cities could disclose what each had paid. So far as I know, they were never asked to do so. Of course, the media attention at the time the Supreme Court decision and the Presidential veto were released was rather large in the United States.

**BOWMAN TRANSPORTATION v. ARKANSAS BEST FREIGHT
SYSTEM, 419 U.S. 281 (1974)**

**WINNING U.S. EASTERN MOTOR TRUCK CARRIERS
RIGHT TO CROSS MISSISSIPPI RIVER TO SERVE
U.S. WEST**

This case involved five consolidated appeals by large eastern common carrier truck firms seeking to extend their service beyond the Mississippi River, to serve southeastern and southwestern areas of the United States. The 10 eastern firms were opposed by 66 western firms which did not want the competition; 1,012 witnesses presented 23,423 pages of testimony and 1,989 exhibits in 150 days of oral hearings before the Interstate Commerce Commission (ICC) on the new services which the eastern companies were proposing. The hearing examiners who heard the witnesses held that existing service was adequate and denied the applications. The applicants appealed to the Commission which, in 1972, reversed the hearing examiners holding that the record proved the public interest and convenience facts supported the need for the new services.

The western truckers chose the U.S. District Court in western Arkansas in which to litigate the

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validity of the ICC's decision, as they were permitted by statute to do. The Arkansas District Court upheld the claim that the action of the Commission was not supported by the evidence and was thus arbitrary and capricious. As the District Court viewed the record before the ICC, the Commission had found that the eastern firms were capable of, and willing to perform a needed service; to the District Court, however, the existing western carriers were no less able to perform. The District Court felt the Commission had arbitrarily ignored the western carriers' good performance simply because it was demonstrated, in part, during the time following the filing of the eastern carriers' applications.

The applicants and the Commission took direct appeals to the Supreme Court, as was provided by statute. In a unanimous decision, the Supreme Court reversed the District Court. The questions presented in our jurisdictional statement to the Supreme Court dealt with the mechanical adoption by the District Court of the western carriers' proposed findings of fact and conclusions of law, and the proper deference which the courts should give, under the substantial-evidence standard, to a federal agency's decision, even when it involved the rejection of the views of its hearing examiners.

But, there was a psychological point which also could be made consistently with these legal arguments. I determined that the massive complexity of the record before the ICC itself could be used to advance our case. The Supreme Court need not - and we were not asking it to - choose whether the factual determinations of the District Court, or the ICC, or its hearing examiners, were the most faithful to the record. That would require a fourth evaluation of the massive record by the Supreme Court. I knew that the Court has avoided such massive factfinding projects wherever possible, in many tax, environmental and antitrust cases on appellate review, and by appointing special masters in the original jurisdiction cases between the states. Not only is such factfinding a tremendous burden for each Justice, it also results in unnecessary disputes

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among the Justices about the disposition of the cases and the handling of factual issues in the opinion. I determined to make the case much easier for the Court by simply asking it to defer - and to require the district courts and other reviewing federal courts to defer - to the expertise of the federal agency, the Interstate Commerce Commission, which was required by the controlling statute to make such decisions.

The oral argument of the case gave me an opportunity to stress this point in a way the members of the Court could not forget. After I had made my opening argument, and had saved a large amount of my time, 35 minutes of the total one hour, for rebuttal, I sat down. The lawyer for the western carriers was well into his prepared remarks when one of the Justices asked, in an apparently offhand fashion and without any emphasis, whether there was any substantial evidence at all to support the ICC's decision and its rejection of the hearing examiners' views. In an equally offhand and unemphatic way, the lawyer answered that, of course, there was evidence to support the Commission, and returned immediately to his argument that the hearing examiners' and the District Court's view of that evidence was superior to the Commission's. The luncheon recess intervened before it was time for my rebuttal argument. Over lunch, I explained to the many other lawyers on my side of the case, representing all the eastern carriers who had won before the Commission, that, while it was possible to use the 35 minutes to rebut all that the western carriers' lawyer had said, it would be much more effective simply to say to the Court that his concession that there was evidence to support the Commission's decision was fatal to his case and then to sit down. My tactical judgment found no support at all among the lawyers who had hired me to handle their case. There was too much money, too much time and too much precedential value for future applications before the ICC involved in the case to forego any time available for argument, they said. I felt that, if they could have fired me at that late date, many would have voted to do so. At the end of our discussion, they told me to do as I

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thought best, happy, no doubt, that if the case were lost, as it was by them in the District Court, it would be my fault, not theirs.

I made just the rebuttal argument I had outlined. It took 30 seconds for me to point out my opponent's fatal concession; I concluded by saying that, "If the Court has no further questions, this case is over." I was greeted with silence from the Court, so I sat down.

I was very happy when the unanimous decision of the Court came down about a month after the oral argument. Justice Douglas's opinion reaffirmed that the scope of judicial review of final agency action was a narrow one, and concluded that the Commission was entitled to take a view different from that of its hearing examiners on the proper amount of competition among interstate trucking firms. In applying these principles to the massive record before the ICC, the opinion concluded:

"At oral argument, counsel for appellees disposed of any 'substantial evidence' objections to the Commission's order by conceding that 'we did not allege that any finding of fact itself was not supported by substantial evidence.' (Tr. of Oral Arg. 25)."

I felt that I had made the proper tactical judgment in stressing this concession by waiving my rebuttal argument and the unanimous opinion confirmed this judgment.

NATIONAL LEAGUE OF CITIES v. USERY, 426 U.S. 833 (1976)

FEDERALISM UPHELD RENDERING NATIONAL LABOR RELATIONS ACT UNCONSTITUTIONAL AS APPLIED TO STATES AND CITIES

This is one of the most important cases to come before the U.S. Supreme Court involving "federalism", or the division of constitutional power between the federal, state and local governments. The delicate constitutional relationship between the federal government and state and local governments has many aspects, and has been a subject of intense political debate throughout our constitutional history.

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The most direct expression of a right of state and local governments to be free from federal interference is in the Tenth Amendment, which states that the powers not delegated to the federal government are reserved to the states.

For the first hundred and eighty years of our Nation's history, "states' rights" was used as a slogan to resist national legislation, as in the area of civil rights; the constitutional questions involved an apportionment of power to regulate private conduct and to make state officials accountable in federal courts for their conduct.

By the 1960's, the relationship between the federal government and state and local governments took on an economic dimension. Federal grants provided much-needed money for local governments, especially those of the cities, but were accompanied by restrictions on the use of the federal money. The sharing of money produced a spirit, perhaps a false one, of cooperation among the levels of government. In the 1960's, too, the Congress began to assert a power to regulate the operations of the state and local governments themselves, even when no federal money was involved. Many state and local government officials began to see their federal partner as less benign. The largest component of the budget of any state and local government is personnel costs, and public employee unions long have been effective advocates in Washington. When direct federal regulation began in this area, the constitutional and financial stakes were large enough to bring the controversy to the Supreme Court.

In 1966, the Congress, acting through its power to regulate activities affecting interstate commerce, had made state-owned schools, universities and hospitals subject to the wage and hour provisions of the Fair Labor Standards Act. This amendment was upheld in Maryland v. Wirtz, 392 U.S. 183 (1968). In 1974, Congress extended the Act to most employees of all state and local governments. Although the labor rules of the Fair Labor Standards Act seemed simply to guarantee public employees the same minimum wage and maximum workweek as in the private sector,

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imposition of private-sector rules on government operations produced waste and, paradoxically, unhappiness among the employees. Firefighters, for example, could no longer work regular shifts of twenty-four hours on duty, with the next two days free to pursue second jobs; unless the firefighters were to be paid overtime (something local taxpayers were unlikely to accept as sensible), they would have to work the same five-day, eight-hour weeks as clerical workers. No one in local government, neither employers nor employees, was happy with such a result. Accordingly, groups of state governors and attorneys general, city mayors and their city attorneys, asked me to bring a constitutional challenge to the latest amendments to the Fair Labor Standards Act.

As I had in Baker v. Carr, supra, I set out to analyze why the earlier challenge, in Maryland v. Wirtz, had failed. At least I would try a different approach with the Court. I concluded that state and local governments could not win with an approach which simply made legal points about the Tenth Amendment. I first considered whether the claimed ground for federal power itself was susceptible of a direct challenge. I concluded it was not. The federal commerce power was too important to the national economic program, to federal criminal law enforcement, and to such emerging areas of federal regulation of private industry as environmental protection to make a commerce power-based challenge acceptable to the Court.

I next considered, carefully, the affirmative protection of state and local governments set out in the Tenth Amendment to the Constitution. That was what the states had relied on in Maryland v. Wirtz. Not only was that adverse precedent an obstacle to another challenge on the same ground, invocation of the Tenth Amendment as an abstract legal proposition seemed to have no practical limit. A state which wanted to harm its neighbors through air or water pollution, or to insulate its police officers or zoning officials from federal suits for torts and

constitutional violations committed against its citizens could make an abstract Tenth Amendment argument, too. I would never win my case solely on a principle which permitted these unacceptable results.

I concluded that the facts of how the federal labor rules cost state and local governments money unreasonably could form the linchpin of a constitutional challenge. The abstract legal principles, such as the Tenth Amendment, would form the more scholarly justification for what I hoped would be a judicial decision reached on more pragmatic and sensible grounds.

Through surveys, questionnaires, telephone calls, research into the operations of state and local governments, and investigation undertaken for the purpose of the litigation, we developed a factual record which eventually took 50 pages of our brief in the Supreme Court to lay out, and concluded that the amendments would cost state and local governments, in fire services alone, a billion dollars in the first year. These facts made the case that, far from being necessary to provide fairness and to prevent poverty and overwork, the federal wage and hour laws would force state and local governments to lay off employees, alter the work schedules agreed to by the remaining employees and eliminate needed services to pay off the overtime which was unavoidable under the federal rules. The result, we argued, was a violation not just of the Tenth Amendment, but of the very federalism structure of the entire Constitution. The International City Managers Association furnished the specific facts as to the billion dollar cost to cities alone.

We filed the constitutional challenge initially in the United States District Court for the District of Columbia, seeking a declaratory judgment that the amendments were unconstitutional and an injunction against their going into effect as scheduled on January 1, 1975. On December 31, 1974, the three-judge District Court dismissed the case, saying it was troubled by the constitutional implications of our factual showing, but that it nonetheless was bound by Maryland v. Wirtz.

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We had prepared, and immediately filed in the Supreme Court, an application for a stay, seeking to enjoin the going into effect of the amendments as scheduled the next day. That New Year's Eve, Chief Justice Warren Burger remained at the Court until late in the evening to review our application. He granted a stay which was continued shortly thereafter by the entire Court. The press of our business fortuitously kept the Chief Justice at the Court when the unfortunate news of Justice Douglas's stroke was received; so, the Chief was present and able to take visible charge immediately, allaying much of the public concern about the effect on the Court of Justice Douglas's incapacity.

Like Baker v. Carr, supra, this difficult case was argued twice, once in April 1975, and, again at the next Term, in March 1976. At both arguments, the Federal Government was ably represented by Solicitor General (later U.S. Circuit Judge) Robert H. Bork, but our factual showing was unassailable. It played the crucial role, I think, in the Court's decision declaring the 1974 amendments to the Fair Labor Standards Act unconstitutional and overruling Maryland v. Wirtz. Justice Rehnquist's majority opinion cleared away the obstacles to our victory: we were not challenging the federal commerce power generally, and we were asserting a fundamental difference between federal preemption of the states' power to regulate private activity and federal regulation of the operation of the state government itself. The opinion mentioned the estimates of compliance with the federal mandate which we had collected from such differing locales as Nashville, Tennessee; Cape Girardeau, Missouri; Inglewood and Clovis, California, and the State of California's operation of its forest-fighting and police activities. The Court held that such a widespread displacement of the states' ability to structure their own employer-employee relationships in the core areas of state government activity, a displacement which affected the state activities themselves, "would impair the states' ability to function effectively within a federal system."

By a 5 to 4 vote, the Court held the Federal Government's constitutional power over commerce did not extend to the exercise of traditional state and local powers over governmental functions, such as fire, police and public health.

Because the states' and cities' victory in National League was accomplished through the factual demonstration of the adverse impact of the federal mandate, its status as precedent always was precarious. It could not support an assertion of state immunity which was not similarly supported by the facts.

Nine years later, also by a vote of 5 to 4, the Court overruled the National League decision in Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985). The Court held the commerce power did empower the federal government to control wages, hours and other employment conditions of the San Antonio Transit Authority's employees and in doing so, extended the effect of its decision nationwide to all state and city employees. In reversing the National League decision, the majority decision in Garcia said that the states and cities must look to the Congress for constitutional relief, as the review process for this question was too burdensome on the Court. This is one of the ideas Justice Frankfurter had used in fighting Baker v. Carr and which the Court there rejected.

The Transit Authority, I think, made the error of trying to win its case simply by classifying its city bus service as a traditional government function, rather than by demonstrating the interference of the federal labor regulation with that function. Abstract distinctions of fact such as that are no more comforting a basis for a court's decision than are abstract distinctions of law. Once the Transit Authority pitched its case on such a line-drawing, it was lost.

I believe the Court mistakenly took the occasion of the Transit Authority's loss to inflict further damage on the cause of federalism. Apparently dismayed at the kind of line-drawing the Court was being called on to perform, Justice Blackmun in his majority opinion concluded that:

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"[S]tate sovereign interests, then, are more properly protected by procedural safeguards inherent in the structure of the federal system [such as equal representation in the U.S. Senate] than by judicially created limitations on federal power." 469 U.S. at 552.

This language was widely interpreted as leaving state and local governments without any hope of a judicial remedy when the political process operated politically rather than constitutionally. It may be, however, that the Court's refusal to intervene to protect federalism was temporary, and that the hope expressed by Chief Justice Rehnquist in his dissenting opinion in Garcia of a return to the rule of National League will be realized. In New York v. United States, 112 S. Ct. 2408 (1992), the Court invalidated a federal law requiring that the states take title to otherwise unprovided-for radioactive waste within their borders. In her majority opinion, Justice O'Connor reviewed Maryland v. Wirtz, National League, and Garcia, concluding that "[t]he Court's jurisprudence in this area has travelled an unsteady path," but finding it unnecessary to reconcile the reasoning of those three cases in order to dispose of the unconstitutional congressional environmental requirement at issue in New York. I think that, in properly prepared and presented cases, proving the enormous adverse financial and national impact will cause the Court to reinstate National League and overrule Garcia. Justice Blackmun's idea that National League overburdened the Supreme Court, when presented by Justice Frankfurter in Baker, will again be rejected and Federalism, as envisioned by the Constitution, will live again. The Court still can be relied upon to insure the continued validity of "federalism," no matter how burdensome the decision process may be.

That the Supreme Court is the enforcer of constitutional rights was established in Marbury v. Madison, 1 Cranch 137 (1803), and reaffirmed in Baker v. Carr. To abdicate its duty as constitutional enforcer, Justice Blackmun did not

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look to the whole of the Constitution when he referred states and cities in Garcia to the Congress as the enforcer of the Constitution's federalism principles, insofar as Congress is concerned. Chief Justice John Marshall did survey the whole of the Constitution in Marbury. I believe Federalism is a constitutional right and should be enforced as such by the Supreme Court of the United States, not by the Congress when it adopts laws infringing upon the constitutional right of Federalism.

McCULLOCH v. SOCIEDAD NACIONAL DE MARINEROS DE HONDURAS, 372 U.S. 10 (1963)

LAW OF FLAG GOVERNS EMPLOYMENT ABOARD SEA VESSELS

During my legal career, the United States has gone from one of several World powers sharing a balance of power to the pre-eminent World power. Accordingly, international law has become increasingly important, both in our foreign relations, and in the worldwide operation of large United States corporations. Occasionally, the international implications of a court case play a part in the development of our domestic law as well.

One of the most important international law cases to be decided by the Supreme Court of the United States in our day of world market legal questions involved the jurisdiction of U.S. labor authorities over international shipping.

At the request of the National Maritime Union of America, the National Labor Relations Board (NLRB) ordered an election of the labor union representatives of Honduran seamen, employed by a Honduran corporation, flying a Honduran flag and making regular sailings between the United States and Latin American ports. The seamen were aliens, as citizens of Honduras, and were already represented by a Honduran union which had a collective bargaining agreement covering wages and conditions of employment with the Honduran corporation which owned the ships. That Honduran Corporation is wholly owned by United Fruit Company, an American corporation.

I filed a complaint to enjoin NLRB from

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conducting such an election because the NLRB has no jurisdiction. I argued that the provisions of the National Labor Relations Act do not extend to maritime operations of foreign flag ships employing aliens. Judge Richmond B. Keech, of the U.S. District Court for the District of Columbia, issued a temporary restraining order and Judge Alexander Holtzoff of the same Court, after a hearing, issued a permanent injunction against NLRB and a summary judgment based upon a written opinion, which included reference to a letter from William H. Orrick, Jr., Assistant Attorney General of the United States, in response to an inquiry from Judge Holtzoff stating that the United States Department of State "agrees with the conclusion that jurisdiction of the National Labor Relations Board should not attach in this case", referring specifically to the complaint I had filed. The NLRB appealed to the U.S. Court of Appeals for the District of Columbia, but the U.S. Supreme Court granted a writ of certiorari before judgment to bring the case before it for consideration along with two similar cases raising a similar issue which were consolidated for argument.

The Supreme Court, in an opinion by Justice Tom Clark, affirmed the judgment of Judge Holtzoff in disposing of all three cases before it.

The opinion stated that Judge Holtzoff's decision had been "chosen as the vehicle for our adjudication on the merits", the other two cases are "controlled by our decision" in that case. The Court stated that "since the parties all agree that the Congress has constitutional power to apply the National Labor Relations Act to the crews working foreign-flag ships, at least while they are in American waters, we go directly to the question of whether the Congress exercised that power. Our decision on this point is dispositive of the case" 372 U.S. at 17. The Court then said: Considering "the possibility of international discord" which might be created, the language of the Treaty of Friendship between the United States and Honduras which "provides that vessels flying the flags and having the papers of either Country shall, both

within territorial waters of the other High Contracting Party and on the high seas, be deemed to be the vessels of the party whose flag is flown" and the "presence of such highly charged international circumstances brings to mind the admonition of Mr. Chief Justice Marshall in The Charming Betsy, 2 Cranch 64, 118 (1804), that an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains." We therefore conclude "...that for us to sanction the exercise of local sovereignty under such conditions in this 'delicate field of international relations there must be present the affirmative intention of the Congress clearly expressed'. Since neither we, nor the parties, are able to find any such clear expression, we hold the Board was without jurisdiction to order the election." 372 U.S. at 21-22 (citations omitted).

One interesting fact about this important case was the amicus curiae briefs it attracted. The Solicitor General of the United States, Archibald Cox, filed such a brief and argued for affirmance in our favor. The governments of the United Kingdom, Canada and Honduras also filed briefs, amicus curiae, urging affirmance of Judge Holtzoff's decision.

Solicitor General Cox was appearing as amicus curiae in a case in which a Federal Government agency was a party and taking a different position, because the division within the Government on the foreign relations implications of the case had not been resolved. The NLRB's petition for certiorari was filed over the names of both the Solicitor General and the attorneys for the NLRB. After the Court agreed to take the case, however, the NLRB filed its own brief, which did not bear the names of any attorney from the Solicitor General's office or any other office in the Justice Department. Archibald Cox, wisely and courageously, filed a separate brief for the United States as amicus curiae, signed as usual by the appropriate Justice Department officials, pointing out that the position of the NLRB would "embarrass the United States in the conduct of its international relations," and supporting our side

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of the case. At the oral argument, Dominick L. Manoli, an assistant general counsel of the NLRB, spoke for his agency as petitioner, and Archibald Cox argued for the United States government as a whole in support of my position.

This kind of extraordinary and public split within the legal offices of the federal government occurred again twenty years after McCulloch was decided in 1963. In Bob Jones University v. United States, 461 U.S. 574 (1983), a private university discriminated against blacks in accordance with its religious views, and was denied a charitable tax exemption by the Internal Revenue Service under a decade-old tax regulation. The Court of Appeals upheld the regulation and the University successfully sought Supreme Court review. The United States filed a brief, as the party respondent, claiming that the IRS had exceeded its authority in issuing the regulation. This brief was signed by an Assistant Attorney General. The acting Solicitor General, a career lawyer in that office of impeccable reputation, signed on but noted that he did not agree with the position expressed in the brief. The Court therefore appointed a private lawyer to defend the judgment of the Court of Appeals, which was affirmed.

In due course, the McCulloch case was ready for argument before the Supreme Court. The real surprise at the argument of the case was that U.S. Attorney General Robert Kennedy showed up in the morning coat required by custom of the Department of Justice for all of its lawyers who represent the Federal Government when appearing in the U.S. Supreme Court. I was sitting beside Solicitor General Cox, awaiting the beginning of the argument, when Robert Kennedy arrived and said, "Charlie, get up out of that chair. I, as Attorney General, must sit beside the Solicitor General." I got up and a Court Marshal brought me another chair. General Kennedy announced he was there to look and listen as he was going to argue a case before the Court soon. I replied he need not worry, as all Attorneys General argue one "unlosable cinch" case where the Court will ask them no questions. I assured him he would have it easy since

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he would not be embarrassed by questions and would not lose the case.

Bobby Kennedy and I both, at that time, attended the Sunday Children's Mass at Our Lady of Victory Catholic Church with our wives and children. One Sunday thereafter, my friend Bobby came running over to my car as we were preparing to leave for home. He said, "Charlie, wait a minute. I want to tell you about my Supreme Court argument. I did great and two Justices asked me questions." I replied I had already heard that he did make a great argument and did answer some questions very well, but I also said I had heard he wrote a letter to each Justice of the Court asking them to please ask him questions. He did not deny writing the letter. The case he argued was Gray v. Sanders, 372 U.S. 368 (1963), a voting rights case. He argued as amicus curiae, by special leave of the Court, and filed a brief relying chiefly upon Baker v. Carr. The Supreme Court voted eight to one to reverse the judgment below as the basis of that decision upholding the Georgia unit system as a basis for counting votes in a democratic statewide primary violated the 14th Amendment equal protection clause. The Court held that every voter, under the decision in Baker, is entitled to a vote equal in weight to the vote of every other voter and the lower Court decision did not so decide. So General Kennedy won his case.

My favorite story about Bobby Kennedy is also about an incident which happened at Our Lady of Victory Church. At the Children's Mass, the then Chief Deputy Clerk of the U.S. Supreme Court, Edmund R. Cullinan, took up the collection on one side of the Church and I did on the other. One Sunday, Cullinan came back and said to the pastor, Monsignor Hess, that Bobby Kennedy had put a bill into the plate and then took out some change. Monsignor Hess laughingly asked if he had taken out more than he put in. Cullinan said he was so flustered that he did not know. I kiddingly told the Monsignor to take Kennedy into the confessional.

Some Sundays later, I was taking up the collection in that part of the Church where Bobby,

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his wife Ethel, and his then very young children were sitting. Bobby put in a bill and slowly took out some change. In the parking lot after the Mass concluded, Bobby ran over and said, "Charlie, I shocked you! I shocked you!" I replied, "Bobby, there is nothing in the world you could do that would shock me." We all laughed and he delivered what was the loudest and most sincere laugh I ever heard from my friend Bobby. Somewhat unlike his brother, the President, Bobby gave the appearance that he was a very serious young man and rarely laughed so very heartily, at least in my presence. Contrary to some writers, he did have a great sense of humor and everyone who knew him, even slightly, would confirm that he was an extraordinarily outstanding man who, with his vision and capacity for leadership, will go down in history as one of the greatest of American leaders.

RAMSPECK v. FEDERAL TRIAL EXAMINERS CONFERENCE, 345 U.S. 128 (1953)

THE FIGHT FOR ADMINISTRATIVE LAW JUDGE INDEPENDENCE

The position I advocated in the Bowman trucking case, that the Courts readily should accept a federal administrative agency's rejection of the views of its hearing examiners was viewed by some who did not analyze the matter carefully, as a departure from my long history of support for the work of federal hearing examiners and their independence to express their own views. In representing the interests of cities and of private interests, I often appeared in protracted hearings before federal administrative agencies such as the Federal Communications Commission and Federal Power Commission, now the Federal Energy Regulatory Commission. In these cases, the testimony of witnesses and receipt of other evidence is given before hearing examiners, now known as Administrative Law Judges (ALJ's), who are usually lawyers with long experience in their agencies' regulatory programs, either as staff attorneys or as private practitioners before the agencies. The ALJ's, who are civil servants with career status,

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formulate recommended decisions for the presidentially - appointed commissioners of their agencies. The result is an effective blend of dispassionate expertise, a fair hearing of complex and time-consuming evidence, and political sensitivity in making broad policy. The dispassionateness and fairness of the ALJ's often results in their recommending to their agency commissioners a decision other than the one initially favored by the agency staff. This produces some tension within the agency - often a healthy development - and occasional attempts to make the ALJ's less independent of their agencies.

I was long involved in the effort to insure that the personnel rules under which the hearing examiners operated worked to increase, rather than restrict, their independent evaluation of their agencies' positions in the cases brought before them. The case I now discuss, is one in which I represented the Hearing Examiners on this issue. Ramspeck v. Federal Trial Examiners Conference, 345 U.S. 128 (1953), resulted in a temporary delay in the long fight to preserve the independence of Federal Administrative Law Judges. The agencies were still fighting for control of Administrative Law Judges and the Supreme Court, in its opinion, referred the matter back to the Civil Service Commission for its direct reconsideration under the provisions of the Administrative Procedure Act (APA).

The American Bar Association undertook a program of enhancing both the status and the independence of ALJ's, beginning under ABA President Frank J. Hogan of Washington, D.C., in 1938. The program culminated in the enactment of the APA in 1946, during the ABA presidency of Willis Smith of North Carolina.

The principal goal of the APA's treatment of ALJ's was to preserve their independence from the federal agencies whose cases the ALJ's heard. The APA largely accomplished this goal, but it did so by delegating to the federal government-wide Civil Service Commission (now the Office of Personnel Management) the power to control the tenure, duties and compensation of ALJ's and the assignment of cases

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to them. The CSC used this power to interfere with ALJ independence in unexpected ways. The CSC promulgated regulations creating five salary grades for ALJ's according to each Agency's view of the difficulty of cases assigned to each hearing examiner.

The some 400 ALJ's throughout the Federal Government were outraged; they saw this as precisely the kind of interference with the substance of their decisions which they had long opposed when wielded directly by their own agencies.

The Federal Trial Examiners Conference (FTEC), an organization of hearing examiners, held several meetings to arrange its protests of the regulations. The FTEC decided to take their case to court. I was honored to be selected as their lawyer. Their complaint for a declaratory judgment that the CSC rules were invalid, which I prepared, was filed in the U.S. District Court for the District of Columbia and came before Chief Judge Bolitha J. Laws. He issued a declaratory judgment holding the CSC regulations classifying the Hearing Examiners were illegal in that they did not further the APA requirements intended by the Congress to guarantee the Hearing Examiners an independent judicial status.

The CSC and some federal agencies appealed to the U.S. Court of Appeals for the District of Columbia, which upheld Judge Laws' decision by a 2 to 1 vote. The CSC and some federal agencies then filed a petition for a writ of certiorari in the United States Supreme Court.

Certiorari was granted and the Supreme Court, in an opinion written by Chief Justice Vinson (from which Justices Black, Frankfurter and Douglas dissented), reversed the decision below. The Court held that Congress intended to delegate power to CSC to classify Hearing Examiners into grades as it did other federal employees, that since CSC chooses Hearing Examiners it has a responsibility to "ensure independent judgements from examiners without agency coercion or domination". The Court further held that APA's requirement of rotation of Hearing Examiners "so far as practicable" did not mean "mechanical

rotation", and that, since the CSC only had power to remove Hearing Examiners for cause after hearing upon the record thereof, this prevented arbitrary action by the agencies in reduction in force cases also. Emboldened by its court victory, the CSC undertook to consolidate its power over the Administrative Law Judges. It established an examination procedure which disqualified a quarter of the ALJ's serving at the time of the enactment of the APA. After the ALJ's challenged this procedure before the CSC and, most effectively, in Congress, with major ABA help of which I was a part, the CSC recanted and recognized the tenure of the pre-existing ALJ's. Slowly, the need for a truly independent cadre of ALJ's became clear and their status was enhanced and their independence improved.

The most comprehensive study of the federal administrative judiciary has recently been issued by the Administrative Conference of the United States. Still in draft form, it was prepared by Paul Verkuil, Daniel Gifford, Charles Koch and Richard Pierce, conference consultants and Jeffrey Lubbers, research director. That study contains recommendations to enhance the office of ALJ.

In reading this long and carefully edited study, I can say that at "long last" these eminently qualified judges are reaching the status and prestige due them and for which we, at least, laid the groundwork in the Ramspeck case.

I have testified many times before Congressional Committees on many matters involved in the APA, presenting ABA views or my own. Because I was a good friend of Senator Pat McCarran of Nevada, the major advocate of this legislation, he consulted me often on the various problems that arose in the battle between the CSC, the agencies and the Hearing Examiners. He was most supportive of our attempts to get the lower courts and the Supreme Court to strike, as a violation of the due process clause, the provisions of the APA that the agencies were using to coerce or intimidate ALJ's to decide cases their way. The Ramspeck decision quotes Senator McCarran's letter to the Chairman of the CSC on ALJ

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independence, but says it cannot use views of congressional members expressed after a bill has been enacted into law to interpret the statute. The similar use of post-enactment legislative history has fallen in and out of favor among the courts over the years; it is an issue which currently divides several members of the Supreme Court.

I credit the current high esteem and status of ALJ's, to a large extent, to the consistently strong ABA support over the years. This is yet another of ABA's leadership roles in taking action to shape law to meet the needs of the times. The ABA thought so much of the importance of the APA that it gave Carl McFarland its gold medal in 1946 for his leadership role as Chairman of ABA's Administrative Law Committee in helping to persuade Congress to enact this law. The ABA Section on Administrative Law and Regulatory Practice has supported the many amendments to strengthen the independence and status of ALJ's and is one of the largest and strongest sections of the ABA.

**PETITIONS FOR EXTRAORDINARY WRITS OF PROHIBITION
AND/OR MANDAMUS BE ISSUED TO THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF COLUMBIA
IN RE FEDERAL SECURITY ADMINISTRATOR, OSCAR EWING
AND THE ATTORNEY GENERAL OF THE UNITED STATES,
HOWARD McGRATH, 337 U.S. 902 (1949):**

THE NUTRILITE FIGHT FOR SURVIVAL

The most active litigant in the Federal Courts, from the District Courts, to the U.S. Courts of Appeals, to the Supreme Court of the United States, is the United States Government. In recognition both of the importance of the Government's legal position and legal views, and of the difficulty in coordinating legal policy within the various departments of the Government, the Federal Rules of Civil Procedure and other Rules make special allowances for the Government. This special treatment extends from a longer time within which to file an answer to a civil complaint in the District Courts, to a special right to file an amicus curiae brief in the Supreme Court without the approval of the parties. This kind

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special procedural treatment is justified and unexceptionable. Some Federal Government attorneys, however, have sought a very different kind of special treatment, namely what amounts to an exemption from the Federal Rules of Procedure, which guarantee fairness and full disclosure in litigation for all cases. Every generation of government lawyers presents a new example. Currently, one example is the position of some recent federal criminal prosecutors that the ethical rule preventing a lawyer's contacting a person represented by counsel except through that counsel does not apply to them. When I was new at the Bar, a similar example was the position of the Attorney General that the discovery provisions of the newly adopted Federal Rules of Civil Procedure did not apply to Federal Government litigants and to their officials as witnesses. This was the question in the Federal Security Administration Supreme Court case.

This case, one of the most difficult cases of my career, involved the claims that Mytinger & Casselberry (M&C), the sellers of the multi-vitamin "Nutralite", developed by Carl S. Rehnberg, President of Nutralite Products, could make for its product.

Nutralite was one of the first such products sold directly to consumers rather than through drug stores. The Food and Drug Administration (FDA) made eleven seizures of the product in different cities across the Country and followed that action with an indictment which included a demand that \$10 million be refunded to purchasers of the product. Through this barrage of litigation, the FDA was in fact threatening to put Nutralite out of business.

I filed a complaint against the Federal Security Administrator, Oscar Ewing, and the FDA, a division of his agency, in the U.S. District Court for the District of Columbia. We asked for a declaratory judgment that the claims which M&C made were valid under the Food and Drug Act, and that the multiple seizures under that Act's statutory provisions without a hearing were unconstitutional; we also asked for temporary and permanent injunctions against the seizures' continuance. The temporary injunction

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was granted by U.S. District Judge Edward Tamm. A three-judge court was appointed to hear the constitutional case; it was composed of Judge Tamm, U.S. Circuit Judge Bennett Champ Clark, and U.S. District Judge Alan Goldsborough.

In preparation for trial, I filed a subpoena incorporating a motion that the Court require FDA to produce all of its records relating to the case, as provided in the Federal Rules of Civil Procedure. The Justice Department's attorneys filed a motion to quash (deny) my subpoena, essentially on the ground that the officials named were not subject to the discovery rules of the Civil Rules on the same basis as other litigants. I asked for an immediate hearing to which the Government filed a multi-page brief citing over 200 cases.

I went down to the District Court and asked the Clerk to assign my motion to a member of the three-judge Court which had been created to hear the case. The Deputy Clerk advised me that none of the Judges of the three-judge court was in his chambers, but that, since District Judge Matthew McGuire was in the Courthouse, he would take the motion to him. In my experience, I said, Judge McGuire had rarely, if ever, in his long career decided any case or motion against the Government; I argued that I was entitled to have one of the members of the three-judge court appointed to hear the case pass upon my motion. I asked the Clerk to allow me to go see Judge Clark, who I had heard was in his chambers, and ask for a quick hearing by him. The issue was very simple: Are the new Federal Rules of Civil Procedure applicable to the United States Government's officials and agencies named in my subpoena?

The Clerk said he would let me try. I talked to Judge Clark's secretary and law clerk, gave them copies of my motion and the Government's reply. They went in to see Judge Clark. They came out and said the Judge was ready to hear the motion. I then called the Solicitor General's office and advised the Government that the motion would be heard quickly, as Judge Clark was in a hurry. The Solicitor General's office was about five blocks from the Court, so it

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was not difficult for Government counsel to get there in a hurry.

When the hearing began, Judge Clark asked if the substance of the Government's position was that the new Federal Rules of Civil Procedure did not apply to the Federal Government or to any of its officers or agencies in this case. The Government's answers came from Vincent Kleinfeld, a very able attorney for the Department of Justice, and William Goodrich, one of the FDA's greatest general counsels. They made the mistake of arguing that compliance with the subpoenas or motions I had sought would be burdensome; they asked Judge Clark to suppose that the Government had served such broad subpoenas on M&C, concluding that a private company would be invoking the Civil Rules for relief. That seemed to suggest that the Government wanted to have it both ways, embracing the Rules only when it suited its litigation purpose. Their position was that the Rules 45 and 34 required a showing of good cause prior to the production of documents [this was the rule until 1970 when Civil Rule 34 was amended no longer to require a showing of good cause for the production of documents], and that I had not shown good cause. Judge Clark ruled that I had shown as much good cause (which he equated with specificity) as I could, since I could not know what kinds of documents the Government actually had. I argued that the Federal Rules of Civil Procedure were intended to, and did, make all litigants equal in Federal Courts.

When Government Counsel concluded their argument, Judge Clark turned to me and said, "I have read all the papers, do you really want to argue further?" Noting the weary tone of his voice, I replied negatively and added that I thought the papers had correctly set forth my client's position and that of the Government.

The Judge then dictated a short, carefully-phrased opinion that the Civil Rules applied to all litigants, including and especially, the Federal Security Administrator, FDA and all the Federal Government, the most frequent litigant in Federal Courts, with about one quarter of the cases

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filed there each year, and the Government was subject to the same rules applicable to all litigants.

The Judge then signed an order which provided that the Government and my clients must each equally produce all the papers and documents in their possession relating to the case. The order states:

**"IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA
"ORDER DENYING MOTION TO QUASH SUBPOENA, ETC.
Filed April 29, 1949**

"Defendants' Motion to Quash the subpoena directed to J. Donald Kingsley, Acting Federal Security Administrator, for the production of documentary evidence, and for oral testimony, in the above entitled cause, having come on to be heard, and the Court having heard oral argument by counsel for both the Plaintiff and the Defendants, it is this 29 day of April, 1949,

"Ordered, adjudged, and decreed that Defendants' motion to quash be, and it is hereby, denied, and that the Defendants produce all correspondence, records, reports or other writings in the possession, custody or control of the Federal Security Agency or of any officials, agents, or employees thereof relating to the product known as Nutrilite Food Supplement or Nutrilite Products, Inc., or Mytinger & Casselberry, Inc., or Carl F. Rehnborg or Lee S. Mytinger or William S. Casselberry, insofar as they relate to the decisions of probable cause made in this case, but excluding the records that relate to the criminal action against Lee S. Mytinger and William S. Casselberry now pending in the United States District Court for the Southern District of California, and it is further

"Ordered, adjudged, and decreed that the Defendants shall have a like right to inspect all documents in the possession, custody or control of Nutrilite Products, Inc., Mytinger & Casselberry, Inc., Carl F. Rehnborg, Lee S. Mytinger, William S. Casselberry, or of any officials, agents, or employees thereof, relating to the product known as Nutrilite Food Supplement or Nutrilite Products, Inc.

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"This order shall be without prejudice to the right of either party to make any motion limiting the production of any correspondence, records, reports and other writings upon a proper showing that such production is unreasonably burdensome or oppressive.

Bennett C. Clark,
Judge.

Approved as to form:

Vincent A. Kleinfeld,
Attorney for Defendants."

The Government then did the unprecedented. It filed a Petition for an Extraordinary Writ of Prohibition and/or Mandamus in the U.S. Supreme Court in the names of Attorney General Howard McGrath and Federal Security Administrator Oscar Ewing, asking that Judge Clark's order be set aside on the ground that the Federal Court could not interfere with any aspect of the FDA's enforcement determinations. Obviously, the taking of this extraordinary appeal to the Supreme Court indicated that the Government had concluded that discovery in the usual manner of the Federal Rules of Civil Procedure would destroy its case against my clients.

On May 9, 1949, the Supreme Court issued an order setting a hearing one week later, on the 16th, and requiring the three Judges to show cause why they should not be ordered to dismiss my case. When served with the order for the hearing, the District Court Judges appointed me and a very distinguished Washington lawyer, Walter M. Bastain, to represent them. Mr. Bastain filed our opposition to the Government's motion and I filed their opposition on behalf of Mytinger & Casselberry and Carl F. Rehnborg, as intervenors, on May 16th. The Supreme Court ordered further that the case be set for immediate argument on May 16th.

U.S. Solicitor General Philip Perlman made a big mistake by opening his argument for the petitioners with a snide comment on Judge Clark's "personal condition" when he made the order and delivered the opinion and order supporting it, saying the Supreme Court knew what he meant, although he did not state

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it, i.e. alcoholism. The Supreme Court seemed to freeze and Chief Justice Fred M. Vinson said, in obvious anger, that such comments were not "welcomed" by the Court. Perlman then finished his argument for issuance of the writs and I presented my argument in response that all concerned with drafting and adopting the Federal Rules clearly intended for them to apply to the Federal Government, its officials and its agencies and offices. I also argued that the Petition for the Extraordinary Writs were in effect a clear admission that FDA records contained information which destroyed the Government's case for its seizures and criminal indictment. The Supreme Court then issued a decision that very day summarily denying the Petitions for Writs of Mandamus and Prohibition by an 8 to 1 vote, with Justice Douglas dissenting. The Supreme Court's decision was:

"May 16, 1949. Per curiam: The rule to show cause is discharged and the petitions for writs of prohibition and/or mandamus are denied. Mr. Justice Douglas dissents." 337 U.S. 902 (1949).

From that time on, our extraction of evidence from FDA went smoothly. The FDA records were indeed a danger to its case, and the tide turned against the FDA. The papers we found in FDA's files supported our contention that FDA was out to destroy my clients' business. We won the case unanimously in the Three-Judge District Court, which held that the FDA had acted arbitrarily and capriciously in instituting the multiple seizures without offering M&C, Carl F. Rehnberg and Nutrilite Products, Inc., the opportunity to defend itself in a hearing; it further held that the provisions of the Food and Drug Act allowing seizures without a hearing were unconstitutional. That decision, too, was reviewed by the Supreme Court. The District Court's findings of fact and conclusions were, as Chief Justice Vinson said to me during the argument before the Supreme Court, very, very rough on FDA. He in fact asked me if I wrote them and I replied that I did; I also said that the FDA had also prepared and submitted proposed

findings which the District Court did not adopt. The Supreme Court viewed the seizures as merely a preliminary administrative step looking toward a trial on the merits of the product and the advertising claims made about it. Since a trial on the merits of one of the seizure cases was already scheduled in a Federal Court in Los Angeles, a majority of the Supreme Court seemed content to have judicial review await that trial; Justices Jackson and Frankfurter dissented, 339 U.S. 594 (1950). The Chief Justice said at oral argument this was the last case on its docket for the Term and the record was one of the largest ever filed in the Supreme Court. The Chief Justice said he thought a new hearing on one of the seizure cases on the merits was in order.

The end result was that the Court did not pass on the merits in its 5 to 3 decision, Ewing v. Mytinger & Casselberry, 339 U.S. 594 (1950), with Justice Burton concurring only in the result of ordering a new trial on the merits in the Los Angeles U.S. District Court and with Justice Clark not participating. Justices Frankfurter and Jackson dissented, in an opinion by Jackson, on grounds of denial of due process of law in the seizures without a hearing and on a failure to uphold the merit findings by the Three-Judge Court. Jackson cited the 43 "detailed findings of fact which would require twenty of these printed pages to reproduce and which summarize a 1,500 page record of a long trial". He further said that "these findings were made largely on undisputed evidence from government sources. This Court does not criticize or reverse any of them... I am constrained to withhold assent to a decision that passes in silence what I think presents a serious issue" (339 U.S. 594, 604-605). The dissenters refer to "denial to the Appellee of due process of law" and "abuse of due process".

When the case reached the District Court in Los Angeles, we learned that the FDA was interested in a settlement. We settled the case in exchange for dismissal of all pending seizures and claims by FDA plus dismissal of the criminal case FDA had filed. In the stipulated facts in support of the settlement,

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FDA agreed to 54 claims my clients could make in advertising for their product. In fact, the settlement order was so good that my clients printed thousands of copies of it for use by their salesmen in selling the product as Government approved claims. Nutrilite has since prospered into a multi-nation and multi-billion dollar business, nationally and internationally, with Carl's son, Sam, as President.

This case demonstrates that if one fights hard enough and the truth is on their side, not even the Federal Government can arbitrarily and oppressively destroy their business. It also demonstrates that resorting to "extraordinary" efforts to prevent fact disclosures by the Government will not work in the U.S. Supreme Court.

EXAMPLE OF U.S. CIRCUIT COURT OF APPEALS CASE I ARGUED REVERSING LEON JAWORSKI TRIAL COURT VICTORY

SUSQUEHANNA CORPORATION v. PAN AMERICAN SULPHUR COMPANY, 423 F.2d 1075 (5th Cir. 1970)

IN "TAKE OVER BID" SECURITIES EXCHANGE ACT DISCLOSURE
IN TENDER OFFER FOR CONTROLLING CORPORATION STOCK
HELD ADEQUATE

As the Court of Appeals said at the beginning of its opinion:

"This is a hard fought contest between two giant corporations of the business and financial world, which involves application of the new tender offer provisions enacted in 1968 as amendments to the Securities and Exchange Act of 1934."

It also exemplifies that in some cases, the home field advantage enjoyed by local lawyers in their local courts is very important and very hard fought for. This is no less true when the local courts are Federal Courts.

This case involved a tender offer by Susquehanna Corporation for 2 million shares of Pan American Sulphur Corporation (PASCO) to secure control of PASCO by acquiring a working majority of PASCO's stock and voting the stock in favor of a slate of

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corporate directors sympathetic to Susquehanna's takeover plans. It is a method used by many large companies to diversify operations and obtain working capital. In order to ensure that the shareholders of the target company are informed of the plans of the acquiring company for these assets, the Securities and Exchange Commission has developed, under the Securities and Exchange Act, disclosure requirements for tender offers such as Susquehanna's.

Susquehanna filed the required SEC statements. PASCO then sued Susquehanna in the U.S. District Court in Massachusetts to enjoin the purchase of its stock, alleging Susquehanna had not fully disclosed its intentions in its SEC filing.

The case came before U.S. District Court Judge Frank Murray in Boston who, as I walked into his Courtroom late due to delay in my airplane's arrival, was explaining that since he and Leon Jaworski, Counsel for PASCO, were both members of the same ABA Committee, he would be glad to recuse himself from deciding the case. When Judge Murray recognized me, I said I represented all parties to the case except those represented by Mr. Jaworski and I would not like for the Judge to recuse himself. I also asked that a motion for dismissal "with prejudice" of PASCO's complaint, which I was filing, be granted. After a hearing, Judge Murray agreed with me and the PASCO suit was dismissed "with prejudice".

PASCO's Counsel then went to SEC and requested it to begin an investigation of the Susquehanna's tender offer. Susquehanna, in turn, filed a request as required by Delaware Law to secure a list of PASCO stockholders so it could prepare for a stockholders meeting. PASCO then filed a complaint similar to the Boston complaint which had been dismissed, in U.S. District Court in San Antonio, Texas, for a temporary injunction against the tender offer. After a two hour hearing before Judge Squires, he took off his robe, came around the bench and embraced me. He said, "Charlie, don't you recognize me?" I am your cousin, born just across the South Carolina line from your hometown of Charlotte." We then exchanged reminiscences. That night I was not surprised to be

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notified that the case had been transferred to Austin, Texas, before Judge Jack Roberts of the U.S. District Court there.

After a hearing before Judge Roberts, which lasted for six days, he entered the injunction order PASCO had requested.

On appeal, the U.S. Fifth Circuit Court of Appeals reversed that order unanimously, holding that the District Court's judgement was clearly erroneous. That is a very unusual criticism for an Appellate Court to make of a Trial Court's determination of the facts before it. It was even more unusual in this case, since we tried to suggest an easier resolution for the Court of Appeals by arguing that the dismissal of the same claims in the Boston case "with prejudice" barred them from being heard in the Texas U.S. District Courts under the doctrine of res judicata. But, the Court of Appeals wanted to reach the merits of the District Court's decision and did.

Before Judge Roberts, every objection I had made, and I made many, was overruled. This indicated to me that the Judge had already made up his mind before hearing the evidence. I knew that all I could do was make a careful and complete record and prepare for the inevitable appeal.

In this case, many depositions had been taken prior to the hearing before Judge Roberts, over many days in the conference room of Leon Jaworski's law firm in Houston. While we fought in and over the depositions since much was at stake, every once in a while his secretary or switchboard operator would come in and hand Leon Jaworski and me a note stating, "You are wanted on the telephone." Out the door we would go, in a hurry, down the hall to Leon's office where Leon would talk to the caller a few minutes, then say, "By the way, Charlie Rhyne is with me and wants to talk with you."

The calls came from the ABA leaders and state delegates from all across the Nation relating to Leon's race for the ABA Presidency, then well under way. Having been an ABA President more than a decade earlier, I would extol Leon as one of the greatest

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lawyers of the day and urge the caller to vote for Leon for ABA President. Leon was elected and served with great distinction. But, one of my clients, Hermann Josef Abs, Chief Executive Head of The Deutsche Bank, Germany's largest commercial bank, who also served on the Advisory Board of Bundesbank, overheard me bragging about Leon, as "one of the greatest of the great" among American lawyers, on the telephone and became upset that I did so. I explained to him the separation of professional and personal relations between lawyers and that I would continue to fight for his bank and my other clients to win the case, even while helping Leon, in my personal capacity as a personal friend, in his campaign for ABA President. He said he thought they should hire another lawyer. I told him that he and the other defendants were, of course, free to do so. However, the other defendants and Susquehanna Corporation, which I represented, disagreed with him.

When the Three-Judge panel of the Fifth Circuit Court of Appeals came into the Houston courtroom to hear the appeal, they were led in by Judge Homer Thornberry, from Austin, Texas. The same client I mentioned above was told by someone that the Judge also was one of Leon's good friends. He came by the counsel table to tell me about this. I replied Leon was probably a good friend of the Judge, but he was also a good friend of mine and that had nothing to do with the decision in the case. I would give my best to winning the case. I mention these "friendship" matters, as one of the distractions lawyers may encounter in cases like this. I pointed out to my client how Judge Murray sought to recuse himself in this very same case in Boston, as proving how far Judges and lawyers go in seeking to avoid even the appearance of friendship bias. The client, after I won the case, said he was sorry to have bothered me as I was right. The client also was troubled by the fact that the Securities and Exchange Commission had filed an amicus curiae brief supporting PASCO. I pointed out that the facts and the law would prevail over the preference of a government agency, and they did.

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The Court of Appeals held that PASCO and its shareholders must have understood clearly what Susquehanna's intentions were in acquiring PASCO, and the strongest evidence was PASCO's allegations of Susquehanna's intentions in the Boston suit. The Court also held that the disclosures of Susquehanna's specific plans were adequate and prudently cautious. The Court concluded with a very reasonable assessment of the purpose of financial disclosure laws: "Here the target corporation assails alleged false and misleading omissions and statements of the offeror. The next case may well be one in which exaggeration and overstatement is the basis of attack. We do not approve either understatement or extravagance. A sensible middle course is the proper one." 423 F.2d at 1086. The Court held my clients had followed that sensible middle course and had filed a legal tender offer.

TWO U.S. DISTRICT COURT CASES IN WHICH I HAVE PARTICIPATED AS EXAMPLES OF THE BROAD TYPES OF DISPUTES I TRIED IN THOSE COURTS:

MAYOR BRADLEY OF LOS ANGELES et al. v. SAXBE, U.S. ATTORNEY GENERAL, 388 F. Supp. 53 (D.D.C. 1974)

U.S. ATTORNEY GENERAL SAXBE'S PLAN TO PROSECUTE AS CRIMINALS THE GOVERNORS, MAYORS, COUNTY OFFICIALS AND STAFFS OF THEIR NATIONAL ORGANIZATIONS FOR LOBBYING CONGRESS HELD BEYOND HIS POWER

It is very difficult to persuade a Court to enjoin a prospective criminal prosecution in which formal charges have not yet been brought. This approach occasionally is attempted when the prosecution target claims that the prosecution is politically motivated, but it rarely succeeds; the target usually must suffer indictment, and conviction, to gain an opportunity to challenge an improper prosecution. However, when a Judge with no doubt about his power to intervene in the decisions of the executive branch is confronted with a challenge raising serious constitutional impediments

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to the prosecution, it may be possible to obtain legal relief. I had one such case involving state and local government officials and their lobbying activities.

William B. Saxbe, former Attorney General of Ohio and U.S. Senator from Ohio, was appointed Attorney General of the United States on January 4, 1974, by President Nixon. Almost immediately, FBI criminal investigators went into the offices of governors, mayors, county officials, and their personal staffs as well as the staffs of their national organizations, the National Governors Conference (now Association), the U.S. Conference of Mayors, the National League of Cities, and the National Association of Counties, seeking information on Congressional lobbying efforts of those just named. All the organizations were based in Washington and were spearheading the fight of state and local governments for federal funds due to a recession then drying up local and state tax resources.

General Saxbe's plan, as I learned of it, was to bring criminal charges in Federal Courts all over the Nation based upon his claim that lobbying Congress by officials of states, cities, counties and their national organizations and staff members, without registering and filing reports of lobbying funds received (particularly from the Federal Government) and how they were expended, was a criminal violation of the Federal Regulation of Lobbying Act of 1946, even though that Act expressly exempted "any public official acting in his official capacity."

As FBI Agents spread out to investigate the proposed criminal defendants, a shock wave reverberated through the ranks of state and local government officials throughout the Nation. I was employed to "stop" General Saxbe's planned criminal actions. I called him and asked to see him immediately. He readily admitted that he had a plan such as I had heard about. He proudly showed me stacks of FBI reports (the labels, not the contents) piled up in a room adjacent to his office. He said this would be "one of the biggest scandals ever -

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page one, Nationwide". He was obviously proud of his plan and was almost ready to start executing it. I asked him to give me a few days to study the matter and he agreed.

It was unclear to me, in large part because of the flamboyant way he put his views, whether General Saxbe personally recognized the express exemption in the Lobbying Act for public officials, such as mayors and governors. By the time the case was in court and was clearly going against them, his assistants reluctantly retreated to the position that the mayors and governors were personally exempt but that the organizations they created to lobby on their behalf, and the employees of the organizations, were covered by the Act. Even that threat was a serious one, because the Act provided a one-year jail term and three-year prohibition of lobbying upon the first failure to register as a lobbyist, and an additional fine of \$10,000 and five-year term of imprisonment for any lobbying during the three-year period of suspension.

I returned to my office, explained Saxbe's admission that he was carrying out his plan, to my son, William S. Rhyne, and to several other lawyers in the office. I also called some professors of criminal law asking for their help in conducting quick research on similar cases, for which speedy research I would pay fairly well.

From all these resources, I was told that an overwhelming series of cases had held that one could not enjoin a prosecutor from bringing criminal charges and that there were few cases involving the Federal Regulation of Lobbying Act, and only one in which the exemption for public officials was involved. We studied the congressional history of the Act to see if that offered any support for our argument that the exemption of the elected officials should apply as well to their staffs and organizations.

I then had an angry call from General Saxbe accusing me of having "sicked" the governors on him. He said Governors Evans of Washington and Noel of Rhode Island had, in vituperative language, called

him and "cursed him out", and dared him to carry out his plan to indict them. He said the call to him came directly from a meeting in Seattle of the National Governors Conference, of which Governor Evans was Chairman, but all the governors listened to the "ill tempered bawling out" by Evans and Noel, with the latter being excessively profane. Because of the governors' call, Saxbe said all agreements with me on a delay in his enforcement program were "off".

We therefore decided to file a complaint immediately for a declaratory judgment that the Lobbying Act's express exemption of public officials applies also to all those whom they employ to assist them in lobbying, including their national organizations, and for an injunction against enforcement of the Act against them. Mayor Tom Bradley of Los Angeles and Allen E. Pritchard, Executive Vice-President, were lead plaintiffs for member cities of the National League of Cities; Commissioner Stanley M. Smoot of Davis County, Utah, and Bernard F. Hillenbrand, Executive Director of the National Association of Counties, were lead plaintiffs for counties; and Mayor Joseph L. Alioto of San Francisco and John J. Gunther, Executive Director, were lead plaintiffs for the U.S. Conference of Mayors and their members. I thought it important to communicate the notion that the elected officials and their assistants and organizations were inseparable, even to the point of including both as parties and listing an elected official as the lead plaintiff. This was not trickery; rather it was demonstrative evidence that a busy public official can act only through his or her agents and that, therefore, the two must be treated alike.

When the case came up for almost immediate hearing before Judge Gerhard Gesell of the U.S. District Court for the District of Columbia, I argued first that the U.S. Supreme Court was divided narrowly in upholding the Lobbying Act in U.S. v. Harriss, 347 U.S. 612 (1954), as applied to private "special interest groups seeking favored

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treatment while masquerading as proponents of the public weal." Our plaintiffs, we argued, were actual proponents of the "public weal". To get the assistants and organizations within the "public officials" exemption, we relied upon Gravel v. U.S., 408 U.S. 606, (1972), applying the "Speech and Debate Clause" immunity of a member of Congress to his assistants.

Of equal importance was establishing the harm which would be inflicted on the states and their local governments if their lobbyists were indicted, even if the argument that the Lobbying Act did not apply to them succeeded and they ultimately were acquitted in a criminal prosecution. We stressed the severe penalties for not registering in arguing that they put pressure on the lobbyists to register and, thereby, forego their challenge to the Act. We argued that the fact that the threatened indictments under the Act impacted freedom of political speech was also an important consideration.

The Federal Justice Department relied as fully on its jurisdictional defenses as on its defense of the Act itself. That was a standard tactic among the lawyers of the Justice Department in any case; but, in this case, it left them in a rather embarrassing factual position. The government lawyers' assertion that no criminal prosecutions had yet been filed could not erase General Saxbe's clearly articulated threat to do so. Their boss's excessive candor clearly had undermined their technical defense of his conduct.

The legal issues were clearly drawn and the facts were not seriously in dispute. Therefore, both sides moved for summary judgment.

The case, as stated above, had been assigned to Judge Gerhard A. Gesell. That raised an interesting feature of the oral argument of the motions for summary judgment, since Judge Gesell, before his appointment as a Judge, had represented the largest pharmaceutical and electrical companies in the Country in litigation before administrative agencies and before Congress. He himself had registered under the Lobbying Act. My task, therefore, was to

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persuade him that registration to which he willingly had submitted could not be imposed on another category of lobbyists. Judge Gesell began the hearing with a clearly expressed skepticism that such a distinction could, or should, be drawn. The process of assisting him in coming to a fresh view of the matter was a lengthy and delicate one. A rather lengthy extract from the hearing may be of some interest in illustrating the difficulties involved.

I led off in the argument, and for a considerable length of time Judge Gesell gave me a "going over", reminiscent of Justice Frankfurter's when I argued Baker v. Carr, 369 U.S. 186 (1962), in the Supreme Court. When I argued that the fact that all U.S. Attorneys General for the 28-year period of the Lobbying Act's existence prior to General Saxbe had not interpreted the Act as he now was doing, citing a case Judge Gesell had won in the Supreme Court, he vigorously disagreed, saying that the case was not applicable. At one point he said, in words I quote from the Court Hearing transcript, "Would you bear with me so that you can help me, Mr. Rhyne, and not shout me down."

I immediately said, "I apologize your Honor." Judge Gesell then said, "Let's see if we can't work it out because I want to try in every way I can to get the benefit of your expertise and your knowledge in this area, which I recognize."

This seemed to present an opportunity to stress exactly how government is different from private business, both constitutionally and factually. I stressed that the national organizations, such as the Governors Conference, were funded by payments directly from the states. In this way, all the lobbyists were paid with public money. I continued:

"So, Your Honor, there is a vast distinction between a representative of the drug manufacturers, for example, and the representative of the City of Los Angeles.

"THE COURT: What is it? Would you explain to me what is the difference?

"MR. RHYNE: The big thing is that they represent all the people and not a special interest group.

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"THE COURT: I find that difficult. Don't you believe that when the Chamber of Commerce lobbies up on the Hill that it feels it is acting in the interest of the public?

"MR. RHYNE: No, they are acting in the interest of their members and they are the type --

"THE COURT: The entire industrial economy of the Country."

I am not sure this made much headway against Judge Gesell's own experience. The breakthrough might have come with the observation that lobbyists for the executive branch of the federal government never had registered under the Act:

"MR. RHYNE: Well, Your Honor, the thing that is odious about this whole thing is applying the term, lobbying, to the presentation of Government information by a public servant.

"THE COURT: In a private manner.

"MR. RHYNE: Not a private manner, public only *** Now the Defendant himself has a section working on legislation headed by an assistant. He has, I don't know how many people up there all the time.

"THE COURT: Yes.

"MR. RHYNE: The Defense Department has some 2000 people up there all the time. Now if this public official acting in his official capacity means anything, it has to cover everybody and I think it does."

When Mr. Anderson, Chief of the Department of Justice's Civil Division, rose to defend General Saxbe, Judge Gesell put the fairness and consistency points to him directly:

"THE COURT: But the federal people don't have to register and the state people do. Is that it?

"MR. ANDERSON: I am not even trying...I am trying to avoid taking a binding position on whether the federal people have to register."

Not only did this admission enhance our case on the merits, it also seemed to affect the federal government's technical defense, that no prosecution yet had been formally filed. That colloquy between Judge Gesell and the federal lawyer went this way:

"MR. ANDERSON: ***[T]he Attorney General ...might still choose not to prosecute....

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"THE COURT: Mr. Saxbe has been fulminating enough to make me feel that isn't likely to happen. The FBI is out against two of the three organizations."

Seven days later, on December 18, 1974, the Court handed down a declaratory judgment and order completely in my plaintiffs' favor.

General Saxbe appealed to the United States Court of Appeals for the District of Columbia Circuit. His resignation was then accepted by President Ford, who then appointed Dean Edward Levi of the University of Chicago Law School as U.S. Attorney General. Levi was one of the most respected legal educators in the Country, and a good friend of mine. General Levi promptly withdrew Saxbe's appeal.

In fact, Attorney General Levi called me about how to withdraw the appeal. He, at the same time, said, "I understand you are responsible for Saxbe's resignation and my appointment. I hereby invite you to join me and a group of our friends for a trip down the Potomac on the Sequoia (a Presidential yacht) to celebrate." I told him I had not mentioned Saxbe to Presidents Nixon or Ford, so did not have anything to do with Saxbe's resignation. Ed Levi laughed and said, "Well, come on over. It has been some time since we have been together and its worth a celebration." I accepted.

THE WATERGATE TAPE 18-1/4 MINUTE GAP CASE: THE EXONERATION OF ROSE MARY WOODS

Many Washington lawyers represented one or another of the officials in the administration of President Richard M. Nixon who became caught up in the series of alleged criminal episodes loosely labelled "Watergate". I represented Rose Mary Woods, (hereafter Rose) President Nixon's Secretary, who first came to national attention, in this matter, when a portion of one of the tape recordings, which President Nixon made of one of his meetings concerning the early investigation of Watergate, was discovered to have an 18-1/4 minute gap. That gap

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itself became the subject of a highly publicized criminal investigation in which no indictments were returned. Washington's criminal defense bar recognizes the avoidance of an indictment without publicity as the highest accomplishment of their art. In this case, avoidance of publicity was impossible. It may be that the publicity attending the case helped avoid an indictment. This case was unique for me, not only for the national attention it received over a sustained period of months, but also because of my prior relations with the people involved.

I will repeat one answer I gave to someone in the media after I began representing Rose. As we were leaving the first court session at which I represented Rose, there was a large crowd of media representatives who surrounded me, my son Bill, and Rose. One shouted loudly: "Mr. Rhyne, are you down here representing President Nixon?" I replied that I was representing Rose Mary Woods only, against all who would charge her with doing anything wrong as to the 18-1/4 minute gap. Someone asked whether this included President Nixon. I said I did not believe President Nixon was involved in any charges against Ms. Woods but I was representing her against anyone and everyone in the whole World who was claiming she was guilty of anything wrong.

Sometime before the gap incident, General Alexander Haig had entered the picture as President Nixon's replacement White House Chief of Staff. General Haig called me about an idea he had of appointing a committee of lawyers to advise or represent President Nixon on Watergate matters. I told both Haig and the President that a committee would be a bad mistake. I suggested the President needed one truly great, experienced trial litigator. A high profile case contested in the media, as well as in court, is always a difficult one. For this reason, I felt it was crucial that the selected counsel should be nationally renowned and respected. I also told both Nixon and Haig that such a lawyer should advise the President directly and not through Haig or any other person. I made it clear that I was not suggesting myself for the job.

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Prior to Watergate President Nixon had asked for my views on other appointments largely due to my serving as his national chairman of his citizens and volunteers national groups in the 1960 and 1968 elections. See infra pages 239-254. For example, he called me in 1971 about a successor to either Justice Hugo Black or Justice John Marshall Harlan, both of whom had retired. He said the lack of legal profession support on other Supreme Court nominees had caused embarrassing rejection and withdrawals. From my knowledge would I please recommend someone who in my opinion would receive such strong legal profession support that they would be overwhelmingly confirmed by the Senate of the United States?

I recommended Lewis F. Powell, Jr. of Richmond, Virginia. I referred to Powell's national reputation as a great lawyer and his outstanding public service career on a national, state and local scale. While he was indeed counsel to large corporations, he as ABA President had conceived and brought into existence a legal service program for the poor. I said he had also held leader positions in Richmond and State of Virginia education agencies. Nationally he had served President Nixon on his Defense Department Committee, and had provided a very important supplementary report to that Committee's Report on the need for political warfare against Communism as well as the raging arms development race. I assumed the President knew this.

To this I added he helped President Nixon's Campaigns tremendously working with me, in 1960 and 1968, and was one of my best friends. The President then asked me to call Powell and ask him if appointed would he accept. I demurred, saying that on a matter as important as this Powell in my belief would expect to hear the voice of the President, not the voice of Charlie Rhyne. Later President Nixon called to say he had John Mitchell call Powell and Powell had refused to accept. What did I have to say on this?

I said that in view of the importance of the appointment to President Nixon he should depart from his previous policy of not talking to prospective

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nominees until someone had called them to make sure they would accept, and talk to Powell personally. I said he should ask Powell to please reconsider the response to Mitchell and add that he wanted to appoint him because Powell's career demonstrated dedication to, and desire for, public service duty to this Nation, and that he believed his service was badly needed on the Supreme Court by his Nation. I also said Powell was extremely patriotic and would probably respond favorably if such statements were made to him by President Nixon.

I said such a talk with Powell was better than hunting for someone else with Powell's known qualifications. I also said that I was present when Powell appeared with his two U.S. Senators from Virginia to support Chief Justice Warren Burger at Burger's Senate Judiciary committee hearing. So President Nixon should also talk to the Chief Justice about Powell.

I do not know or recall all the happenings in this matter but Powell was contacted and nominated and confirmed by the Senate of the United States by a Vote of 89 to one.

Around noon on Thanksgiving Day 1973, my daughter Mary Margaret (we call her Peggy), informed me the "White House" was on the telephone for me. I answered and asked who was calling. A voice said, "This is General Alexander Haig, Jr. We want you at the White House at once." I asked who "we" were and he responded, "It is Rose, she is in bad trouble." At about that time, the children's line rang and I was told Rose was on that line and wanted to talk to me. Rose said to me, "I do not know what has happened here, but suddenly I am 'snake bitten'. No one will talk to me. Leonard Garment has given me a subpoena to appear before the court of Judge Sirica at 10:00 a.m. next Monday. He said he and J. Fred Buzhardt will no longer represent me, so I should get a new lawyer. I have told everyone here that I would only have you as my lawyer."

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I quickly interrupted Rose, as I did not want her story presented on a White House telephone and risk the danger that it would be printed on the front page of a newspaper or quoted on TV or radio until I heard it in private. With all the media flap raging, I imagined the telephone making a noise that I interpreted as someone listening or recording the conversation. I told Rose, "the whole family is here as we know this is Sue's last Thanksgiving. She has fought cancer for some six or seven years but the doctors tell me the end is near. So I will not, I cannot, come to the White House today. I suggest you go home and do not talk further to anyone on whatever it is you are calling about. I will meet you at your office at 11:00 a.m. tomorrow."

Rose replied, "Fine, I'll see you then."

I had known Rose for about as long as Richard Nixon had been in Washington. Although she was from Ohio, she became his secretary when he represented California in the Congress. It was common then, as it still is, for secretaries on Capitol Hill to transfer from one congressman or senator to another when their original boss retired or was defeated; the secretaries often know more about how the government really operates than the elected officials and the political staffs they brought to Washington with them. Rose stayed with Nixon as he moved on to higher offices and, when he was out of office, continued to work for him in his law practice. She is well known not only for her outstanding ability, loyalty and discretion, but for her graciousness and unflinching courtesy whatever the circumstances. I recall also that she had been chosen as one of America's most important women, and as such, written up in Who's Who in America.

My son, Bill (William S.) Rhyne was in his last year of law school at George Washington University. I asked him to go with me to meet Rose the next day. When we arrived at the White House we were immediately ushered into General Haig's office in the West Wing. Another person was there looking out the window with his back to us. Haig did not introduce him. I assumed he was there to serve as a witness

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for Haig as to what we or he said, or to record that. I introduced Bill to Haig and Haig again said, "Rose is in bad trouble. There is no question but that she has knocked 18-1/4 minutes of conversation off of an important Watergate tape."

I said, "How do you know? Did you see her do it?"

Indignantly, he replied, "No, I did not see her do it, but I have seen reports from FBI, CIA and U.S. Secret Service all stating she did."

I asked, "Who made the reports and where are they?"

He answered, "Garment and Buzhardt supervised their making and have them now."

I said, "I need not waste time talking with you. I will go see Garment and Buzhardt."

Bill and I then walked out of Haig's office and over to the Old Executive Office Building across the street from the White House and went to the offices of Leonard Garment and J. Fred Buzhardt. They were apparently glad to see Bill and me.

Leonard Garment had come to Washington from the New York firm at which both President Nixon and John Mitchell practiced. J. Fred Buzhardt had capped a career as a congressional committee staff counsel with an appointment as General Counsel of the Defense Department, and was detailed, at Haig's request, to help the White House on Watergate matters. I had not known either to be experienced in either litigation generally or in sensitive criminal investigations before then. Certainly neither would have been known to the local judges, such as Johnny Sirica, before whom the Watergate legal issues were being presented.

Buzhardt said that the 18-1/4 minute gap was first discovered about a week before, and that he and Garment had asked the FBI, CIA and Secret Service to investigate the cause of the gap. Each concurred in a finding that Rose had knocked words off that part of a White House tape. The tape was of a meeting held on June 20, 1972, three days after the break-in of the headquarters of the Democratic National Committee in the Watergate office building. I asked for the FBI, CIA and Secret Service reports and Buzhardt's

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response was, "They are classified documents, we cannot give them to you." The agencies Buzhardt had named supposedly worked for a week on these reports, collecting information and testing machinery in Rose's office at nights in her absence and without her knowledge. Garment said, "they have done a thorough job and we can give you a copy of a memorandum which, we believe, recites what was on the 18-1/4 minute gap."

Bill and I read that one page document which was said to be from notes taken during a meeting by the President's then-Chief of Staff, H.R. Haldeman. It said the President had told Haldeman about the Watergate break-in and that the President said, "Surely the Democrats have done something worse than this. Find out what it was and get it out to the media."

I put the Haldeman memo into my pocket and they demanded it be returned to them as it was a "classified document" and they could not give it to me to keep. I refused to return it, saying they had given it for some purpose, so I intended to keep it which made them very angry.

Bill and I departed, but Garment followed us - even into the restroom where we stopped en route to the door - urging the return of the Haldeman memo copy. I said, "Rose did not have a lawyer until I listened to you; now she has one. Take the return of the document that you gave me up with the President."

Garment then asked, "When did you see the President last?" I replied, "That is for me to know and for you to find out". He asked, "Are you on your way to see the President?" I replied, "The same answer goes for that." Then he added, "I have not seen him since April."

Bill and I went back to the White House and into Rose's office. She came around her desk and put her arms around me and cried for quite a while. At that time, the President came into her office from the door connecting with his office. He popped into a chair and put his feet up on a desk and asked, "Now what are we going to do about Rose?"

I replied, "Mr. President, with all due respect,

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'we' are not going to do anything. Please leave. As lawyer for Rose, I do not now want you involved in any way. I do not want anyone to be testifying as to anything you or Rose or I said at this moment. Please leave so I can talk to Rose in confidence." Obviously displeased, he jumped up and went out the door leading down the hall to Haig's office. That is the last time I saw him or heard from him, in any way, until Rose's case was completed by her exoneration.

After the President departed, I asked Rose, "Do you have a copy of the tape on which 18-1/4 minutes of sound is missing?"

She replied she did not, so I asked her Secretary Marge Acker to call Garment and ask for it to be sent over at once. I decided we would not talk too much in Rose's office since I thought the room was probably bugged. But we could listen to the tape and did. I heard only two words which I imagined were the President asking for some consommé, coke or coffee. I then asked Rose to come over to my office, about 2 blocks from the White House, for a detailed discussion of what had happened.

At my office she said that for some days, beginning in late October, she had been transcribing Watergate tapes which the White House lawyers determined had been subpoenaed by the Court. She had also been testifying in Court before Judge Sirica regarding the accuracy of these transcriptions. She had been using an old machine to listen to the tapes. Because the single microphone attached to the recording device in the President's office, at the time the recordings were made, was hidden in a desk, the recordings were often unclear. The sounds of coffee cups being replaced in saucers, and feet hitting the side of the desk would drown out conversation. For these reasons, Rose had to listen to each tape segment repeatedly, each time deciphering another word or phrase. Each listening required that the tape be rewound and reset.

A week before, some government supply persons had brought her a new German-made Uher 5000 recording machine about 1 p.m. She began to use the machine

and at about 1:20 p.m. to 1:30 p.m., the President buzzed her to come into his office. She was in his office about five minutes. When she returned to her office, she noticed the Uher 5000 had apparently been operating while she was in the President's office. She shut the machine off and went in to tell him of that fact and her conclusion that perhaps about five minutes of the tape may have been erased. He told her to forget it since that part of the tape was not one which had been subpoenaed by the Court. He told her, too, to take the tape off and put it in her safe which she did.

We worked day and night, through the weekend, preparing for Monday's hearing.

On Monday, November 26, 1973, Rose, Bill and I went to District Court. The media was present in force and quite a crowd was gathered to greet us. We fought our way into the courthouse. I declined to answer all questions, except to deny that we were there to represent President Nixon. I refused to comment to the media at any time. Rose did not talk to anyone either, yet the media would nevertheless print stories, day by day, which were either inaccurate, untrue, or fabricated to justify their horror headlines. One such headline that most newspapers heralded on Sunday, November 25, 1973 was that Rose would plead the Fifth Amendment. This was totally untrue. Rose had never intimated to anyone, including Haig, Garment or Buzhardt, that she intended to invoke the Fifth Amendment. No one ever said to me that they even discussed the matter with Rose.

When the court formally opened, Judge Sirica said that he and all counsel would meet in the adjacent jury room. In the jury room, he asked who was representing Rose and I replied I was. When I offered to take Rose through the story set forth above, Judge Sirica said, no, that Mr. Jaworski would. I objected and insisted that one of Jaworski's assistants, Jill Wine Volner, examine Rose for their side. By long custom in the District, only a single lawyer for each party in a case may examine a witness, unless the examining lawyer becomes

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incapacitated. Ms. Volner had examined Rose originally, earlier in November, on the accuracy of other transcripts, before the gap in the tape had been disclosed and before the intense media interest, and I pointed out that Volner was there and in apparent good health and this was just another tape. When Judge Sirica indicated he did not agree, I asked for time to appeal. Judge Sirica did not agree to that either. Then Mr. Jaworski asked the Judge to let him and me discuss the matter privately. The Judge agreed. We walked out of the room and down the hall outside.

Jaworski told me that this matter was the most important to arise in the Watergate investigation thus far and, since it was generating such tremendous publicity, nationwide and worldwide, he personally wanted to be the lead counsel questioning Rose.

I answered that someone had already planted a totally untrue statement with the media, that Rose would "take the Fifth Amendment". Due to a false "source" to which the media referred, this headline had prejudiced Rose's right to a fair trial since she had been tried by the media and found guilty before the hearing even started. Jaworski then said he would not do the questioning although he was prepared to do so. He assured me then he would go back into the jury room and tell the Judge he would not insist on questioning Rose to avoid delay. Jaworski did so and actually left the courthouse and returned to his office.

Leon Jaworski and I had been friends for some years and, as a Past President of the American Bar Association, I had helped get Jaworski elected ABA President in 1971-72. Clearly, however, he did not like my move to exclude him as Rose's interrogator. He said I was banking on the fact that Judge Sirica had been reversed many times by the Court of Appeals in my suggestion that I wanted to appeal the matter to that Court. This I denied, adding that Judge Sirica and his family and mine, too, were good friends. My position had nothing to do with the Judge's Court of Appeals record and his report on it was not fully accurate.

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Soon after Volner's questioning of Rose began, another of Jaworski's assistants, Richard Ben-Veniste, claimed a ruling by Judge Sirica was "contrary to what the Judge had ruled in his robing room in a prior hearing". I immediately approached the bench and demanded the transcript of that hearing. I had been in enough cases in New York, whence Ben-Veniste hailed, to know they referred there to the judges' chambers as "robing rooms". My suspicions were aroused for two reasons. First, over the weekend, we had examined the public transcript of the earlier hearings on the accuracy of the tape transcripts; there was no portion which seemed germane to the point being argued by Ben-Veniste and no hearing in chambers had been included. Second, I knew that in the earlier hearing, Garment and Buzhardt had represented all the witnesses employed at the White House: tape custodians, secretaries, and Rose. In the circumstances, I felt anything could have been done or promised to Rose's detriment. I did not want any secrets where my client was concerned. After some stalling, Judge Sirica said he thought the transcript of that hearing had not yet been typed, but the court stenographer spoke up and said it had indeed been typed. The Judge then gave the secret transcript to me but it was given under seal, which meant that it could not be made public until the Court proceeding was concluded, unless released earlier by the Court (which later was done.)

The transcript was shocking, to say the least. The judge would not allow me to read it into the record. The day before Thanksgiving, President Nixon's lawyers, Garment and Buzhardt, had appeared before Judge Sirica with Jaworski and his assistants and, in effect, said they were convinced Rose was guilty of erasing the 18-1/4 minutes from the tape. After secretly condemning her, they further said they could therefore no longer represent Rose. Under the changed circumstances, Judge Sirica concluded that meeting by saying that he had to give Rose time to get herself a new lawyer. That explained how the hearing came to be scheduled for Monday, November 26, and why Garment and Buzhardt had seemed so

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unconcerned about Rose's position when we met them the day after Thanksgiving.

Neither Garment nor Buzhardt, so far as I have learned, ever told Rose about their secret meeting in Judge Sirica's chambers, nor did they tell her they suspected her of a crime or why they no longer would represent her. They simply told her to find a new lawyer. I came to the conclusion that, but for Ben-Veniste's offhand disclosure during the later public court hearing, everyone involved would have been happy to have the secret betrayal of Rose remain a secret. (Because so much else of the original source material of Watergate is of continuing interest to historians and others, I have reprinted the secret transcript beginning at page 172 infra.)

Once I had obtained the secret transcript, however, Fred Buzhardt was forced to return to court to explain that he had condemned Rose before Jaworski, then before Judge Sirica, without informing her of his intentions or informing her that he no longer represented her as an employee of the White House.

If Rose did not erase the tape intentionally, either it was an accident or someone else was guilty of an intentional erasure. In addition to the obvious suspicions directed to those whose sensitive conversations had been recorded, the possibility was that the motive of someone intentionally erasing from the tape was, not the destruction of harmful information, but embarrassment of the President by making it seem that he or those close to him had done so. My dilemma was who to suspect in the upper echelons of the administration as the person out to get Nixon. I decided that, for our strategy, the "trial" before Judge Sirica must be held strictly to a trial of Rose Mary Woods and not President Nixon. Bill and I endeavored to keep it so. I could not believe that the President himself had knowingly allowed his counsel to go to Jaworski and Judge Sirica and, in effect, plead Rose guilty, as they did, on the secret record. I have never discussed this with Nixon. Regardless, I still believe he did not authorize what Buzhardt and Garment did and said

about Rose at that secret meeting before Judge Sirica. Such an act is totally unlike the Richard Nixon I knew for some 60 years.

On December 5, 1973, in the judge's chambers, only Ben-Veniste, Garment, I and my son Bill were present when the Judge remarked: "Now, one of the things that concerns me, and I am sitting, more or less, in a dual capacity as judge and jury, is we don't have a jury but at least we have facts coming in." (Underlining supplied for emphasis). Judge Sirica plainly meant that he intended to deliver his opinion on the cause of the 18-1/4 minute gap at the end of the hearing, in public and for the benefit mainly of the media. His position was fine with me. Judge Sirica then stated: "I don't know what she knows, but the point is, whatever she knows, if she knows anything that has not been brought out, anything involving this whole matter, there is no better forum than right here in the courtroom to bring it out. That is my position." I answered: "That is my position and has been." I was confident Rose would not lie. I wanted the hearing to be public and for everyone who had anything to say to be subject to cross-examination. That offered me, as a defense lawyer, a substantial advantage over any kind of closed door grand jury hearing where I could not be present. I needed to know what the Special Prosecutor had developed so to prepare Rose for a later trial, if there was one. It appeared that Judge Sirica's well-known impulsiveness and tendency to comment on the evidence in open court would force the prosecutors to put on their entire case against Rose in open court. If Judge Sirica's comments, or "findings", at the close of the hearing were equivocal, it would be very difficult for the prosecutors then to claim publicly that they nonetheless had sufficient evidence to bring an indictment against a member of the President's staff.

The questioning of Rose went on for days after the opening session on November 26, 1973, at which she denied erasing 18-1/4 minutes of the June 20, 1972, tape. When her testimony, and the testimony of almost everyone else who had handled a White House

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tape recording was completed, there did not seem to be a case against Rose.

The testimony was that tapes could be checked out from the custodian by many people working at the White House, and no permanent records were kept; when a person checked a tape out, as Haldeman, for example, did to prepare for his testimony in various forums, that fact was noted on the back of a scrap of paper, which was discarded when the tape was returned.

It therefore seemed wise to Judge Sirica to bring in a panel of professors and other acoustic experts to try to determine whether an examination of the tape Rose was transcribing and the machine she was using could shed any light on whether the erasure was accidental, and on its source. This panel had been selected earlier, jointly by Buzhardt and Garment and Jaworski's staff, to determine if any of the parts of the tapes which were inaudible or difficult to hear could be enhanced electronically. Judge Sirica now assigned them the new task of studying the source of the 18-1/4 minute gap on the June 20, 1972, tape.

After six months' work, the tape experts returned to Judge Sirica's court to explain their examination. They admitted they had found a defective part in the Uher 5000, which they then discarded, making it impossible for anyone else either to duplicate their work independently or to determine exactly the state the recorder was in when Rose used it. In any event, the tape experts could not say who had erased the tape. After the experts conceded they had destroyed evidence, which any other expert would need to test their "conclusions", expert Weiss admitted that "yes, in large part, they had" (Tr. 2707, January 18, 1974). Judge Sirica then granted my request to visit each of the experts at their workplaces. My son Bill and I divided the six locations: I took those on the east coast and Bill took the western sites. (See U.S. District Court Record, Misc. No. 47-73, of "In Camera", closed door proceeding of January 15, 1974.)

Judge Sirica finally ended his hearing by

suggesting that Jaworski take the matter up with the grand jury. That was done, but the results were equally inconclusive according to Jaworski.

In July 1974, Leon Jaworski called and said he wanted to talk with me about Rose Mary Woods at a public place, so everyone would know of our meeting. We met at the Metropolitan Club. He, in effect, told me I had been so aggressive during Sirica's "trial" that Rose stood completely exonerated. He implied the information I had gotten from the tape experts in questioning them when they reported in chambers, or discovered additionally about them on my court-approved visits to their headquarters, had rendered them useless. He said that he and Judge Sirica had agreed on Rose's exoneration but that he had some 20 other defendants he would take to trial, and to announce Rose's exoneration might adversely impact those cases. If I could agree, and get Rose to agree, not to announce her complete exoneration, he and Sirica would quietly drop the whole case against her, as frankly, it was no case at all. He said he had already secured Judge Sirica's approval of that action and he was anxious to get the case of Rose Mary Woods closed.

I talked to Rose and she agreed to his request. Jaworski kept his word and we kept ours. In his final report, Jaworski said almost nothing of the tape gap hearing and did not mention anything of consequence about Rose Mary Woods. (See Watergate Special Prosecution Force Report, October 1975).

Interestingly, Judge Sirica in his book To Set The Record Straight, subtitled "The Break-In, The Tapes, The Conspirators, The Pardon", published in 1979, reviews the involvement of Rose Mary Woods after I entered the investigation at pages 193-199. He stated on page 199 in part:

"In the end, the prosecutors could not produce enough evidence, in Leon Jaworski's judgment, to justify recommending an indictment from the grand jury. Despite the efforts in court to bring out the truth, and despite the government's spending \$100,000 for the experts' investigation, we never did find out precisely who was responsible for the erasure. But the

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experts' report did convince me that it was not an accident. I never quite believed that Rose Mary Woods caused the first part of the gap, at least in the way she described it. Her story about the foot pedal being depressed as she reached over her shoulder to answer her phone appeared to me as ridiculous as the pictures of her re-enacting the scene. That story seemed to have resulted more from her talks with the White House lawyers before her testimony than from her independent recollection. Yet, she may somehow have been responsible for part of the erasure. I believed her when she said she had had nothing to do with the remaining thirteen minutes."

Judge Sirica thus confirms what Leon Jaworski told me about his agreement with Judge Sirica on the complete exoneration of Rose Mary Woods of having erased the 18 1/4 minute tape gap.

The entirety of Chapter 11 of his book entitled "The Eighteen Minute Gap", which begins on page 189, really explains why and how Judge Sirica came to his decision. Judge Sirica there describes Fred Buzhardt as "pale as a ghost. He was obviously extremely nervous and very troubled. His colleague on the White House legal staff, Leonard Garment, did not look much better as the two came into my chambers to join Special Prosecutor Leon Jaworski and three of Jaworski's staff members. It was the day before Thanksgiving, 1973." The Judge then explains the story contained herein (Supplement pps. 172-192), plus a reference to Alexander Haig's testimony which "...pinned responsibility for the tape gap on Rose Mary Woods". (p. 198). I do want to correct Judge Sirica's erroneous statement on page 197 where he says that "From time to time, in the courtroom, Rhyne would curse under his breath at Buzhardt and Garment." I never curse - even "under my breath."

There is one interesting note to the work of the so-called tape experts. Their leader, Richard Bolt, was President of Bolt, Beranek and Newman, Inc. of Boston, Massachusetts. Two of his associates at that corporation, and the corporation itself, in 1980,

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pled guilty to defrauding the U.S. Government on contract work, including the work for Judge Sirica on the tapes matter, by erasing and whitening out facts and figures on records of work done, and costs incurred, so they could increase their bills for services to the Government by \$2 million dollars. The named defendants paid a \$706,000 fine and made restitution of \$2 million to the government. Minor criminal sentences were imposed on the individual defendants named below, but they were granted probation instead of jail time. If anyone wants to read the lengthy proceedings before the grand jury indictment which was replaced by the "Information" that was filed at the plea bargained guilty hearing, they can be found in the records of the U.S. District Court, Massachusetts, Criminal No. 80-363-6 U.S., District Judge Skinner presiding. Why the delay to 1980 in disclosing these guilty pleas in this matter is not explained. United States of America v. Salvatore P. Luciano, Harry R. Kirsch, and Bolt, Bednareck and Newman, Inc., Crim. No. 80-363-6, U.S. District Court for the District of Massachusetts, October 30, 1980. Filed in Clerk's Office December 31, 1980.

THE SECRET HEARING SUPPLEMENT TO PAGE 167, et seq

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE: SUBPOENAS DUCES TECUM ISSUED)
TO PRESIDENT RICHARD M. NIXON)
MISC. NO. 47-73
FOR PRODUCTION OF TAPES)

Wednesday, November 21, 1973

The above entitled cause came on for hearing in Chambers of Chief Judge John J. Sirica at 2:00 p.m.

The following transcript of proceedings was ordered SEALED by the Court.

APPEARANCES:

LEON JAWORSKI, Special Prosecutor

Litigation Lawyer

RICHARD BEN-VENISTE
JILL WINE VOLNER
HENRY RUTH
J. FRED BUZHARDT
LEONARD GARMENT
DOUGLAS M. PARKER

Also Present:

Carl Feldbaum
Richard H. Bolt
Mark R. Weiss

P R O C E E D I N G S

THE COURT: All right.

MR. BUZHARDT: Judge, we have a problem.

In the process of preparing the Analyses we have discovered and discussed this with the prosecutors this morning, one of the tapes, the intelligence is not available for approximately eighteen minutes. There is an obliteration of the intelligence for approximately eighteen minutes. You can't hear the voices. There are two signals there, one overrides for approximately 4 minutes and 30 seconds and you get a different type of signal and runs through.

Under the circumstances we know at this point it looks quite serious. It doesn't appear from what we know at this point that it could have been accidental.

THE COURT: Does not appear?

MR. BUZHARDT: Does not appear from the information we have at this point and the circumstances surrounding it. We have been through the circumstances with Mr. Jaworski this morning as we know them. We did a number of tests yesterday on our own to try to see if we could find out what the explanation for this was. They were negative results. That is why we checked the original this morning to see if the same thing was on the original as we were working with a copy. We checked the original. It is the same.

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Now we have, we discovered this I guess Wednesday night, that it was on a subpoenaed tape, that it was prior to that we had known that Miss Woods thought on a non-subpoenaed tape, after the conversation she had attempted to take off and she had told us she had made a slight erasure on a subsequent conversation. Well, as it turned out when we examined it last Wednesday night there were two conversations subpoenaed on that date although it was not readily apparent on the subpoena itself, it was from the other material filed in the case.

Also, the removal of the conversations from it, or non-existence of the conversation was approximately 18 minutes and 15 seconds in duration.

I have been unable to determine how it could have been done on the machine she was using.

THE COURT: Excuse me. Was this one of the tapes that she listened to at Camp David?

MR. BUZHARDT: It was the tape she listened to; in fact the first one she testified to.

THE COURT: This the one brought to Key Biscayne also?

MRS. VOLNER: They were all brought there.

THE COURT: This was one of the 7 or one of the 9?

MR. BUZHARDT: One of the 7. It was the first one and there are 2 full conversations. The first one she transcribed, although she didn't use that word. The second one she didn't and I don't think she was supposed to.

It is a very difficult set of circumstances. We checked on Friday morning to see if we had an explanation how it occurred to see if it could be recovered and he told us it was very remote. This was with Rosenbloom (phonetic spelling). That if a recorder button was hit.

After you gave us a continuance I decided I better advise you, not hold this till we put the Index in, so I did a series of tests if this is what happened.

We first got duplicate machines and couldn't produce the effect with that machine. Subsequently we sent over and swapped machines and got the machine

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she actually used and tried it on that. We couldn't reproduce it again.

So we are kind of at a loss. We want to bring in a technical man to tell us what this is we are hearing, if he can, and get some more circumstances.

At its worst it looks like a very serious thing, Your Honor. If there is an explanation, quite frankly I don't know what it is at the moment. I am sure you can appreciate we are in somewhat of a difficult position to cross examine people under these circumstances. It would be much better done by Mr. Jaworski and his people than it is by us. They can take the appropriate steps and do whatever is necessary. And that is really what I have to report.

THE COURT: Excuse me. Who was the last one that actually listened to this particular tape?

MR. BUZHARDT: The original? The original, according to the record, was first checked out to Miss Woods.

THE COURT: Was it all right before it was checked out to Miss Woods?

MR. BUZHARDT: We don't know, Your Honor.

THE COURT: Anybody listened to it?

MR. BUZHARDT: No. I guess she is the only one who listened to it.

MR. BEN-VENISTE: The records kept by the Secret Service do not reflect that particular tape was checked out prior to the time that Miss Woods received it from Mr. Bull on the 28th of September and the testimony is, as I recall it, that it was kept in her safe under her custody until the hearing started.

MR. BUZHARDT: When we started if you remember, Your Honor, you said you wanted these sealed. I personally accompanied Mr. Ben-Veniste and Mr. Powers and we went to the safe and took them out and went to NSA and made copies, after which they were sealed.

THE COURT: Where is that tape now?

MR. BUZHARDT: We sealed it back, Your Honor.

THE COURT: Who was present?

MR. RUTH: Carl Feldbaum.

MR. BEN-VENISTE: May I ask a question for clarification? Is it only one obliteration that you are talking about lasting 18 minutes?

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MR. BUZHARDT: One straight through.

THE COURT: What part of the tape does it appear on? Is it anything about national security?

MR. BUZHARDT: Let me explain the circumstances.

The subpoena was directed at a meeting in the President's EOB office - I believe it was between the President, Mr. Haldeman, Ehrlichman from 10:30 till noontime approximately. What actually happened both from the logs and from the tape the two of them did not meet together with the President. Mr. Ehrlichman met with him, the log shows 10:25 till 11:20. Then there was a interval when no one met with the President. Mr. Haldeman came in at 11:26 until 12:45 and you can hear between the conversations, you can hear - the first one is nothing wrong with Mr. Ehrlichman's conversation. Then you can hear noises for three minutes and some seconds and then you can tell when Mr. Haldeman comes in. From the moment he enters - and we have been stop-watching these things - there is three minutes and 40 seconds until this signal comes in, continuous for 18 minutes and 15 seconds according to my timing and then the conversation picks back up and continues.

THE COURT: What conversation continued after 18 minutes?

MR. BUZHARDT: Between the President and Mr. Haldeman.

THE COURT: It would indicate Mr. Haldeman was there talking to the President?

MR. BUZHARDT: Yes.

THE COURT: Then there is a lapse?

MR. BUZHARDT: Yes. Then the circumstance is even a little worse than that, Your Honor.

THE COURT: I don't know it could get much worse.

MR. GARMENT: Just wait.

MR. BUZHARDT: As you know, Your Honor, the notes were subpoenaed too. We found Mr. Haldeman's notes of this meeting. They consist of two legal pads of paper. On the first page the notes start at the beginning and come to the end and they reflect directions or instructions of the President given during the part of the first three minutes and forty

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seconds of that conversation. Lift the page and at the top of the page the first two-thirds of the page the notes reflect that the discussion was about Watergate. The first thing my recollection is something about making sure the EOB office was not bugged and went on from there. When you get past the Watergate typed notes, or that could reasonably be concurrent, you know, on that subject, I think the first one after is about a Senate Foreign Relations Committee hearing on SALT. I think that is where the tape picks up.

MR. BEN-VENISTE: May I ask a question?

Does Rose Mary Woods purport to have a transcript of that conversation prior to the obliteration?

MR. BUZHARDT: No. She only did the one. She tells us she only did the one, you know, the first conversations -

MR. BEN-VENISTE: - She said that is the only conversation she worked on?

MR. BUZHARDT: Of that two, she only attempted to transcribe the meeting between Ehrlichman and the President and if you look at your subpoena that is perfectly reasonable. In fact, I thought that was one subpoenaed too up until last Wednesday.

MR. BEN-VENISTE: She, I thought said in the tape she was trying to transcribe, the difficulty was because more than one person was speaking at the same time which would indicate the conversation of more than two.

MR. BUZHARDT: No. You can have two people in the room, now that I have been through these tapes they are all talking at the same time. It is impolite, I guess, but you can make it out though with a lot of work.

Now, Your Honor, as you know I wouldn't be here unless I thought it was an extremely serious matter. I have suggested to Mr. Jaworski it is time for him to approach the matter also with us in attempting to ascertain what the facts are. Under the circumstances it is my belief that it would be better and we could find out better with an investigation before we had an open hearing because there is still some investigation to be done.

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At the present time I don't know of a reasonable explanation of how this occurred but that is not to say there may not be one. I would hope we could have a few days to exhaustively see because the announcement of this type of thing could have a very devastating effect. Possibly we won't come to one but a few days won't make any difference. If we don't find an alternative it won't make that much difference in the few days that we will have, is my opinion.

THE COURT: Well, I have heard you now. Mr. Jaworski.

MR. JAWORSKI: Your Honor, may I add for the record that this matter was disclosed to us at 10:00 o'clock this morning and the substance of the disclosure made to Your Honor was also made to us. I realize that whatever investigation is to be made is not complete. I realize there may still be some possible rationalization, I have no way of prejudging that.

On the other hand by Mr. Buzhardt's own statement which I think has been very open, very frank, there is a situation that involves possibly not only the obstruction of justice but also contempt of Court. What else is involved I don't know, but certainly this is apparent. I am not so certain that the matter should not be disclosed immediately. While I recognize there is always the danger of some injustice being done especially if it should be found eventually that there might be some explanation, I think that on balance perhaps it is better to make the disclosure. If it isn't made it will infinitely worse in my judgement than if it isn't made at the present time.

To whatever extent we can be of assistance in determining the facts, of course we want to be.

Now I recognize Mr. Buzhardt and Mr. Garment's situation which is certainly a difficult one in these circumstances because they can go just so far in examining Miss Woods or anyone else. We can all understand that. And I am not ready to prescribe any procedure, this is not what I could do this readily. But I certainly do feel that the better course would be for disclosure to be made.

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THE COURT: I am in accord with Mr. Jaworski. I always find it better to bring these things out as fast as you can bring them out and any explanation that can be made can be made later on.

I also have this in mind: it might be a good idea to have these experts in court listening to this testimony as it unfolds, you understand, because they have to make an appraisal of these tapes, they may come up with some answers somewhere, I don't know.

To go back to what the President said the other night - I listened to that speech - somewhere at the beginning of his talk the matter came up, I think, about your disclosing to me about what had happened. I forgot the language he used, but he said he thought that was appropriately done, something like that, to bring this out into the open, you remember that; which I thought was a fine commentary for him to make, to show the public when we hear these things we bring them out in the open. It may be something can be answered later but if you keep this in a closed session two, three or four days, the news media already knew about the meeting here today. Then we will have to get Miss Woods back on the stand and question her, find out what happened, who had these tapes at any time; let the experts hear the testimony. They might be in a better position to come up with some answers.

I am for disclosure as soon as possible. I just can't help it. It is a sad thing to have to report. I understand your position, Mr. Buzhardt, and you can understand my position and Mr. Jaworski's position. If it is not done immediately there will be no answer to the thing. That is all I have to say. All right.

Tomorrow is Thanksgiving Day. Why can't we do it this afternoon, say at 4:00 o'clock.

MR. BUZHARDT: Your Honor, I couldn't possibly even get Miss Woods down here by 4:00 o'clock.

THE COURT: You can make your statement and we can get her down here Friday morning, day after Thanksgiving.

MR. BUZHARDT: Your Honor, I think we could make the statement about the circumstances and maybe I am

Autobiography by Charles S. Rhyne

out of line for saying this, but quite frankly I think Miss Woods ought to have time to reflect on this and she ought to have time to secure counsel. Maybe she doesn't want to and I certainly am disgusted with her.

MR. GARMENT: Your Honor, I was going to say there are two problems: one is disclosure of the matters Fred disclosed to Mr. Jaworski and to yourself today which I know he determined in the last couple days and checked out yesterday.

The second is the question of the method of pursuing what of investigating the facts which may involve the kind of matters ordinarily conducted under auspices of the grand jury.

THE COURT: We have a hearing set for Monday. Why can't we make the disclosure in open court today and then if you make the request, if there is no objection, we will set the hearing starting at 10:00 o'clock Monday morning?

MR. JAWORSKI: I would think that would be wise.

THE COURT: I would think that would give her the weekend to think about the matter, obtain counsel if she wants.

MR. BEN-VENISTE: Your disclosure would not necessarily name Miss Woods.

MR. BUZHARDT: I would certainly hope not, Your Honor.

THE COURT: She may be innocent.

MR. BUZHARDT: What I would like to get to is disclosure we have of the tape, which is the problem. I don't know how it was done. I have been unable to duplicate with sample tapes, that there is no - that for part of the tape the conversation is not recoverable. I would like a little bit to write this out. In fact, I would like to take a while to write it out because I want to be very careful what I say here.

THE COURT: I think you can write it out in an hour and a half, couldn't you?

MR. BUZHARDT: Yes, sir.

THE COURT: We will call a meeting for 4:00 o'clock in open court and go from there and you make the request the matter be continued till Monday

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morning at 10:00 o'clock and if there is no objection by the other side I think I would go along with that. Then we could get the experts. I am in favor of having the experts listen to the testimony as to what might have happened or what might not have happened. What do you think of that?

MR. JAWORSKI: I think it is fine.

MR. BEN-VENISTE: I think simultaneously we ought to be prepared to listen to the tapes.

MR. RUTH: This is a new science apparently of testing these tapes. I think in terms of this June 20th, they will be here later this afternoon. I don't know if you want to get into that then but we can't tell how long it would take to test this June 20th tape.

THE COURT: This is the June 20th tape?

MR. BUZHARDT: Yes.

MR. GARMENT: 1972.

MR. BEN-VENISTE: That is the same day on which there is the missing telephone conversation between the President and Mr. Mitchell.

THE COURT: Made from the Lincoln Room of the White House.

MR. BEN-VENISTE: He says it was not made - if it were made from the Lincoln Room it would be recorded.

THE COURT: So this would be three days after the break-in and this is the tape that has 18 minutes plus, I think, there is nothing as I understand on there. There is something going on, somebody was talking apparently?

MR. BUZHARDT: That is true. Mr. Haldeman's notes reflect that.

MR. GARMENT: There is a signal over it.

MR. BUZHARDT: There is really two signals.

THE COURT: What do you mean by "signal"?

MR. BUZHARDT: It is like a steady tone, it is like a buzz, and after 4 minutes and 30 seconds I think there is one sort of click at the very beginning, then it is almost a drop in amplitude and you get not near as strong a signal of a slightly different tone for the rest of the time.

THE COURT: Well, we also have to consider this

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too, I think, while we are at this: suppose Miss Woods comes in Monday morning, which she has a right to do, and let's assume she relies upon the Fifth Amendment, claims the Fifth Amendment and doesn't testify? Then the next question is what do we do next? You understand? This is something the Special Prosecutor has to decide whether you want to ask the case be submitted to the grand jury for further investigation. That is a probability. I would say that this might be the next step and let the grand jury look into it.

MR. BUZHARDT: That is really what I was suggesting, Your Honor, the first time. Maybe it is a matter for the grand jury to look into with the prosecutors maybe.

THE COURT: As long as we have been disclosing this to the public, the important thing as Mr. Jaworski said, you cannot keep this quiet and not let the public hear this, this fact.

Now, if the case goes to the grand jury then that is a different matter.

MR. BEN-VENISTE: I think it can be in tandem as well, Your Honor, the fact we have open proceedings won't foreclose a grand jury inquiry either. We can have it both ways.

MR. JAWORSKI: The question has been raised, Your Honor, whether it would be wise even from your standpoint for the tapes to be sequestered - the other tapes. Is there advantage to that being done?

THE COURT: Now? I think you probably have a point there. It seems to me now that this happened, Lord forbid if something else should happen, then the people might say why didn't they turn these over to the Judge. You see we are all set with the security here. We will have two men around the clock and they will be in the safe. I don't know why you don't go ahead and turn these things over now and put them in our safe. You can make that statement in open court.

MR. BUZHARDT: There is one other problem I have here.

THE COURT: Have you copies of the tapes?

MR. BUZHARDT: Yes, sir. What we want to turn over are the subpoenaed conversations, the 6-foot

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reel tapes. We got to set up a procedure somehow of how we take out the conversations and submit the conversation. I want somebody to do it that can mark where it comes out with the total conversations and we determined there is nothing we will claim as national security on those conversations. There are some matters of national conversations.

MR. BEN-VENISTE: Maybe we are talking about semantics, but are you suggesting all you are prepared to turn over to the Court is a slice of tape? That isn't the underlying factor on which we have been basing our tape testing, for example. The experts expect to be able to test the conversations in context of the whole tape to determine among other things whether the conversation has been recorded on a different tape, whether portions have been taken from one portion of the tape and put on others. They fully expect and I fully understand that the experts would have the entire tape to test and not just the selected conversations.

MR. BUZHARDT: The three tapes that are involved, that telephone tape and the other two, yes, we agreed to submit the whole one. But we never agreed to submit the entire tapes.

MR. BEN-VENISTE: There is no way of proving as far as my experience in criminal cases, authenticity unless you have the entire tape in context. That doesn't require divulging the substance of the material but it is impossible to authenticate a snip of tape.

THE COURT: How can you do that? I was under the impression the whole tape was going to be -

MR. BUZHARDT: - the whole reel, Your Honor? They only subpoenaed the conversations. We are really running into a problem there. It is one thing to weed out national security and other things out of the conversations, but when we get into whole meetings with foreign dignitaries -

MR. RUTH: - It is not for the purpose of listening to them.

MR. BEN-VENISTE: It is not for substance of it, it is only for context of it in terms of one continuous running of tape.

Autobiography by Charles S. Rhyne

MR. BUZHARDT: What we suggested earlier and I too have problems with cutting the tape, was to have the conversations themselves recorded out and a copy of the conversations - you can hear as well on the copy - and have that verified, let the Judge verify if he would, and then we make the reels available for inspections.

THE COURT: What did the subpoena call for?

MR. BUZHARDT: For recordings of the conversations, Your Honor.

MR. BEN-VENISTE: You have to turn over the original reels in the first instance to the Court for the Court to hand them over to the experts to perform their tests. That is my understanding of what is to be done.

With respect to what is submitted to a grand jury in terms of the contents of the matter that would only be the subpoenaed conversations, correct? But if the experts were not to have the full reel you would find that would substantially impede their ability to make the tests they have to make.

MR. BUZHARDT: What I am saying is this: we could do, to try to find a way to work this, the Court is interested in the conversation subpoenaed, we could make a copy of the conversations to leave here in the Judge's presence anyway, we could submit the entire reels to the experts. I am sure you can understand our problem with submitting the entire reels to the jurisdiction of the court. We may never recover them that way.

THE COURT: Well, it is something you have to work out between yourselves. I don't know as I can help you at this point on that.

MR. BEN-VENISTE: As long as we are understood in the first instance the experts will have access to the entire reels?

MR. BUZHARDT: The experts will have access to the entire reels, yes.

THE COURT: All I want to be sure if I can get them at the proper time what I am supposed to listen to, I am not interested in conversations the President had with you or Bill Rogers, or anything like that - I guess I can call him Bill now, he is not the Secretary of State.

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O.K. Let's do first things first then you can get around to this to work it out.

Mr. Sokal: (Reporter) Will you be ready at 4:00 o'clock?

MR. RUTH: Your Honor, we do have the experts. I don't know if Mr. Garment wants to proceed with that.

MR. GARMENT: One comment: I know the people worked on this till rather late last night and into the morning.

THE COURT: Do the experts know anything about this?

MR. GARMENT: No, Your Honor. As Mr. Buzhardt indicated to the President, persons in the White House cannot be consulted because of their possible involvement in some matter, possible criminal jurisdiction; I wonder whether in the next hour and a half we will have a chance to consider some things we haven't considered before, whether the one possible alternative would be to have this announcement made on Friday morning? My only concern is, Mr. Buzhardt was the one who took the initiative and made this disclosure, this is not an adversary investigation, it is cooperative at this point, and soon as these facts were made they were made known.

MR. BUZHARDT: I would like the opportunity to consult with my client, Your Honor, on this.

MR. GARMENT: When we discussed the matter with Mr. Jaworski this morning Mr. Buzhardt made the point, I think a legitimate one, nothing can change, be it facts or persons. The situation is there. In terms of Friday morning, the question of the promptness of the disclosure, I think the disclosure has been made immediately to Mr. Jaworski and to yourself.

THE COURT: Well, I have a different idea about that. I don't think you are going to know much more about it Friday morning.

MR. GARMENT: I don't expect to know that much more, I think what I am asking for is the opportunity for Mr. Buzhardt and myself to think through a little bit.

THE COURT: When is the first time you discovered this last thing that happened?

Autobiography by Charles S. Rhyne

MR. BUZHARDT: Judge, we discovered the thing was there last Wednesday night.

THE COURT: You mean there was a lapse of 18 minutes?

MR. BUZHARDT: Yes. At that point we went through all kinds of things to try to find out an explanation.

THE COURT: You see, already a week has gone by. I think that should be put on the record what you tried to do in the meantime to find out. I think we ought to go ahead at 4:00 o'clock and disclose this thing, myself. That is going to be the ruling of the Court. If counsel disagrees with me, you put it on the record, both sides, how you feel. You can write your statement out in the meantime. I would put in there what you have been doing since last Wednesday trying to find out what happened here. We will have a full-fledged hearing starting Monday morning. You can make the motion if you want if you think we ought to go into this starting Monday morning at 10:00 o'clock.

MR. JAWORSKI: Excuse me a minute. I want to say the advantage of doing it is because somehow, somehow this matter is going to come to light and it is going to be infinitely worse. If you do it solely from your standpoint you would be much better off.

MR. BUZHARDT: Right, but I also have to consult my client. And it is hard to get my client on the phone, Your Honor, on short notice. That makes it extremely difficult.

THE COURT: Well, all right, I think maybe it wouldn't be wise to talk to these experts now. Let them come in to court at 4:00 o'clock if they want to hear the proceedings from the beginning and they will understand why we are postponing this till Monday.

MR. GARMENT: Your Honor means we would postpone the meeting with the experts?

MR. RUTH: The meeting as you recall, Your Honor, was on the plan for the tests.

THE COURT: Do you have anything I can release?

MR. RUTH: There is a plan which you may want to discuss for a few minutes.

MR. BEN-VENISTE: Some of these gentlemen are from out of town, Your Honor.

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Your Honor, there is one matter we haven't fully resolved and that is the question of the custody of the originals, the tapes, which are resealed. Your Honor alluded to this before. Wouldn't it make sense if we can have these turned over to the Court at the same time as this announcement is made?

MR. BUZHARDT: Your Honor, that would involve turning over custody to the Court of all the reels. It is not something required by the order.

MR. BEN-VENISTE: If Your Honor will hear argument on this, the Court certainly has the power to protect the integrity of the evidence subpoenaed by the grand jury and we all say nothing else could happen, my God! If something happens to those things don't you have the most vested interest in turning these over the Court at this time?

THE COURT: Mr. Jaworski, as you know is a great trial lawyer for many years; I tried many cases and I know the Assistant U.S. Attorney has; I am not sure about the young lady. Now, doesn't the Court in a situation like this where I have been put on notice of something happened to one of these tapes -

MR. BUZHARDT: - not since they have been sealed, Your Honor.

THE COURT: I understand, but even from now on, I don't know, don't I have the inherent power in the interest of protecting what is available now to say they will be just as safe here with two marshals on duty night and day and I understand they are going to check everybody that comes in and out of my office when these things are turned over? Wouldn't it be better from the standpoint of the public and the court and everybody to have them here and you have copies of them to work with?

MR. BUZHARDT: Your Honor, let me say this: I would like to make myself perfectly clear, as my client would say, I don't have the authority to say anything about what we could do except with respect to subpoenaed material.

THE COURT: Does your client know what has happened today? Maybe your client wants that done.

MR. BUZHARDT: I would have to go back to my client to go beyond subpoenaed conversations.

Autobiography by Charles S. Rhyne

THE COURT: Would you tell your client the Court suggested, and would you go along with it?

MR. JAWORSKI: Indeed so.

THE COURT: That it would be better. They may kill a couple marshals here to get them but chances are remote of that. You would have them out of your custody, they would be in the custody of the Court. Wouldn't it be better from here on in when you need copies to work with?

MR. JAWORSKI: Fred, that does not mean the Court is ruling now anybody would listen to these tapes. It is purely a matter of custody and no one will be listening to them until such time as the matter is passed on and you are heard completely on the situation.

MR. BUZHARDT: I understand that, Leon, but it would mean official transfer of custody to the Court. We are dealing with unusual parties in this case. It is just not a decision for the lawyer to make. We got a man who has got an official position and I have got to have time for him to consider this. I can talk to him, I hope, Your Honor, but I don't know if I can get him by 4:00 o'clock. I don't know what he is engaged in.

THE COURT: All right. Let's talk about the experts now. We have been getting calls, I think, whether there will be anything released today, names of experts or anything we can give the press. So I left word we cannot tell them anything.

MR. GARMENT: Excuse me, Your Honor. Could I absent myself for a moment?

THE COURT: Yes.

(Mr. Buzhardt and Mr. Garment left the hearing room briefly.)

MR. JAWORSKI: Judge, I was going to leave this afternoon. If there is nothing to be done more than the announcement he may make at 4:00 o'clock I would ask Your Honor to excuse me, if you will?

THE COURT: All right.

MR. JAWORSKI: I do intend to be in court on Monday morning at the time you have indicated.

THE COURT: All right, sir.

MR. BEN-VENISTE: Would you accept service for Miss Woods?

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MR. GARMENT: Surely.

(At this point Carl Feldbaum, Richard H. Bolt and Mark R. Weiss entered the hearing room.)

MR. BEN-VENISTE: Your Honor, may I be excused to make a phone call?

THE COURT: Surely.

(Mr. Ben-Veniste left the room briefly.)

(Douglas M. Parker entered at this point.)

MR. FELDBAUM: Your Honor, pursuant to Your Honor's order White House counsel and the Special Prosecutor's Office considered the problems of getting together a group of experts and we coordinated these problems and finally arrived at six names who after a great deal of consultation with experts in the field we are in agreement these men represent the best that the various disciplines that are involved in the tape testing have to offer. These men met with us Sunday evening - afternoon and evening -

THE COURT: - you mean both sides were represented?

MR. FELDBAUM: Yes. And after a lot of consideration came up with a draft proposal which outlines to the Court the types of problems involved in testing, the types of solutions to those problems that they can come up with. This is the original copy of the Proposal (handed to the Court).

The experts, as Your Honor will be able to see from the biographies in the back, come from various parts of the country and it is not possible due to that fact to have everybody write this one proposal; therefore, the experts have asked me to request that until they can all get together and consider this draft proposal that this particular document be not made public in its present form.

THE COURT: All right.

MR. FELDBAUM: They have prepared a very brief capsulized statement that Dr. Bolt and Dr. Weiss asked that I hand to you.

(Handed to the Court.)

THE COURT: Let me ask you a question: we all know that the grand jury has been sitting for almost 18 months. I don't think this concerns our friends

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here. December 5th, I think, will complete about 18 months of service. We have, I think, some new legislations which will take care of the extension of time. I don't know that we have to wait in order to complete the investigation until after the experts have made their report as set forth. It seems to me whatever the grand jury intends to do, assuming they get parts of the conversations or the exhibits, do we have to wait until these gentlemen finish their examination? I don't think so. Because if we had to do that this might continue three or four more months. Seems after I make my ruling and there is no appeal by either side and whatever I think goes to the grand jury goes to them for whatever action they want to take because I would like to see this thing handled expeditiously if we can, you know, keeping those people together so long.

Is it all right to release this one page document?

MR. PARKER: Yes, sir; it was prepared for that purpose.

MR. FELDBAUM: If I may make one more suggestion as to the release? I spoke to Doug Parker at the White House and the press office would be glad to distribute this with the press release with the attachment of the biographies of the experts.

THE COURT: Now, has it been decided to release the qualifications or just the names?

MR. GARMENT: They have no objection.

MR. BOLT: I would comment we wrote them very quickly, you know.

MR. GARMENT: I would hate to see an exhaustive research.

THE COURT: One at a time, gentlemen. We have a reporter trying to take this down.

Now, how would you suggest it be handled? Let your office handle the release?

MR. RUTH: Your Honor might want to read this from the bench at 4:00 o'clock and tell the press the biographies are available where?

MR. FELDBAUM: In our press office and Jim Doyle (phonetic spelling) made them available at the White House press office.

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MR. PARKER: The longer document is not for release. Only the biography portion of it.

THE COURT: All right, that takes care of that. Gentlemen, is there anything we have to do now with the two gentlemen that just came in.

MR. RUTH: Unless Your Honor wants to hear brief discussion of the types of tests.

THE COURT: At 4:00 o'clock we are going to have a short proceeding in the courtroom. I think it might be advisable for both of you to be there. It might take five or ten minutes.

Now, did you want to try to start educating me what I should know about this matter?

MR. BOLT: Not unless you want to. We tried to write it. All six of us were very much task oriented, we have not in any sense tried to put together a long term research program even granted the urgency here and seems the problem is so complex and the, if you will, cost of making an error in judgment is so high in this case that we should go through a pilot phase first where we weed out the tests that are going to be most useful and come back and propose what we think will be accomplished. At this stage we can put odds on it.

MR. BEN-VENISTE: Your Honor, one word if it hasn't been mentioned: the fact these gentlemen who have graciously accepted to serve on this panel will undoubtedly be inundated by the press with various questions, speculations and maybe if we can forewarn that the best thing is not to make any statement because you can't make any errors that way, you can't be misquoted that way. We have found that to be the most helpful approach.

MR. BOLT: Do we create a problem for you if we refuse to talk?

THE COURT: No. The Court suggests it doesn't think it is appropriate at this time to make any comment to the press. That is all.

MR. RUTH: I think, Your Honor, since the biographies are going to be released someone should clarify his background which is separate from the task.

MR. BOLT: Yes. These are very cryptic things.

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MR. GARMENT: Beyond that this would embrace discussions we had at the White House and here.

MR. BEN-VENISTE: Carl, you can advise those that are present that it is a Court suggestion.

THE COURT: All right. I will give you about an hour to get ready.

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* (2:55 pm)

CERTIFICATE

It is certified the foregoing is the official transcript of proceedings indicated.

(Signed)
NICHOLAS SOKAL
Official Reporter

EXAMPLES OF STATE SUPREME COURT DECISIONS I
PARTICIPATED IN:

From time to time, I have been called upon by lawyers for local governments to help them on cases before their States' highest Courts. State Supreme Courts frequently are called upon to balance expressions of the limits of local government power in older State Constitutions and cases against the needs of modern experience. My work as General Counsel of NIMLO and for cities in other cases enabled me to help. I was often able to contribute modern, nationwide information to assist these municipal lawyers. Two cases illustrate the pattern.

PEOPLE v. BARTHOFF, 388 Ill. 455, 58 N.E.2d
172 (1944)

AIRPORTS AS A PUBLIC PURPOSE FOR MUNICIPAL BONDS

On March 21, 1944, the Supreme Court of Illinois announced a decision that the Illinois Authorities Act under which airport districts could be established was invalid. The case involved bonds issued to build the Springfield Airport. I was

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employed by Hugh Dobbs, Corporation Counsel of Springfield, to help draft a petition for rehearing. I worked with Mr. Dobbs and the Firm of Chapman and Cutler of Chicago, which had issued an opinion that the bonds were valid, on a petition to rehear and set aside the March 21, 1944, decision.

I collected the many decisions holding that airports were a "public purpose" or "public use" within the provisions of the State Constitutions relating to expenditure of public tax funds. We cited 51 decisions in 28 states so holding. These cases are reviewed in Rhyne, Airports and the Courts (1944) pp 17-55, 116 ALR 733-64 (1946). The Court granted the petition for rehearing and on May 15, 1944, set aside its original opinion and held the Springfield airport bonds valid, as authorized under the Constitution of Illinois. In People v. Word, 391 Ill. 237, 62 N.E.2d 809 (1945) and People v. Quincy, 395 Ill. 190, 69 N.E.2d 892 (1946) the Illinois Supreme Court reaffirmed its decision that airports are a public purpose.

**CITY OF PUEBLO, COLORADO v. GRAND CARIOLIAN
SLOVENIAN CATHOLIC UNION AND PREDOVICH,
RECEIVER, 145 COLO. 6, 358 P.2d 13 (1960)**
DIVISION OF LEGAL POWERS - EXECUTIVE,
JUDICIAL AND LEGISLATIVE

The complaint in this case sought a court order appointing a receiver of certain funds held by the City of Pueblo through collection of special improvement taxes and held in a Refunding Improvement Bond Fund. By judgment of a trial court, a receiver was appointed to marshall and collect all assets rightfully belonging to said fund, and convert them into cash and to equitably distribute the same, all to be done under the order or orders of the Court. The City appealed.

The Supreme Court reversed the order, holding that in the absence of a provision in the bonds so providing the Court did not have jurisdiction to appoint the Receiver. The Court held that otherwise a court could appoint receivers for any agency of

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government, a result which would be subversive of the basic principles upon which our government is founded.

SETTLEMENT OF A COMPLEX, MASSIVE, FEDERAL
ANTI-TRUST CASE

CITY OF CHICAGO AND 500 CITY INTERVENERS v. GENERAL
ELECTRIC, WESTINGHOUSE AND 27 OTHER ELECTRICAL
COMPANIES FILED IN U.S. DISTRICT COURT OF ILLINOIS
EASTERN DIVISION, (1960)

Every lawyer knows that most cases which are filed do not go to trial, but are settled by mutual agreement. Every good lawyer knows that favorable settlement terms go to the lawyer who projects a willingness to go to trial aggressively. I had some such experiences involving cities organized nationwide against major industrial corporations from whom they had purchased equipment or supplies.

In 1960, NIMLO President John F. Melaniphy, Corporation Counsel of Chicago, filed a 237 page printed Complaint, including appendices, alleging violations of the Clayton and Sherman Anti-Trust Acts as a class action on behalf of the some 2,000 member cities of NIMLO who were in a similar situation as Chicago but are so numerous as to make it impracticable to bring them all before the Court. Still, some 500 cities intervened. The Complaint alleged that the rights of all said cities in law and fact involve common questions, issues and relief. Chicago's Complaint stated it would ensure adequate representation to all cities joining in the Complaint.

The Defendants, including General Electric and Westinghouse, and their co-conspirators were alleged to have fixed or manipulated prices collusively to prevent competitive bidding in electrical switch gear assemblies and other equipment including circuit breakers purchased by cities. The twenty-one criminal indictments previously brought by the Government of the United States setting forth the facts of the violations alleged were incorporated in

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full as appendices to the Civil Complaint listing Defendants by name and some of the governmental agencies to which they had submitted illegal bids. The Federal criminal proceedings had been already terminated by guilty or nolo contendere pleas in 1960, followed by entry of judgments on these pleas and imposition of criminal sentences on February 6 and 7, 1961. The pending civil proceedings of the Federal Government were identified. The conspiracies were alleged to have begun about 1955 and extended into 1960.

Seymour F. Simon of Chicago, a great anti-trust expert, I and members of my law firm, aided Mr. Melaniphy in preparing the Complaint of which 27 printed pages covered the violation facts generally and added facts not set forth in the criminal indictments. Similar Complaints were filed by others in 34 other U.S. District Courts throughout the Nation. Many meetings of Judges and Counsel were held and many facts were presented by Plaintiffs and Defendants during the taking of depositions. Finally it was agreed that the first trial would be held in Philadelphia with U.S. District Court Judge Miles Lord presiding.

I filed many Motions trying to obtain the testimony of witnesses who appeared before the grand juries which had indicted the Defendants. I argued that the Federal Government had all of this testimony to use in their own civil damage cases, so all state and local Governments should be entitled to it. I decided to present my case to Acting U.S. Attorney General Nicholas Katzenbach who was acting while Attorney General Robert Kennedy was out of Washington. Mr. Katzenbach said my plea was reasonable and he would instruct Mr. William Maher, the U.S. Attorney in Philadelphia, to support my Motion at a hearing Judge Lord had scheduled on the following Monday just before the trial began.

I rode up to Philadelphia with Gerhard Gesell, then Counsel for General Electric, and later a most distinguished Judge of the U.S. District Court of the District of Columbia. I did not mention my meeting with Katzenbach. When we arrived in

Philadelphia, I hurried to meet Mr. Maher to be sure Mr. Katzenbach had talked to him. He assured me Katzenbach had and he in turn had informed Judge Lord that the Federal Government would support my Motion. While I, Mr. Melaniphy and many other municipal attorneys were in Mr. Maher's office he received a call from Attorney General Kennedy instructing him to "stand mute" at the hearing before Judge Lord. He told the Attorney General he had already informed Judge Lord of the Government's position and never heard of doing such a thing, in his position, as "standing mute". At that moment, a clerk came in to say Judge Lord had taken his place on the bench so we must get in the Court quickly. Naturally, Judge Lord was upset when Mr. Maher informed him he had been instructed to stand mute. Judge Lord had invited all Judges having similar cases to the first trial so he was impatient to get to them. He said he would withhold Judgment on the Motion but the first time a witness varied from his Grand Jury testimony he would give me and my municipal clients that testimony.

We hurried into the Court where a brilliant young Philadelphia lawyer, representing a private Philadelphia utility, had won the argument over who was to go first, as his case was the first filed in the Philadelphia Court. He began to question President Corbin of General Electric. After only a few answers to questions, Judge Lord held up his hand and said the witness's present testimony conflicted with his Grand Jury testimony. He began pulling out transcripts of Grand Jury testimony from underneath the Court Bench and announced he was going to give it to me. At that moment, Hoyt Steele, General Counsel of General Electric, came up to me and said to please ask for a short recess because he had been authorized by all the Defendants to make a settlement proposal to the municipalities I represented. The recess was granted and the numerous municipal attorneys present gathered with Mr. Melaniphy and me in an adjacent room. Mr. Steele said his settlement offer was that the Defendants would pay all municipalities their actual damages - not triple damages - plus their costs and attorneys fees. The municipal attorneys

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present said they would recommend the settlement but needed to clear it with their Mayors and Council members and that would take some time.

We re-entered the Court and informed the Judges of our decision to accept the settlement proposal of Defendants, subject to formal approval of our municipal clients. We said we thought all would accept rather than go through months of trial expense.

The Judges were overjoyed to get rid of our some 500 municipal Plaintiffs, so they agreed we would meet with the Defendants and come back in one week and inform Judge Lord of municipal actions on the settlements. I informed Mr. Steele that many cities did not know exactly how much they had been damaged but we would do our best to get together what each municipality would accept and meet him and other Defendant Counsel in my office in Washington the next Monday. On that Monday, after some problems, we persuaded Mr. Steele to give us the Defendant's damage estimates. They were actually higher than most municipal estimates.

The equipment companies had superior knowledge not only of damages but also of the mechanics of the bid rigging conspiracy. We never did find out exactly how the bids were decided and the winning bids apportioned among the companies. I suppose we appeared to know more than we actually did, and the prospect of our obtaining extensive Grand Jury minutes raised a fear we would soon know much more.

We then voted to accept the damage estimates of Defendants but each Plaintiff would need to sit down with a representative of the Defendants involved in their violation purchases and agree on costs and attorneys fees.

That was in substance agreed to and the municipal parties in the Chicago case were out of this complicated massive litigation. Each municipality worked out its own total claim with the particular Defendants involved in their purchases. So far as I know, every municipality thought this settlement was fair and reasonable.

I should pay tribute to President Melaniphy's

Autobiography by Charles S. Rhyne

leadership and to Raymond J. Kelly, former Corporation Counsel of Detroit and NIMLO President, who handled the project's business management. Judge Kelly had also served as National Commander of the American Legion and Federal Judge of Alaska before it became a state and for some years thereafter. John Fleming, City Attorney of Milwaukee, was Chairman of the NIMLO Task Force on Bid Rigging Damages which oversaw not only the electrical bid rigging cases, but also those involving parking meters and rock salt. The immense cooperation of municipal lawyers through me and Judge Kelly for NIMLO brought success to all three of these municipal multiple litigation efforts.

In all of these cases the organized collective manpower and litigation expense money meant victory. Millions were paid to cities in these case settlements which it was unlikely that any one city could have collected. Thus did NIMLO prove its value to its municipal members. I received an education in how to handle massive many-party litigation which has helped me throughout my litigation career.