

Mrs. Abe Conger
Bainbridge, Ga.

A Cowardly and Self-
Serving Press Breeds
Corrupt Government.

THE AUGUSTA COURIER

Be Not Content With The Appearance of Things, But Look For The True Meaning

Vol. 2

THE AUGUSTA COURIER, AUGUSTA, GEORGIA, JULY 9, 1951

No. 187

U. S. Debt Exceeds 1-4 Trillion Dollars; Truman's Stupidity Threatens Nation

SOUTH LAST BULWARK OF REAL DEMOCRACY IN U. S.; DIXIE MUST NOT BETRAY ITS DUTY TO COUNTRY-BLOCH

Macon Attorney Praises Byrd; Calls On Georgians To Continue Fighting

Charles J. Bloch, prominent Macon Attorney, says that the South is "the last bulwark of real democracy."

In a letter to the Editor of The Augusta Courier he says that the time has now come for the people of the South to have the fortitude and the courage to remain "the last bulwark of real democracy."

He emphasized the fact that this is "our last chance" and that we in the South must not "betray the obligation that rests upon it to maintain and preserve the traditions of the nation."

He also says that democracy does not connote the rule of a simple majority and that we should see to it that a simple majority are not permitted to destroy the South and the people of the South.

His letter follows:
"I could tell by the expression on your face last night while Senator Byrd was speaking that you were enjoying it. Perhaps you were occasionally thinking what I was—that it was nice to hear so distinguished an American urge those same things that we have been urging over the years."

"I rather hoped that when Senator Byrd mentioned the fact that in 1944 Georgia was the only Southern state to vote for Henry Wallace, that he would call attention to the fact that some of the delegation most strenuously opposed Georgia's voting for Henry Wallace, and that the only reason that the vote was unanimous was that the Georgia delegation was bound by the unit rule."

"He did say that that was a 'different Georgia' back in 1944, but I wish that he had stressed just a little more how the new Georgia redeemed itself in 1948."

"In 1948, I had the privilege of speaking for that new Georgia in Philadelphia. On that occasion, Georgia, speaking through me, said some of the very things that Senator Byrd said last night."

"For instance, we said:
"The South is no longer going to be the whipping boy of the Democratic Party and you know, if you don't know, you can learn here and now, that without the votes of the South you cannot elect a President of the United States." (Official Proceedings of the Democratic National Convention, 1948, page 233.)

"We also said:
"The South has accomplished so much in the last eighty-three years; when Lee and Johnson and other leaders of the Southern Confederacy were forced to surrender, and their war-weary soldiers tread their forlorn way homeward, they were left to fend for themselves. There was no treaty of peace. There was no Southern Recovery program. There was no Marshall
(Continued on Page 4)

STRICTLY PERSONAL

By ROY V. HARRIS

I feel better. It looks like a little sanity is returning to our country. I couldn't help but sit on pins and needles for weeks while the South Carolina negro segregation case was pending before a three-judge court.

The issue was too critical and too important not to worry. I knew that the radical Federal Judge J. Waties Waring was one of the three judges. I knew that since he got into a fight with his neighbors in Charleston because they would not accept his Michigan wife that he had gone absolutely crazy, entertained negroes in his home and openly advocated the destruction of the pattern of segregation and the mixing and mingling of the white and negro races.

In other words, you and I and everybody else knew what his decision in this case would be.

Therefore, the only doubt existed about the other two.

To those who knew Judge George Bell Timmerman there was no doubt about what he would do. Judge Timmerman is one of the finest gentlemen who ever lived in the State of South Carolina. At the same time he has been one of South Carolina's leading lawyers. He is a fine student of the law and a great jurist.

He is not one who would let politics or anything else sway his judgment. He is one of those rare individuals who has a legal mind and the utmost respect for the courts and the traditions of the law.

Judge George Bell Timmerman is not one of these long-haired, wild-eyed radicals who wants to change everything, tear up all the law there is and to throw everybody into one melting pot to be poured out in one mold.

Judge Timmerman is perfectly sane, has great ability and is one of the finest characters who ever graced the bench in South Carolina or any other State.

The third judge was Judge Parker of the Circuit Court of Appeals in Richmond who is a native of the State of North Carolina.

Judge Parker's legal philosophy has been somewhat wishy-washy. On this negro question his position was doubtful until the decision was rendered on Saturday morning, June 23, 1951.

It was a very pleasant surprise when Judge Parker joined Judge George Bell Timmerman in holding that segregation in the public school system of South Carolina did not violate the Federal Constitution.

The radical Waring said that it was a violation of the Constitution to keep the two races separate.

I can't help but give full credit to Judge George Bell Timmerman for this decision of the Federal Court. He wrote the opinion which was of the majority. It was Judge Timmerman's ability and forcefulness, his known knowledge of the law, his reputation as a jurist with a fine mind and a spotless character which undoubtedly influenced the decision of Judge Parker to join Judge Timmerman in this decision.

Let me say here and now that the people of the South ought to remember George Bell Timmerman. He is a great Southerner, a great judge, man of courage, man of ability and a judge with a keen knowledge of the law. Having such a man on this court to write this opinion was the finest streak of luck the people of the South have had in many years. We should always feel greatly indebted to this fine South Carolina Judge.

Had we had some of these crazy federal judges sitting on this court in the position which Judge Timmerman occupied the decision would
(Continued on Page 3)

Americans Face Grave Problems For Many Years, Senator Byrd Says

Senator Harry Byrd of Virginia in his speech in Atlanta on June 25, 1951, denounced the administration of President Truman.

Speaking on the occasion of the Jefferson-Jackson Day Dinner he contrasted the party of Jackson and Jefferson with what he called "the Truman Democratic Party."

He pointed out the irresponsibility, the corruption, the waste, the graft and the socialistic trends of the Truman Administration.

In the first part of his speech he dealt principally with the financial irresponsibility of the Truman Administration and in this connection he said:

"It is a very great pleasure for me to come to Georgia. When I went to the Senate on March 4, 1933, your two very distinguished Senators—George and Russell—were there. No other state has at this time the same two Senators who were in the Senate when I entered that body."

"One of the real pleasures of my service in the Senate has been my close association with Senators George and Russell. It so happens I have been on the Finance Committee with Senator George as Chairman, and on the Armed Services Committee with Senator Russell as Chairman. I have had a close opportunity to observe their fine ability and the great service they are rendering to their country."

"Both of your Senators have the complete respect and confidence of their colleagues of both parties. Senator George is the outstanding fiscal expert in Congress and Senator Russell is one of the most influential and able members of the Senate. As Chairman of the committee investigating the Truman-MacArthur controversy, his has been a masterly exhibition of tact and fairness in developing the real facts of the question. I can say that no state in the Union is better represented, both in the Senate and in the House than your State of Georgia."

"It is a pleasure, too, for me to be here with your very able Governor. Only last week Governor Talmadge made a speech at Old Point Comfort, Virginia, in which he stated a truth which should be repeated time and time again and resound through the land. He said that the American system of free enterprise, the home, the school and the church are the main factors contributing to the Nation's moral fibre."

"The subject of what I shall say to you at this Jefferson-Jackson Dinner is 'The Truth at Washington as I See It.' And I shall give it to you straight, and unvarnished, for I believe frank discussion of public affairs is the abiding obligation of the Nation.
(Continued on Page 2)

THE AUGUSTA COURIER CIRCULATES IN EVERY COUNTY IN GEORGIA

THE AUGUSTA COURIER

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but the voices of all.

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HARRY BYRD OF VIRGINIA

Senator Harry Byrd of Virginia made a brilliant speech contrasting the Democratic Party as it used to be with that of what we know as the Truman Democratic Party today.

He literally blasted the Truman Administration and showed it up in its true light.

Since none of the daily newspapers in Georgia carried this speech in full The Augusta Courier is going to carry it in full for the benefit of its readers.

Since our space is limited we will not be able to carry all of it in one issue but it will be divided into three or four parts and every word of it presented to you.

We carry the first installment in this issue and the others will follow in succeeding issues.

Look for these installments of Senator Byrd's speech. Read them carefully.

When you have read his speech it will then be time for action and we hope that everybody who reads this speech will stand ready to do whatever it is necessary to help rescue the Democratic Party from the hands of those who have been produced from the most ruthless and corrupt political machines on earth.

It is time the people of the South developed and displayed some courage.

Americans Face Grave Problems For Many Years, Says Senator Byrd Says

(Continued from Page 1)

ation of men entrusted with public office. It is an obligation not to be carried lightly, and especially in these times of national peril.

"It is a privilege to meet tonight with those among us who, of all our lives, have endeavored to emulate the founders of our great Democratic Party. We know that the Democratic Party of Jefferson and Jackson—that it was a party of unquestionable integrity—that it was a party of short, unvarnished debate among ourselves with the force of a thousand arguments.

"The Democratic Party of Jefferson and Jackson will survive because in the hearts of men entrusted with public office, it is an obligation not to be carried lightly, and especially in these times of national peril.

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world's population, twice as much military equipment as all the rest of the world combined.

"Without the competitive enterprise system, this mass production is not possible. This system can be destroyed by excessive taxation, by government competition, by state socialism. It can be destroyed by national inactivity. To destroy this economic system, I think, is Russia's purpose, and we must admit that Russia is being made in this direction.

"Let us not be lulled. The emergency in which we find ourselves may last for many, many years. It will require enormous annual expenditures. General Eisenhower says it may last for 20 or 30 years. It presents to America the greatest challenge that has ever come to us in our history. It calls for leadership characterized by unselfish and selfless patriotism, which will present the stern issues and requirements to the American people for the wisdom of their decision unimpaired by personal jealousies and political considerations.

"If first things are to come first, what we need above everything else, it is an impregnable national defense. This may determine our survival. We must have military defense backed upon the latest inventions in warfare and the most advanced scientific military research, and this defense must be kept in step with all future inventions and developments.

"As a member of the Senate Armed Services Committee, I have actively supported all measures to provide an impregnable national defense. I am for the Navy and the Air Force, for the Army, for the Coast Guard, for the Marine Corps, for the 100 groups or more, or whatever it may be, that constitute our defense around this country so that hostile airplanes and submarines, and the like, cannot get here and get away.

"I speak tonight the views of one of the 100 groups or more, or whatever it may be, that constitute our defense around this country so that hostile airplanes and submarines, and the like, cannot get here and get away.

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of business who have the influence that comes from distributing vast amounts of public funds.

"The Congress has accepted the President's 'dare'. Considerable headway is being made in reducing the President's budget. Only two appropriation bills have so far been considered, and it appears likely that there will be a 10 per cent reduction in the total of these two bills. This success has come only after later President's assistance. With the President's cooperation, we will be able to make a reduction of at least \$5 billion without sacrificing a single essential Federal function.

"Some desirable but not necessary activities would have to be cancelled or postponed; national defense could be accomplished if we were able to make such a reduction.

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EACH COUNTY NEEDS TO ADOPT DEFINITE SCHOOL PLAN

New Buildings Should Be Built To Conform To General Program

A definite educational program should be adopted by every county in Georgia before planning a school building program.

Buildings should be constructed to fit the program adopted.

This is advised by Claude Purcell, Director of the Division of Administration of the State Department of Education.

Recently in a paper written for the use of school people Purcell said:

"After the various types of school centers have been located and the instructional program has been decided upon, it becomes necessary to determine the size of the school plant, the facilities to be retained and altered, and the construction program. Although only one building may be erected during a period of years, it should be planned and constructed in such a place and manner that it will become a part of the total program.

"Determination of Building Size and Sequence for Construction.

The development of a center involves many complicated problems and requires the professional assistance of teachers, department heads, supervisors, principals, superintendents, board members, state department of education officials, local business officials, architects and engineers.

When this group works together effectively, the school building and school program mistakes often may be avoided. If local officials have promoted a continuing study of their needs, agreement on the type of construction, and the type of the plants can be achieved with a minimum of delay.

"Careful thought must be given to the type of building to be constructed. It should be developed obviously to suit construction at one time and probably obsolescence at a later date. It should be made rather quickly and inexpensively, and a large part of the necessary equipment can be made available quickly if this type of building is given first place on the construction agenda.

"Financing the Program.

"After the number, size, and type of organizations to be housed have been determined, the most logical step will be to estimate the cost of the program by school centers and buildings. Sometimes school officials have allowed architects without experience has proved that even the best architects, without specialized training in school plant design, make many serious and costly mistakes.

"School buildings may be financed from county or state bond issues or by means of state bonds issued by the State Public School Building Authority. Where bonds are created from local bond funds, additional local taxes beyond the maximum allowed by law must be levied. When the county is to be levied, the county tax must be levied. When the county is to be levied, the county tax must be levied.

"In France one out of four votes went for the communists. The United States during the last five years has put four million dollars into France to keep them away from communism. After all of our effort and four billion dollars in five years the communist vote have dropped six per cent.

"In other words it took four billion dollars to get a little handful of votes in France. In Italy the communists received two out of every five votes. In the United States in 1948 we had more than two billion dollars in Italy to buy them away from communism. In five years and at the cost of two billion dollars the communist received four per cent of the vote they did in the last election.

"We poured six billion dollars into Great Britain. Yet Great Britain has gone socialist and almost down the road to communism.

"So it doesn't seem as if we are getting any very much trying to buy friendship and buy people away from communism.

"Also France and Italy for instance have now how can we depend upon these two countries when we know that their armies, their government, their diplomatic machines and labor unions and their industries are run completely by communists and communist sympathizers?

"Let's translate conditions in France and Italy into similar conditions in the United States.

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STRICTLY PERSONAL

(Continued from page 1)

have been different.

This leads me to say that all of us ought to write our Congressmen and Senators and urge them to be most careful about the type of men they put on the Federal bench. It is a shame that South Carolina has a Waring. It is a shame that other states have judges similar to him.

Our Congressmen and Senators should slip a cog in Georgia. They slipped up when they let Abe Conger be appointed to the bench in this State. You will remember when the Convention of the Democratic Party in Georgia met in Macon in 1950 it adopted a resolution denouncing these federal decisions against segregation of the white and negro races in the public schools and committed the party to ignore these decisions and the school officials to the City of Atlanta. He let them know in no uncertain terms that as Mayor of Atlanta they were glad to have them meet there to prepare plans to destroy segregation in the public schools of the City of Atlanta and elsewhere in the South.

It is a pity we do not have more men on the Federal bench like Judge George Ball Timmerman instead of men like Abe Conger.

In the first place the negroes would never dare to organize and conduct their campaign to destroy the pattern of segregation unless they were encouraged to do so by white people and especially by white judges.

The National Association for the Advancement of Colored People met in Atlanta last week. Their avowed purpose is to destroy segregation. That is the object of the organization.

Yet Atlanta's Mayor, Bill Hartsfield, went down to the City Auditorium and welcomed this group who are attempting to destroy the white people of the City of Atlanta.

His picture appeared in the Atlanta papers welcoming this bunch of racketeers to the City of Atlanta. He let them know in no uncertain terms that as Mayor of Atlanta they were glad to have them meet there to prepare plans to destroy segregation in the public schools of the City of Atlanta and elsewhere in the South.

It is strange to me how any white man can welcome such an aggregation into his town and city.

Bill welcomed them for one purpose and one purpose only and that is to get the negro vote in his race for re-election.

The reason I call attention to this fact is to show that Southern men are willing to stop in the race for re-election.

We need mayors, governors, congressmen and United States Senators with the courage to allow their throats to be cut before they would stab their own children in the back with such a dastardly deed.

It is time for the people of the South to put up with such tomorrows. It is time for the people of the South to have the nerve and the courage to put a stop to such dastardly practices on the part of our public officials.

U. S. NEEDS MOST POWERFUL AIR FORCE IN THE WORLD

Senator Lodge Reveals Weakness In Air Compared With Russia

The United States needs an air force superior to that of any nation in the world. The security of this nation demands it. Our air force should be superior in numbers, in men, in planes and in skill.

Anything less means doom and destruction. Anything less is flirting with the survival of the nation, the lives and safety of our people.

A month ago Senator Lodge of Massachusetts shocked the United States Senate when he said the presumption of U. S. air superiority in the struggle with Russia is more myth than reality. Prior to that time the people in this country had been led to believe that with the world's production facilities that we should be able to pepper Russia or any other enemy with atomic bombs at will.

"The cold brutal fact is that the U. S. does not have air supremacy, air superiority or anything like it . . . On balance, air superiority as well as land superiority lies with the Soviet Union," said the Senator.

He made these statements based on information given him by the air force high command in the Pentagon Building.

Since that time the Chief of the air force, General Vandenberg, has testified before a Senate Committee that we have only a "shoe-string" air force.

Lodge said Russia has supremacy in the air today over most of the world's land mass. "We excel them only in the quality of our long-range bombers and in numbers of atomic bombs. On this single fact, our security hangs by a delicate thread," he said.

This is his estimate of our strategic air force potential.

But his estimate of the tactical air force was even more pessimistic.

Lodge is no wild-eyed dreamer or any alarmist. He fought in World War II in an armored division and therefore knows the need of air support in time of war.

Lodge voted to send troops to Europe and now takes the position that without air protection these troops will be moving into a trap.

"Without tactical air, the most mobile troops with maximum firepower per pound are still as naked as men in their underwear," said Lodge.

So far as tactical air support is concerned our fighting troops stand as naked as jay birds, Lodge should have said.

He claims that Russia has a tactical air force in addition to its strategic air force of from 16 thousand to 20 thousand planes.

As against these 16 thousand to 20 thousand planes in their tactical air force the United States has approximately 700 aircraft for support of ground troops and most of them are now in Korea.

Seven hundred planes to go against 16 thousand or 20 thousand planes would be nothing less than murder and suicide. "That," said Senator Lodge "gives you some idea of the jam we are in."

We need 18 thousand tactical fighter bombers in addition to the strategic air force.

To have it it is going to cost more than twenty billion dollars a year.

But to guarantee the continuance of this nation, the security and safety of our people it must be spent.

The United States must be able to protect and defend itself.

Without the biggest and the best air force on the face of the earth we are flirting with our very existence and we are taking calculated risks too great to even consider.

We need the best planes, the best guns and the best trained fighters on the face of the earth.

Whatever it takes to get these planes, these guns and these trained men should be done.

It is beginning to look as if it is necessary to have a house cleaning in Washington before the strategic and tactical air force necessary to protect and preserve this country can be developed.

We need leadership in high places who will be able to do away with the tangled web of confusion which exists in the government in Washington.

The government is now so tangled and snarled up with the confused mess until it seems to be absolutely impotent.

Those in responsible positions have sold the people of this country down the river. Mainly it is because of the lack

STRICTLY PERSONAL

(Continued From Page 3)

Unless our white people have the courage to eliminate such leaders then we will gradually see socialism and communism spread in our own state, lawlessness and racketeering multiply and the moral fibre of our people continue to deteriorate.

But to get back to this court decision. This gang of negroes meeting in Atlanta say they are going to carry this case to the Supreme Court.

What will happen to this case when it gets to the Supreme Court? The Supreme Court of the United States has already made a mockery of the law and stultified the court. They have already undertaken to play politics with the court in order to gather the negro votes in the big cities and they have already rewritten the law and tried to destroy segregation in this nation.

One man who knows the members of the Supreme Court of the United States as no other man does has made a prediction. He says that Chief Justice Vinson from the State of Kentucky will cast the deciding vote.

There are nine members of the Court. This man says that four members will vote to destroy segregation and four members will vote to keep it. He says Chief Justice Vinson will cast the deciding vote and that we will receive a five to four decision.

How will Chief Justice Vinson vote? This man has been associated with Chief Justice Vinson for many years and says that if the Chief Justice is a candidate for President that he will vote to destroy segregation. This man says that if the Chief Justice is not a candidate for President that he will vote to uphold the law as it is and will vote in favor of segregation.

Now it remains to be seen what this court which has been continuously usurping powers, violating the Constitution and rewriting the laws of this land will do in this case.

This man who has made this prediction knows every member of the Court personally. He has been associated with everyone of them. He knows their political philosophies. He knows their legal ability and he knows what they will ordinarily do.

He believes that unless Vinson permits his political ambition to supersede his judgment that the South will win this case. But in the event that Vinson has in mind being a candidate for President of the United States he fears what this man will do.

And now that is a pretty kettle of fish.

If we have men in this country who will take an oath to uphold the Constitution of this country and then write a political decision in order to advance their own political ambition it is doubtful if we have the right to survive and continue as a great nation.

It is my opinion that the strongest argument presented to this court in this case was the fact that Georgia and South Carolina had already said by acts of their legislatures that if segregation is destroyed by the courts that the public school system will also be destroyed and that another system will be set up to guarantee the continuance of segregation.

When the legislatures of Georgia and South Carolina had the nerve and the courage to write that principle into the law, they served notice on the courts and everybody else that we are going to have and keep segregation regardless of any court decision.

This action on the part of the two legislatures had no effect on either Judge Timmerman or Judge Waring. Yet it is believed that this position of the lawmaking bodies of these two states, the attitude of the governors of these two states did go a long ways toward persuading the third judge in making up his mind.

And all this goes to show that the white people of the South can win these cases if they only have the courage and the fortitude to stand up and do what they should do.

There was one thing that Judge Timmerman and Judge Parker could not help doing. They ordered Clarendon County to give to the negro children of that County the same kind of school buildings, the same kind of equipment and in fact facilities equal to the whites in every respect. They ordered the School Board of Clarendon County to report back to the Court in six months as to the progress they are making equalizing facilities.

This is the law and these two judges could have done nothing less. Now that brings up this question. What would happen to your county if this kind of a case was brought against the Board of Education in the Federal Court?

You and I know that at least we would be forced to give the negroes equal facilities.

Now since we know that it is the law and that it should be done, why should you in your county continue to flirt with this dangerous situation and risk your children being thrown into the same school room with negro children?

Why shouldn't you do something about it now? Why wait for a court order?

We still are in a dangerous position. We are still going to have a hard job getting a decision from the Supreme Court of the United States upholding segregation. We know we can't maintain segregation without equal facilities.

So why not get busy now?

There are a lot of white people in Georgia backing up the negroes and stirring them up. Let's face this issue like men. Let's get on one side or the other and have the courage to stand up and be counted. When we have been counted, let's do something about it.

of ability in some places and lack of loyalty to the United States in others.

Too many communists, socialists and communist and socialist sympathizers infest the city of Washington.

It is time these termites be destroyed and that the government of the nation be turned over to men with brains, guts and loyalty to the country which feeds them.

Macon Attorney Praises Byrd; Calls On Georgians To Continue Fighting

(Continued from Page 1)

Plan for us. We had the force bill, bayonet rule and the tragic era of Reconstruction, and we do not propose to return to that tragic era of Reconstruction in the vehicle of Civil Rights. (Same book, same page.)

"Georgia through its present National Committeeman, the Honorable Robert J. Elliott, plead for the re-establishment of the two-thirds rule.

"In his magnificent argument for the restoration of the two-thirds rule, he said in part:

"I submit to you in conclusion that the rule that was good enough to nominate and select Andrew Jackson, Grover Cleveland, Woodrow Wilson, and Franklin Delano Roosevelt, is good enough to nominate a candidate for President and Vice-President in 1948 . . .

"All of these things we preached in July of 1948 very vigorously, but the trouble was that some of those who preached these principles in July didn't practice them in November. Some who are most vociferous in condemning appeasement as a part of our foreign policy were guilty of appeasement internally in 1948. We have another chance in 1952. I do hope that we will not continue the policy of appeasement, and that from now until November, 1952, we will not only preach these principles but plan to enforce them and practice what we preach and plan.

"Preach—Plan—Practice"—will be a pretty good motto for us to follow in the months to come.

"Although, in 1948, some of us made a strong fight to ally ourselves with the four states which practiced what they preached, the majority of the voters who voted in November of 1948 in Georgia, voted for President Truman. Now, we are reaping the harvest.

"I do hope that in our planning, we will fight for the restoration of the time-honored two-thirds rule. It was established, I believe, in 1830. It continued to be a rule until 1936. It was abrogated then with the consent of most of the South as a gesture of appeasement toward the minority groups in the party. As a result, those minority groups now control the party which owes its life to the South.

"It always sounds ridiculous to me when I hear it said that democracy connotes the rule of a simple majority.

"There are at least four instances in the Constitution of the United States in which a two-thirds vote is required for action:

"(a) No person may be convicted in an impeachment proceeding without the concurrence of two-thirds of the members of the Senate present. (Article I, Section 3, paragraph 6.)

"(b) The Constitution of the United States may be amended whenever two-thirds of both Houses of Congress shall deem it necessary and shall propose amendments to the Constitution, or, on the application of the legislatures of two-thirds of the several states, Congress shall call a convention for proposing amendments which shall become a part of the Constitution when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof. (Article V.)

"(c) The President has power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur. (Article II, Section 2, paragraph 2.)

"(d) When a President vetoes an act of Congress, it may become the law notwithstanding his veto if it is approved by two-thirds of the Congress. (Article I, Section 7, paragraph 2.)

"In view of Constitutional provisions such as these, safeguarding the nation against a rule of a mere majority, is it too much to ask that before a citizen can be nominated for the high office of President, that he receive the vote and the expression of the confidence of two-thirds of the delegates to a national convention? "At this same Philadelphia Convention, Georgia, speaking through me, said:

"In the hands of the Democrats of the South are the traditions of the nation, the last bulwark of Democracy . . . We propose to remain the last bulwark of a real democracy.

"That was a good creed. It is a good creed. We have another chance now and in 1952 to practice that creed. Perhaps our last chance."

Bastian

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
WASHINGTON 1, D. C.

CHAMBERS OF
WALTER M. BASTIAN
DISTRICT JUDGE

June 20, 1952

File

Dear Mr. Chief Justice:

Thank you for autographing the
Bible on which I was sworn in, and for
the nice things you wrote.

With kind personal regards,
I am,

Sincerely,

Walter

Honorable Fred M. Vinson
The Chief Justice
Supreme Court of the United States
Washington, D. C.

W. CALVIN CHESNUT
DISTRICT JUDGE

Judge's Chambers
United States District Court
Baltimore, Maryland

Chestnut

June 29, 1953.

Dear Chief Justice,

This is just a little
personal note to thank you
sincerely though inadequately
for your kind and gracious
words last week at the Greenbrier,
and to say what a privilege and
pleasure it has been to be on your
federal judicial team even if I am
now to be partly 'benched'.

With highest esteem
Respectfully

W. Calvin Chesnut.

Hon. Fred M. Vinson
Chief Justice of the U.S.
Washington

Collett

JOHN CASKIE COLLET
UNITED STATES COURT HOUSE
KANSAS CITY 6, MISSOURI

November 5, 1951

Dear Chief:

Again, many thanks for the lunch and the
opportunity to have the pleasant visit we had last
week.

Kindest regards and many good wishes.

Sincerely,

Caskie

The Honorable Fred M. Vinson
Chief Justice of the United States
Washington 13, D. C.

NOTED

NOV 8 1951

FILED

Connally

January 24, 1951

Honorable Ben C. Connally,
United States District Judge,
United States District Court,
Southern District of Texas,
Houston 2, Texas.

Dear Judge Connally:

Your letter of the 19th was received in my chambers in the afternoon of the 22nd.

I am not informed with reference to the attitude of the Military with reference to a judge who holds a reserve commission. I do have some recollections relative to the desire of the late Justice Murphy to enter upon military duty while he was Associate Justice of the Supreme Court. As I recall it, he took some training while the Court was in vacation, and wanted to enter upon active service and still remain a member of the Court. He did not enter active service and he remained a member of the Court.

In regard to Judge Marvin Jones, your recollection is correct. He served as War Food Administrator and at the same time he was a judge of the Court of Claims. I do not recall which salary he accepted. There was quite a bit of conversation about this incident when Marvin's nomination was being considered by the Senate for Chief Judge of the Court of Claims. It was finally ironed out, but your Daddy can give you the details about it better than I.

In your second paragraph, you put a finger on the point which controlled my action when I left the Circuit Court here in May, 1943, to enter the Executive Branch. I resigned from the Circuit Bench as I concluded that executive and judicial service were incompatible. Frankly, I did not make any extensive examination into the matter, but I felt when you took an oath of office to serve in the Executive Branch you vacated the judicial office. When I heard about Marvin's conclusion, I had some doubts about it, but I never did take occasion to examine the legal question. I am certain that he was in the best of faith wanting to serve his country in a tough spot, and he did a swell job, but I was not surprised when the question was raised, but was happy that it worked out in such a way that there was no opposition to his confirmation.

- 2 -

I can well recognize your position and your desire to avoid any criticism that might come your way from not entering the active service. Without having given any research to the problem, I stand where I did when I made my own decision. Since I have been in my present position, I have resisted the efforts of the Executive to have federal judges assigned to courts in Germany.

Getting off on another note, I want to say I have heard fine things about you as a lawyer before you were appointed, and from time to time I hear from persons, both in and out of the judiciary, that you are doing a fine job as a judge.

With the kindest of regards,

I am truly,

(Signed) Fred M. Vinson

United States District Court
Southern District of Texas

Ben C. Connally
U. S. District Judge
Houston 2, Texas

January 19, 1951

RECEIVED

JAN 22 3 21 PM '51

CHAMBERS OF THE
CHIEF JUSTICE

My Dear Mister Chief Justice:

At the time of my appointment by the President to this position in October, 1949, I held a Reserve commission in the Air Corps as result of my service with that organization during the last war. I have never been assigned to an organized Reserve unit and have taken no active part in the Reserve program. Recently I have received telegraphic inquiry as to my availability for recall to active duty, to which I replied that presently I was not available by reason of this position. I note from the press dispatches, however, that within a short time it is expected that all Reserve officers will be ordered to active duty.

I am not aware of any statutory provision which would permit a District Judge to take a leave of absence or otherwise temporarily to be relieved of duty for military or other type of governmental service, and in fact the question arises in my mind as to whether the two might not be entirely incompatible. By reason of my acquaintance with them personally, however, I seem to recall that Judge Marvin Jones left the Court of Claims to serve as Food Administrator and Mister Justice Murphy left the Court to serve in the Armed Forces for a short period during the last war.

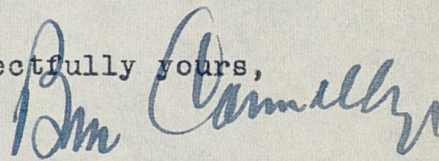
I have no desire nor expectation to resign or relinquish this position; but, in the event I have any choice in the matter, I would have no objection to serving wherever my services were most needed in the event we enter into World War III and face total mobilization. I have no desire to return to active duty at this time, nor at all except in the case of great emergency.

- 2 -

With the thought that similar instances may have come to your attention, I am taking the liberty of addressing this communication to you and would appreciate very much having your advices in connection with this problem.

With best wishes, I am,

Respectfully yours,

A handwritten signature in blue ink, appearing to read "Ben C. Cunniff". The signature is written in a cursive, flowing style with a large initial "B".

The Honorable Fred M. Vinson
Chief Justice of the United States
The Supreme Court
Washington, D. C.

Conger -

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF GEORGIA
BAINBRIDGE, GA.

A. B. CONGER
JUDGE

July 9, 1951.

NOTED

JUL 31 1951

F.M.V.

Honorable Fred M. Vinson,
Chief Justice,
Supreme Court of the United States,
Washington, D. C.

My dear Judge Vinson:

I remember meeting you in Washington with Judge Cox, and I also remember meeting and seeing you in Macon when you spoke to the Walter F. George School of Law. I know in what very high regard you are held by both Judge Cox and Senator George, and, having met you on two occasions, I am taking the liberty of writing you about a matter in which you may or may not be interested.

Roy V. Harris, the publisher of The Augusta Courier, a political paper that survives and thrives on dissention and particularly the race problem, in his issue of July 9th not only takes a rap at me, which he has done several times before, but speaks very disparagingly, if not contemptuously, of the Supreme Court, and particularly of you.

To take cognizance of this article would probably add fuel to his flame and give him further and additional notoriety and advertisement. However, it so annoys and irritates me to have so low, irresponsible and dispicable an individual write disparagingly if not contemptuously of the Supreme Court and calling you by name that I thought I would bring it to your attention.

With assurance of great respect and high regards, I am,

Sincerely yours,

A. B. Conger

ABC-c

file

December 23rd, 1949 -

Honorable William C. Denman, Chief Judge
United States Court of Appeals
Ninth Judicial Circuit
San Francisco, California.

Dear Judge Denman:

I am enclosing herewith exchange of correspondence between the Clerk of your Court, Mr. O'Brien, and the Director of the Administrative Office in regard to the printing of the record in the "Tokyo Rose" case, for your convenience and information.

This matter was brought to the attention of the Judicial Conference at its Special Meeting on November 29th in connection with the printing of the record in another case from your circuit involving an estimated expense of some \$7,000 and for which the Director sought Conference authorization to submit a request for a deficiency appropriation in the event it was found impossible, or impracticable to absorb this extraordinarily heavy item.

I am certain that you are familiar with the views of the Conference in regard to printing the records in cases of this type and the concerted effort that is being made to dispense with this expensive proposition wherever and whenever it is at all possible to do so. Also, in this connection, I wish to recall to your attention the fact that the appropriations for the judiciary are generally pretty-tight and that the leeway afforded the Director insofar as absorbing possibilities are concerned is very narrow. It was solely because of these limited possibilities that the Director felt it necessary to seek authority to request additional funds to cover the \$7,000 item.

I know your views in respect of expenditures for the judiciary, but I am sure that you will readily appreciate the budgetary problem which these unusual expense items, totalling approximately \$19,000. places before us.

I am fully appreciative of the convenience and labor-saving that ensues from having a printed record, but where the record is complete and the expense involved is so great—and the budgetary situation is such as it is — I am wondering if the appeal can not be considered on the unprinted record.

Judge Denman -

December 23rd, 1949.

Of course, it goes without saying that the matter is brought to your attention solely from the standpoint of economies in our operations, and does not question the power, or the propriety of the courts to order or require the printing of the record in these in forma pauperis cases. In view of this, I would appreciate your checking on the matter further and giving me the benefit of your views and advices.

I trust that you have fully recovered from your recent indisposition, and that the Christmas Season and the New Year will bring to you and yours much happiness and contentment.

Sincerely,

December 23rd, 1949 -

Honorable William C. Denman, Chief Judge
United States Court of Appeals
Ninth Judicial Circuit
San Francisco, California.

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Judge Denman -

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I trust that you have fully recovered from your recent indisposition, and that the Christmas Season and the New Year will bring to you and yours much happiness and contentment.

Sincerely,

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

SUPREME COURT BUILDING
WASHINGTON 13, D. C.

HENRY P. CHANDLER
DIRECTOR

ELMORE WHITEHURST
ASSISTANT DIRECTOR

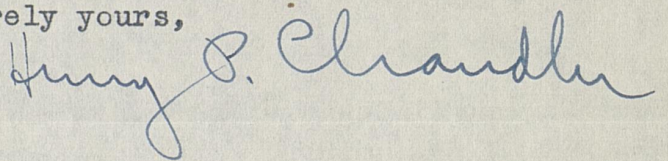
December 13, 1949

RECEIVED
DEC 14 5 40 PM '49
CHAMBERS OF THE
CHIEF JUSTICE

Dear Mr. Kelley:

In order that your file in reference to the printing of the record for the appeal of the Tokyo Rose" case in the Court of Appeals for the Ninth Circuit may be complete I send you with this a copy of a letter which I am writing to Mr. O'Brien, the Clerk of the court, saying that his letter on the subject is having consideration and that I will write him definitely on the subject as soon as possible. I shall be obliged if you will let me know when the circumstances are such that I can do this.

Sincerely yours,



Mr. Paul L. Kelley,
Supreme Court of the United States,
Washington, D. C.

Enc.

File -

United States Court of Appeals
Ninth Judicial Circuit
United States Post Office and Courthouse
San Francisco 1, California

CHAMBERS OF
WILLIAM DENMAN
CHIEF JUDGE

December 29, 1949

RECEIVED

JAN 3 3 40 PM '50

CHAMBERS OF THE
CHIEF JUSTICE

Honorable Fred M. Vinson
Chief Justice of the United States
Supreme Court Building
Washington, D. C.

Dear Mr. Chief Justice:

This acknowledges receipt of yours relative to the order for the printing of the record in the Tokyo Rose case.

This order was made by a division of the court presided over by Judge Healy, and I have referred your letter to him. It is quite likely that the same division which has considered the motion may sit on the further consideration of the appeal.

This comes with my warmest wishes for your continued strength and vitality, facing the 218 submitted cases the coming year, to say nothing of three-quarters of a thousand petitions for certiorari, administrative orders and direction of and participation in congressional lobbying for judicial legislation.

Cordially,

William Denman

WD:IM

January 21, 1950

Honorable William Healy,
Circuit Judge,
United States Court of Appeals
for the Ninth Circuit,
San Francisco 3, California.

Dear Judge Healy:

I hardly know what to add to my previous letter to Judge Denman relative to the Tokyo Rose case. The Director of the Administrative Office presented the matter to the Conference, and I advised you of their attitude. Your letter was very understanding and fine.

Of course, I cannot know what our Court would do upon a motion to print if and when the case comes to us, but we have had many instances in which the printing of the record was dispensed with, so the conclusions which you have reached will present the problem for our Court if the case comes here.

I want you to know that I appreciate, and I am certain the Conference did also, the burden and inconvenience involved in dispensing with the printing of the record.

With high esteem, I am

Sincerely,

(Signed) Fred M. Vinson

United States Circuit Court of Appeals
Ninth Judicial Circuit
San Francisco 3, California

Chambers of
William Healy
United States Circuit Judge

December 30, 1949

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JAN 3 3 42 PM '50

CHAMBERS OF THE
CHIEF JUSTICE

Dear Justice Vinson:

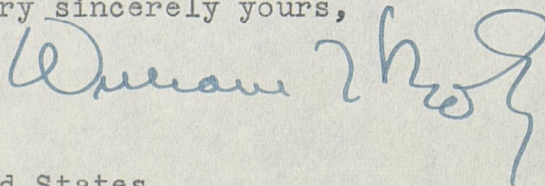
Judge Denman has referred to me your letter relative to the Tokyo Rose case, inasmuch as the order in question was made by a division over which I presided.

The trial judge had allowed an appeal in that case in forma pauperis. Representatives of the Department of Justice in charge of the case for the government concurred in appellant's motion that the record be printed at government expense, and since our rule requires that the record, or so much of it as may be designated by the parties, be printed, the order applied for was granted as a matter of routine. I have discussed your letter with Judges Bone and Pope and all three of us are willing that the case be considered on the typewritten record notwithstanding the burden and inconvenience involved in so doing, plus the fact that but two copies are available in the clerk's office.

However, the case may not ultimately be assigned to us, and before recommending that course to the other judges or vacating the order I wish to suggest another angle that may cause difficulty. Undoubtedly, in view of the gravity of the case, if the judgment is affirmed there will be a petition for certiorari. Whether the Supreme Court would be willing to consider the petition on so extensive a typewritten record, or whether, in the event certiorari is granted, it would be disposed to require a printing of the record, we of course do not know. Perhaps you have already considered this phase and discounted it as presenting no obstacle. If so I would be pleased to have you advise me and we will recommend that the printing be dispensed with.

With best wishes for the Holiday Season, I am

Very sincerely yours,



Hon. Fred M. Vinson
Chief Justice
Supreme Court of the United States
Washington, D. C.

February 2, 1950

Honorable William Denman,
Chief Judge,
United States Court of Appeals
for the Ninth Circuit,
San Francisco 1, California.

Dear Judge:

I have your letter of the 30th and note its contents. You are a go-getter. I knew that you had that characteristic from observation of your work many years ago.

As I recall it, Director Chandler only has \$5,000 for in forma pauperis cases for the whole country so, technically, you are ascribing to him at least \$19,000 more than he has for this purpose. That amount has not yet been appropriated from the Treasury or the deficit.

But, seriously, I will check in on the San Francisco library for you and your associates and see what, if anything can be done about it. I am fearful, knowing you as well as I do, that Mr. Chandler will be able to paint a picture that you have already received more for the library in San Francisco than any other spot in the country. But, when you say there is a deplorable insufficiency, I intend to make him prove his case. Incidentally, if you could drop me a note pointing to what you would like to have which you have not already twisted out of him, that might help your friend argue the case with the Director. Facts are mighty good things to have in arguing any issue. I will be glad to go to bat for you.

With warm regards to you and your very lovely and sweet partner, in which Mrs. Vinson joins, I am

Sincerely,

(Signed) Fred M. Vinson

FMV:McH

United States Court of Appeals
Ninth Judicial Circuit
United States Post Office and Courthouse
San Francisco 1, California

CHAMBERS OF
WILLIAM DENMAN
CHIEF JUDGE

January 30

RECEIVED
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JAN 32 9 24 AM '50
CHAMBERS OF THE
CHIEF JUSTICE

The Honorable Fred M. Vinson
The Chief Justice of the United States
Supreme Court Building
Washington 13, D. C.

D'Acquino v. United States, No. 12383
Kawakita v. United States, No. 12061

My dear Mr. Chief Justice:

In response to the suggestions of your letter regarding the "Tokio Rose" case, the court in banc has ordered that both it and the Kawakita case be heard on typewritten transcripts, rejecting the provision of Director Chandler of \$12,000 for the printing of the record in the appeal of Kawakita.

This means that about \$24,000 is not to be taken from Director Chandler's funds. By assuming the burden of a review of many thousands of pages of typing in each of these cases, the court desires me to say that it feels it is entitled to special consideration by the Director in correcting the deplorable insufficiency of its principal library—that in San Francisco.

With my warmest regards,

Cordially yours,

William Denman
Chief Judge.

WD/b

cc Director Chandler

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

SUPREME COURT BUILDING
WASHINGTON 13, D. C.

Denman
rated
2/10/50

HENRY P. CHANDLER
DIRECTOR

ELMORE WHITEHURST
ASSISTANT DIRECTOR

February 10, 1950

Dear Mr. Chief Justice:

Apropos of the letter written to you by Chief Judge Denman of the Ninth Circuit on January 30th, concerning the hearing of two cases on typewritten transcripts, in which Judge Denman incidentally referred to the "deplorable insufficiency" of the court's library in San Francisco, I asked Mr. Collier, the Service Officer, to supply me with information about the library. He has done so and the information is enclosed.

This consists first of a memorandum of requests received in this office for additions to the library since October 1945 and the action of this office in regard to them, and an inventory of the books presently in the library. The first is probably the more significant in reference to the attitude of this office toward maintaining the library. You will note that with very few exceptions all of the works which have been requested have been furnished. In some instances in which books requested were not furnished the request was withdrawn. In only two instances were requests declined. The reason was that the books called for did not seem to come within the types of works to which we feel limited by the funds available

-2-

in the appropriation for miscellaneous expenses in order that we may make it go as far as possible to supply necessary law books to the judges.

Sincerely yours,

Henry P. Chandler

Honorable Fred M. Vinson,
Chief Justice of the United States,
Washington, D. C.

Enc.

<u>Date Requested</u>	<u>Item Requested</u>	<u>Action on Request</u>
<u>1945</u>		
October 2	University of So. Calif. Cornell Law Review	Furnished
October 3	Illinois Law Review	"
December 10	U. S. Reports Replacements Old Volumes	Furnished from stock
December 11	Mertens Federal Income Taxation Barton Browning Federal Income Estate Taxes Sutherland Statutory Construction Walker on Patents	Purchased Request withdrawn " Furnished but returned to Publisher
	Simkins Federal Practice Graske, War Contract Claims, etc. Deering's Calif. Codes, 1943 Revised Edition of Codes	Furnished " "
December 26	Pocket Parts for Oregon Compiled Law	"
<u>1946</u>		
January 15	Hawaii Lifetime Digest	"
January 22	U. S. Code Congress Service	"
February 6	Replace Vol. 7, McKinney's Calif. Digest	"
February 11	Pocket Parts for Uniform Law Annotated	"
April 4	McKinney's California Digest 1945 Pocket Parts	"
April 18	Federal Rules of Criminal Procedure with Notes and Institute Proceedings	"
May 28	Housel and Walser, Defending and Prosecuting Federal Criminal Cases, 1946 ed.	"
June 5	U.S.C.A. Internal Revenue Act	"
October 3	Federal Register #149 to 157 incl.	"
December 12	American Practical Navigator (Bowditch)	"

<u>Date Requested</u>	<u>Item Requested</u>	<u>Action on Request</u>
<u>1947</u>		
January 1	U. S. Code Annotated - Repl. Vol. 18	Furnished - Later re- turned Orig. found
January 15	McKinney's Calif. Digest, 1946 Pocket Parts	Furnished
February 3	Labor Relations Reporter sub.	Request withdrawn
February 24	Documents Illustrative of the Formation of the Union Manual of the Origin and Develop- ment of Washington	These works not furnished as they were considered outside the scope of legal reference material
May 20	Montesquieu, The Spirit of the the Laws - Vols. 1 & 2, 1886	Furnished from stock
June 6	National Labor Relations Board Decisions Repl. Vols. 27, 66 & 67	Furnished
August 27	1947 Larmac Index to Calif.	"
December 17	University of Chicago Law Review sub.	"
December 31	Deering's 1943 Rev. Ed. of the Calif. Codes & Gen. Laws - 1945- 1947	"
<u>1948</u>		
January 19	Oregon Code Laws Annotated - 1944- 1947 Pocket Parts	"
January 26	Washington Reports - Repl, Vol. 63	"
February 5	Advance Sheets to Hawaii Reports	"
March 26	California Laws of 1947	"
April 12	American Jurisprudence - 1947 Supp. & Index	"
April 20	Deering's 1947 Calif. Corporations Code Annotated	"
April 23	Handbook of Indian Laws by Felix S. Cohen	"

<u>Date Requested</u>	<u>Item Requested</u>	<u>Action on Request</u>
<u>1948</u> May 11	U.S. Code Annotated, Repl. Vol. 2 of Title 12 - 1946 Ed. U.S. Code	Furnished
July 13	Fifth Decennial Digest, Federal Reporter, 2nd Series, Vol. 136	"
July 21	Revised Vol. 10 for 10 yrs. Suppl. to Calif. Jurisprudence	"
September 16	1948 Session Laws of Calif.	"
November 8	Poore's Charter Parties and Ocean Bill of Lading	"
	Montana Session Laws - odd numbers	"
	1949 Pocket Parts to Arizona Digest	"
November 2	Federal Rules Decisions	"
November 24	Stanford Law Review	"
December 22	Vol. 89 Calif. Appellate Reports to Title 50 USCA, Sec. 1-300 to replace lost volume	Vol. furnished - later returned to publisher as surplus
December --	U. S. Patents Quarterly, Cum. Index Digest for Vols. 38 to 51	Furnished
<u>1949</u>		
January 25	Alaska Compiled Laws	Order placed then can- celled, Mr. Longsdorf's request of Jan. 27, 1949
	Mertens Federal Income Taxation Idaho Code Annotated	Furnished "
July 8	Deering's 1949 Calif. Codes	"
July 18	Moore's Fed. Practice, Vols. 2 & 3, 2nd Edition	"
	Williston on Sales, 1948, 24 Vols.	"
	Callaghan's Fed. Rules Digest Vol. 69, Fed. Suppl. to replace lost volume	"
July 25	Martindale-Hubbell Law Directory 1950 Edition	"

<u>Date Requested</u>	<u>Item Requested</u>	<u>Action on Request</u>
September 12	New Montana Code, Off. 2nd, 9 vols.	Furnished
October 24	Who Was Who in America, 3 vols.	"
November 7	Deering's Calif. Banking Code	"
	David Dudley Field Centenary Essays	"
December 9	1949 Pocket Parts, Arizona Code, 1936	"
December 27	U. S. Advance Sheets for current term	"
	1949 Suppl. American Jurisprudence	"
<u>1950</u>		
January 5	Selected Essays on Constitutional Law, Vols. 1, 2, 3 (Vol. 4 out of print)	"
January 20	1950 Revised Ed. of Fed. Rules of Civil Procedure	"
	1949 Alaska Session Laws	"
	Barron and Holtzoff's Fed. Practice and Procedure	"

BOOKS LOCATED IN THE LIBRARY, UNITED STATES COURT OF APPEALS
FOR THE 9TH CIRCUIT
SAN FRANCISCO, CALIFORNIA

- * Alaska Federal Reports
Alaska "Lifetime" Digest
- * American Digest System, General Digest Second Series
- * American Federal Tax Reports
- * American Jurisprudence
- * American Law Reports Annotated
American Law Reports, Five Year Digest
American Law Reports, Ten Year Digest
American Law Reports, Word Index
- * American Maritime Cases
Anderson, Limitations of Corporate Entity, 1932.
Anti-Trust Laws of the United States, Harry Aubrey Toulmin, Jr.
Arant, Suretyship, 1931
- * Arizona Code Annotated, 1939
Arizona Code Supplement
- * Arizona "Lifetime" Digest
- * Arizona Reports
Arizona, 1938 cumm. Supp. to the Revised Statutes of 1928
- * Arizona Session Laws 1939 and 1941
Arnould On Marine Insurance, 12th Ed., 1939
Aspinall, Maritime Cases
Atlantic Reporter
- * Atlantic Reporter, 2nd Series
Atwell on Federal Criminal Law and Procedure 4th Edition 1929
Babbitt, Law applied to Motor Vehicles
Bancroft's Code Pleading, 1926 Edition
Bancroft's Probate Practice, 1928 Edition
Bancroft's Code of Practice & Remedies, 1927-1928 Edition
Barton and Browning, Federal Income and Estate Tax Laws, correlated,
8th Ed., 1938
Bender's Forms of Federal Practice and Procedure, 1928 Ed.
- * Benedict's Law of American Admiralty 1940
Beven on Negligence in Law (English) 4th Edition 1928
Berry on Automobiles, 5th Edition 1926
Birdseye's Abott's Encyclopedia of General Business and Legal Forms
1924 Edition
Black on the Recision and Cancellation of Contracts 2nd Edition
1929
Blashfield's Cyclopedia of Automobile Law and Practice, 1936
- * Board of Tax Appeals Reports
Bogart's Trust and Trustees, 1935
Borchard, Declaratory Judgments, 1940, 2nd Edition
Bouvier's Law Dictionary, Rawles 3rd revision, 1914
Bowditch, American Practical Navigator
Bowers on Civil Process and Service, 1927 Edition
Branson on Instructions to Juries, 1925 Edition
Broom's Legal Maxims, 10th Edition, 1939
Bunn on Jurisdiction and Practice of the United States Courts, 1927 Ed.
- * Continuation material for these sets being furnished by the Administrative
Office.

- Bunn on Jurisdiction and Practice of the United States Courts, 1927 Ed.
Byrne on Federal Evidence, 1928 Edition
California Appellate Court Reports (old series)
* California Appellate Court Reports (new series)
California Codes, Lake
* California, Deering's Codes, 1949 (Civil, Civil Procedure & Probate, Penal)
* California, Deering's New California Banking Code Annotated
* California, Deering's California Codes and General Laws, 1943 Revised Edition
* Deering's California Codes and General Laws 1941-1943
* Deering California Code
* Deering's 1947 California Corporations Code, Annotated
* California Digest, (McKinney's)
California Current Digest for 1928
* California Jurisprudence
California Laws of 1947
* California Reports, New Series
* California Session Laws, 1948 Edition
* California Statutes & Amendments to Codes
Campbell, Workmen's Compensation, 1935 (Calif. Law)
Chaplin on Suspension of the Power of Alienation 3rd Edition 1928
Clark's Idaho Digest 1926 Edition
Cohen's, Handbook of Indian Laws
* Collier on Bankruptcy, 14th Edition
Cooley's Briefs on Insurance, 1927 Ed.
Cooley on the Law of Taxation 4th Edition 1924
Cooley on Torts, 4th Ed. 1933
Cornelius on Search & Seizure, 1925 Ed.
* Corpus Juris
* Corpus Juris Secundum
* Couch, Insurance, 1929-30
Court Decisions Relating to National Labor Relations Act.
Custom and Patent Appeals Reports
Cyclopedia of Law and Procedure
David Dudley Field Centenary
Davis on Legal Accounting & Court Auditing, 1928 edition
* Decisions of the Comptroller General
* Decisions Interior Dept.
Dobie on Federal Jurisdiction and Procedure, 1928 Ed. Revised 1940
Dunn on Food & Drug Laws, Federal and State, Annotated, 1st Ed. 1928
* English Law Reports
* English Reports, Full Reprint
Estrich, Installment Sales, 1931
Federal Cases
Federal Law of Contracts, 1934
Federal Penal Code, 1910
* Federal Reporter, Second Series
Federal Reporter Digest, 1st series
Federal Reporter Digest, Second Series
* Federal "Lifetime" Digest

* Continuation material for these sets being furnished by the Administrative Office.

- * Federal Supplement
- * Federal Register
- Federal Rules Civil Procedure
- * Federal Rules Decisions
- * Federal Rules Digest
- Fisk on the Law of Proof in Judicial Proceedings, 1929 Edition
- Fixel, False Financial Statements, 2nd Ed., 1934
- Fixel on the Law of Aviation, 1927 Ed.
- Fletcher's Corporations Forms, 1928 Edition
- * Fletcher's Cyclopedia of Corporations
- Gerdes, Corporate Reorganization, 1936
- Glenn, Fraudulent Conveyances and Preferences, 1940...
- Glenn on Liquidation, 1936
- Graske, War Contract Claims and Renegotiations
- Gray, Anatomy, 22nd Ed., Revised
- Gray, Att'ys Handbook of Medicine, 1934
- Great Register of Marin County
- Groniger on Public Utility Rate Making, 1928 Edition
- * Halsbury's Laws of England, 1928 Supplement
- Hardy on the Removal of Federal Offender 1929 Edition
- Harvey on Rights of Minority Stockholders, 2nd Edition 1928
- Hawaii "Lifetime" Digest and latest pocket parts
- Heald-Menerey Map of California, with Survey Index, 1927
- Hopkins' Federal Equity Rules Annotated, 6th Edition 1929
- * Housel and Walser's Defending and Prosecuting Federal Criminal Cases 2d Edition
- * Hughes Federal Practice, 1931
- Hughes, The Supreme Court of the United States
- Idaho, 1940 Cumulative Supplement to Code of 1932
- * Idaho Code Annotated 1947
- * Idaho Session Laws, 1947
- * Idaho "Lifetime" Digest
- * Illinois Appellate Court Reports
- Internal Revenue Cumulative Bulletins (1919 to date)
- Internal Revenue Laws
- Internal Revenue Regulations
- Internal Revenue Regulations (includes sample vol. (1909-1935) submitted)
- * Interstate Commerce Commission Reports
- Jones' Cyclopedia of Real Property Law Perm. ed.
- Jones, Chattel Mortgages and Conditional Sales, 6th Ed., 1935
- Jones on Mortgages, 1928 Ed.
- Joyce on Indictments, 2nd Ed. 1924
- Kappler, Indian Affairs, Laws and Treaties
- Kerr's Cyclopedic California Codes
- Labor Relations Reporter
- Larmac 1947 Index to Calif. Statutes
- Larmac Index Rules of Court (1941 Ed.) to California Laws.
- Lawrence on Equity Jurisprudence, 1929 Edition
- Lewis & Spelling on the Law of Injunctions, 1926 Ed.
- Longadorf & Nichols' Cyclopedia of Federal Procedure, 1928 Ed.
- Lupton, Civil Aviation Law
- * Continuation material for these sets being furnished by the Administrative Office.

Lust's Consolidated Digest of Decisions under the Interstate
Commerce Act

- Maloy, Legal Anatomy and Surgery, 1930
- * Martindale Hubbell Legal Directory
- Mason's U. S. Code Annotated, 1789-1926
- Masterson on the Jurisdiction of the Marginal Seas 1929 Edition
- * Merten's Federal Income Taxation, 1942-1943
- Mewa, Digest of English Case Law, 1925-1930
- Meyer, Stockbrokers and Exchange, 1931
- McQuillin on Municipal Corporations, 2nd Ed. 1928
- * Michie on Banks and Banking, Permanent Edition, 1931-1932
- * Montana "Lifetime" Digest
- Montana Digest, 1925 Edition, Clark
- Montana Code
- * Montana Session Laws
- Montgomery on Federal Income Tax Procedure 1929 Edition
- * Moore's Federal Practice, 2nd Edition
- Morse on Banks and Banking, 6th Ed. 1928
- National Labor Relations Board Decisions
- Nevada Compiled Laws, 1929, Annotated
- Newell on Slander and Libel, 4th Ed. 1924
- New York Civil Practice Act, Cahill
- * New York Supplement
- * New York Supplement Reports
- Nims on Unfair Competition and Trademarks 3rd Edition 1929
- * Northeastern Reporter, 2nd Series
- Northwestern Reporter
- * Northwestern Reporter 2nd Series
- Oakes on Organized Labor and Industrial Conflicts, 1927 Ed.
- Oregon Code
- Oregon Digest
- * Oregon "Lifetime" Digest, incl. latest P. P.
- * Oregon Compiled Laws Annotated
- Osborn on the Problem of Proof, 2nd Ed. 1926
- Osborne on Questioned Documents, 2nd Edition 1929
- Pacific Reporter, First Series
- * Pacific Reporter, Second Series
- Pacific Reporter Digest
- * Pacific Reporter Digest, 2nd Series
- Page, the Law of Wills, 3rd Edition
- Perry on Trusts and Trustees, 7th Edition 1929
- Pierce and Cook, Manual to the U. S. Constitution, 1938
- * Pike and Fischer, Federal Rules and Service
- Pomeroy on Code Remedies, 5th Edition 1929
- Pomeroy's Equity Jurisprudence, 5th Ed. 1941
- Ponlon Public Utilities, 4th Ed. 1932 and latest P.P.
- * Poor's Charter Parties and Ocean Bills of Lading, 3rd. Ed., 1948
- Pound & Plucknett on Readings on the History & System of the Common
Law, 3rd Ed., 1927

- * Continuation material for these sets being furnished by the Administrative
Office.

- * Prentice-Hall Federal Tax Service
 - Quindry on Bonds and Bondholders, 1934
 - Rand McNally Commerical Atlas, 60th Ed., 1929
 - * Remington on Bankruptcy
 - * Remington's Revised Statutes of Washington
 - * Remington's Washington Digest, 1919-1926
 - * Restatements of the Law
 - Robertson on Appellate Practice and Procedure in the Supreme Court of the United States, 1928 Edition
 - Roberts on Federal Liabilities of Carriers 2nd Edition, 1929
 - Roberts on Patentability and Patent Interpretation, 1927 Edition
 - Robinson on Admiralty, 1939
 - Rules of Criminal Procedure for the District Courts of the United States with the Advisory Committee's Notes and Proceedings at the Institute at New York
 - Schneider's Workmen's Compensation Law, 2nd Edition, 1930
 - Schouler on Marriage, Divorce, Separation and Domestic Relations, 6th Edition, 1921
 - Schouler on Willis, Executors and Administrators, 1926 Supplement to the 6th Edition
 - Scott & Beaman's Index Analysis to Federal Statutes
 - * Scott on Trusts, 1939
 - Scrutton on Charter-Parties and Bills of Lading, 14th Edition
 - Shealey on the Law of Government Contracts, 2nd Ed., 1927
 - * Shepard's Atlantic Reporter Citations
 - * Shepard's California Citations, Cases and Statutes, 1946 Edition
 - * Shepard's Montana Citations, Cases, Statutes and Classified Topical Index
 - * Shepard's New York Supplement Citations
 - * Shepard's Northeastern Reporter Citations
 - * Shepard's Northwestern Reporter Citations
 - * Shepard's Oregon Citations, New Edition
 - * Shepard's Southern Reporter Citations
 - * Shepard's Southeastern Reporter Citations
 - * Shepard's Southwestern Reporter Citations
 - * Shepard's United States Citations, 1943
 - Shepard's Washington Citations, 1927 Supplement
 - * Simkins, Federal Practice, 3rd Edition
 - Smoot on Insanity, 1929 Edition
 - Southern Reporter, 1st Edition
 - * Southern Reporter, 2nd Series
 - Southeastern Reporter
 - * Southeastern Reporter, 2nd Series
 - * Southwestern Reporter, 2nd Series
 - Stull, Digest, Court Claims, 1940 Supplement
 - * Supreme Court Reporter
 - Sutherland on Statutory Construction
 - Tanney on the Law of Government Contracts and Administration 1930 Edition
 - * Tax Court of the United States
- * Continuation material for these sets being furnished by the Administrative Office.

- * Thompson on Real Property
 - Thompson on Construction of Wills, 1928 Edition
 - * Thornton, Oil and Gas, 5th Edition, 1932
 - Thornton's Treatise on Federal Anti-Trust Laws, 1928 Edition
 - Thorpe on Prohibition and Industrial Liquor, with the Revised Digest 1926 Edition
 - * Tiffany on Real Property, 1940
 - Tracy on Corporate Foreclosures, Receiverships and Reorganizations, 1929 Edition
 - Treadwell's California Constitution, Annotated, 1931
 - Treasury Decisions under Internal Revenue Laws
 - Underhill on Criminal Evidence, 4th Edition
 - * Uniform Laws Annotated
 - * U. S. Code, 1946 Edition
 - * U. S. Code Annotated
 - United States Court of Claims Reports
 - U. S. Patent, Trade Mark and Copyright Reports
 - * U. S. Patents Quarterly
 - * U. S. Reports, Lawyer's Edition
 - * United States Reports, Official Edition
 - * U. S. Supreme Court Reports Digest, New Lawyer's Edition
 - * U. S. Statutes at Large
 - Vold, Sales, 1931
 - * Walker on Patents, Deller Lifetime Edition, 1937
 - * Washington "Lifetime" Digest
 - Webster's International Dictionary, 2nd Edition, Unabridged
 - Wharton's Criminal Law, 1932
 - Wheless, Compendium of the Laws of Mexico, 2nd Edition
 - Whitten on Valuation of Public Service Corporations, 1927 Edition
 - Wickersham on Stock Without Par Value, 1927 Edition
 - * Wigmore on Evidence, Permanent Edition
 - Wigmore, Science of Judicial Proof, 3rd Edition, 1937
 - * Williston on Contracts, 2nd Edition, 1936
 - Williston on Sales, 1948, 4 volumes
 - Willoughby on the Constitution of the United States, 2nd Edition 1929
 - Wiltsie on Mortgage Foreclosure, 4th Edition
 - Who Was Who, 2 volumes
 - Who's Who in America
 - * Words and Phrases, Permanent Edition
 - Zoline on Appellate Jurisdiction and Procedure in the Federal Courts, 3rd Edition, 1928
- * Continuation material for these sets being furnished by the Administrative Office.

LAW REVIEWS:

California Law Review
Columbia Law Review
Cornell Law Review
Harvard Law Review
Stanford Law Review
University of Chicago Law Review
University of Illinois Law Review
University of Michigan Law Review
University of Minnesota Law Review
University of Oregon Law Review
University of Southern California Law Review
Washington Law Review
Yale Law Review

Continuation material for the above Reviews being furnished by the Administrative Office, with the exception of the University of Minnesota Law Review, which was discontinued at the request of the court about a year ago.

File
Mayflower Hotel

April 2, 1951

*File Correspondence
Denman*
RECEIVED

APR 2, 6 00 PM '51

CHAMBERS OF THE
CHIEF JUSTICE

Honorable John W. Bricker
Senate Office Building
Washington, D. C.

Re: Senator Bricker's obligation to publish
at once in the Congressional Record
the Ninth Circuit's opinions on the
release of Harry Bridges.

Dear Senator Bricker:

The United Press has given national circulation to your press
release of March 29, 1951, containing the following statements:

"That Congress should investigate federal judges, particularly
some who have freed communists or alleged communists."

That the Senate Judiciary Committee should "take a look at the
whole situation."

The character of the investigation proposed is not as to the
ability or wisdom of the federal judges' opinions but, according to
your release, it is "as to whether they are carrying out their
oaths of office."

Your statement then identifies certain of the judges as those
who "freed" on bail, during appeal and certiorari proceedings, the
appellants in the case of the eleven communists tried in New York.

It also identifies the judges who on August 24, 1950, "freed" on
bail during appeal the appellant in Bridges v. United States. Here the
bail was granted by a division of the Ninth Circuit's Court of Appeal

of which I am Chief Judge.

As such Chief Judge I am further concerned with your smearing suggestion respecting these two cases, for each of my six associates and I recently have "freed" on bail during appeal some ten appellants of whom the Department of Justice has issued a press release describing them as "alleged communists." As to all these so freed on bail during appeal, the appeal was sustained, ultimately by the unanimous opinion of the Supreme Court, and our court freed of the shame of holding in prison during appeal, men so held guiltless.

The ground of your suggested investigation is not that these judges committed mere errors of law in not having support in the record for their findings of fact, for you well know that this is outside the area of congressional action. It is for the venal offense of federal judges' violations of their oaths of office to aid communists - a matter of vital concern not only to Congress but to the nation at large.

Nothing could be more unfair than to publish such charges and then not bring them promptly to issue before the Senate Committee but to let them simmer and continue to smear the judges involved.

Of course you would not give national circulation to your insinuations that the judges releasing Harry Bridges on bail during appeal did so in violation of their judicial oaths to aid a communist, without reading my associates' opinion in that case. One of these judges is a Catholic, another was appointed on the recommendation of Senator McCarran of Nevada.

I strongly request that you will give the court's opinion the publicity within your control, that is by publication at once in the Congressional Record.

This I know you will do, even though the text of their opinion granting bail to Bridges is a complete answer to the hurtful suggestions of your press release. It shows that Bridges was indicted more than three years after his alleged offense and that the statute continuing the jurisdiction to indict him has been held invalid by a court of appeals whose decision was upheld by the Supreme Court on an even division of the justices.

If the law continue as in this latest case, and Bridges held to be wrongfully convicted, the wrong done him by imprisoning him during his successful appeal, would make him a sacrificial hero to every Communist in the country.

Very truly yours,

WILLIAM DENMAN

Chief Judge

Mayflower Hotel

April 2, 1951

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Senate Office Building
Washington, D. C.

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Very truly yours,

WILLIAM DENMAN

Chief Judge

Denman

Teletype Message No. 495 - Denver, Colorado - November 6, 1951 -
9:29 a.m.

Honorable Fred M. Vinson,
Chief Justice of the United States,
Supreme Court Building,
Washington, D.C.

CAN YOU ADVISE APPROXIMATE DATE SPRING MEETING JUDICIAL
CONFERENCE?

Judge Orie L. Phillips,
Chief Judge, United States Court of Appeals

Following sent Nov 8, 1951

*Hon Orie L. Phillips, Chief Judge
U.S. Court of Appeals
Denver, Colo.*

*Re: Spring Meeting probably
March twentieth and twenty first.*

*Fred M. Vinson
Chief Justice*

RECEIVED
Nov 6 12 08 PM '51
CHAMBERS OF THE
CHIEF JUSTICE

DENMAN

For correspondence with Judge Denman in re Judge Metzger's being
retained in Hawaii - see

PERSONAL FILES - THE PRESIDENT -
GENERAL

Denman

United States Court of Appeals
Ninth Judicial Circuit
United States Post Office and Courthouse
San Francisco 1, California

CHAMBERS OF
WILLIAM DENMAN
CHIEF JUDGE

March 24, 1952

File

Supreme Court Library
Washington, D.C.

Dear Chief;

Re: successive motions
under 28 U.S.C. §2255 and
habeas corpus after the
denial of a motion.

These are the two cases decided by our court
to which I referred in our discussion last Friday
in the Judicial Conference. Winhoven's counsel
has stated he will not seek certiorari in that
case.

Cordially,

Denman

*No second motion on same issues
under 28 U.S.C. 2255, sub p 2.*

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

WILLARD A. WINHOVEN,

Appellant,

vs.

EDWIN A. SWOPE, Warden, United States
Penitentiary, Alcatraz, California,

Appellee.

No. 12,933

Feb. 28, 1952

Appeal from the United States District Court for the
Northern District of California,
Southern Division.

Before: DENMAN, Chief Judge, and STEPHENS and ORR,
Circuit Judges.

DENMAN, Chief Judge:

This is an appeal from an order dismissing Winhoven's application for a writ of habeas corpus. The application alleged that in his trial on an indictment charging a violation of Section 320 of 18 U.S.C. in the robbery of one H. C. McCloy, a postal clerk, he had been denied the effective assistance of counsel, in violation of the Sixth Amendment of the Constitution. The district court issued an order to show cause and heard and decided the application on the merits of this contention, holding that Winhoven had not been denied such assistance of counsel.

Winhoven seeks our consideration of the appeal on the merits of the contention that he did not have the effective assistance of counsel.¹ This we cannot do because it appears that the district

¹In effect his contention here is that he was tried with a co-defendant, one Sivyer, and that a single attorney represented both defendants; that an alleged written confession of Sivyer's was put in evidence, which also inculpated Winhoven; that Sivyer denied the testimony that he had made this confession. Winhoven then moved to be freed of representa-

*Appellants counsel has stated
he will not seek certiorari.*

Denman.

court was without jurisdiction to entertain the application for the writ.

Section 2255 of 28 U.S.C. provides in its last sentence that if a federal prisoner moves under that section to vacate the sentence under which he is held, in which motion he may have effective and adequate relief, and is denied that relief, he cannot thereafter apply for a writ of habeas corpus.

"An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his contention."

We have so held in *Jones v. Squier*, No. 13200, decided _____, *See Hayman v. United States*, _____ U.S. _____ *here attached*

Winhoven states that he sought the identical relief in his Section 2255 motion that he seeks in his application for the writ. It therefore cannot be said his "remedy by motion is inadequate or ineffective to test the legality of his detention."

→ The able attorney for the pauper ^{Winhoven} ~~Hayman~~ urges that we should consider the application for the writ as a second motion under § 2255. As seen the first motion proceeding, as a proceeding, afforded an adequate and effective remedy for the relief there sought on the same issues as in the instant habeas corpus proceeding. Winhoven's contention is that though the motion pro-

tion by the attorney and thereafter conduct his own defense and make his own argument to the jury. This he did because the attorney would be unable to argue on Winhoven's behalf to the jury that if they were inclined to believe that Sivyer made the written confession inculcating Winhoven, Sivyer in making it was a monumental liar, as they could plainly see from his demeanor on the stand and his futile contradictions of the witness who claimed he made it. The contention is that this brings the case within *Hayman v. United States*, _____ U.S. _____, 96 Law. ed. Adv. Op. 206, 209, a case involving the question of efficient representation by counsel decided after the trial below, and within *Wright v. Johnston*, 77 F. Supp. 687.

* The first motion was in the same district court.

ceeding is adequate, if properly conducted, it may be treated as "inadequate" if the court makes substantial errors in its administration.

On the hearing of the appeal, the parties stipulated that the record on Winhoven's motion under § 2255 could be judicially noticed by us. That record shows that the court failed to act (a) on his motion to be present at the hearing of his motion; and (b) on his application for a writ of habeas corpus requiring him to be present; and (c) on his motion for the issuance of subpoenae to witnesses whose names and addresses were stated. It also appears that he did not appear in the proceeding at any time after filing his motion.

However, it does appear that upon the decision of the motion, the clerk of the district court mailed to Winhoven a notice of the decision. It also appears that Winhoven did not appeal though § 2255 expressly provides that:

"An appeal may be taken to the court of appeals from the order entered on the motion as from a final judgment on application for a writ of habeas corpus."

All these claimed errors could have been raised by appeal as similar contentions were considered and decided in the appeal in the Hayman case. That is to say, § 2255 afforded Winhoven an adequate and efficient remedy both as to the issues tendered in the motion and as to any error committed in litigating the motion. The decision on the first motion is not void and subject to collateral attack in such a second motion.

We think the application treated as a second motion is not one the district court is entitled to consider, § 2255 providing:

"The sentencing court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner."

Nothing we here say should be construed as holding that Winhoven may not seek in the first motion proceeding to have its decision set aside under the provisions of Rule 60 (b) of the Federal Rules of Civil Procedure or on the contention that Winhoven was not granted procedural due process in violation of

the Fifth Amendment. Cf. *Powell v. Alabama*, 287 U.S. 45, 69. What his rights now are with respect to the first motion proceeding we do not consider.

The order of dismissal appealed from is affirmed on the ground that the district court had no jurisdiction to entertain the application for habeas corpus, and that if the application be deemed a second motion in the district court under § 2255, it should not be entertained.

(Endorsed:) Opinion. Filed Feb. 28, 1952. Paul P. O'Brien, Clerk.

*No habeas corpus after
denial of motion under 28 U.S.C. 2255.*

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

FRED DWIGHT JONES,

Appellant,

vs.

P. J. SQUIER, Warden, United States Peni-
tentiary, McNeil Island, Washington,

Appellee.

No. 13,200

Feb. 28, 1952

Appeal from the United States District Court for
the Western District of Washington
Southern Division

Before: DENMAN, Chief Judge, and ORR and POPE,
Circuit Judges.

DENMAN, Chief Judge:

This is an appeal from an order dismissing a petition for a writ of habeas corpus in which Jones sought to establish that the judgment of conviction (a) for conspiracy with one Guadalupe De Anda to commit the offense of theft from an interstate shipment in violation of 18 U.S.C. 659, and (b) for aiding and abetting De Anda in the theft for which they conspired, under which he is held a prisoner by appellee, is invalid because Jones had been previously indicted for the same theft and tried and acquitted. He claims the trial and conviction on the conspiracy and aiding and abetting charges is a violation of the double jeopardy provision of the Fifth Amendment. The appellee does not dispute Jones' claim that he sought relief by motion under 28 U.S.C. § 2255 without avail.

We think we are not permitted to consider the merits of these contentions in this habeas corpus proceeding because the district court was without jurisdiction to entertain Jones' application for

the writ. Section 2255 of 28 U.S.C. provides in its last sentence that where, as here, the contentions of such a federal prisoner as Jones can adequately and effectively be disposed of under its provisions and the prisoner fails to move under that section to vacate his sentence, he cannot apply for the writ nor can he so apply when he moves and is denied the relief sought. That portion of section 2255 reads:

"An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief,¹ unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention. June 25, 1948, c. 646, 62 Stat. 967, amended May 24, 1949, c. 139, § 114, 63 Stat. 105."

The motion under that section clearly affords an adequate and effective remedy to test the legality of Jones' detention. This has been made clear in the recent decision of the Supreme Court in *United States v. Hayman*, _____ U.S. _____, 96 L. Ed. Adv. Op. 206. There the Supreme Court reviews the history of the legislation and declares the purpose of Congress in enacting § 2255 is to afford the same rights as those litigated in a habeas corpus proceeding.

"This review of the history of § 2255 shows that it was passed at the instance of the Judicial Conference to meet practical difficulties that had arisen in administering the habeas corpus jurisdiction of the federal courts. Nowhere in the history of § 2255 do we find any purpose to impinge upon prisoners' rights of collateral attack upon their convictions. On the contrary, the sole purpose was to minimize the difficulties encountered in habeas corpus hearings by affording the same rights in another and more convenient forum."

¹Under § 2255 the prisoner's custodian is not a party, as in habeas corpus. It would appear that if the relief sought by the motion were granted and the prisoner's custodian refused to free him, or he were arrested as a fugitive from justice, then the writ would be available. Cf. *Barrett v. Hunter*, 180 F.2d 510, 515 (Cir. 10).

The Hayman decision further cites the statement of the Revisers who framed the section that:

"This section restates, clarifies and simplifies the procedure in the nature of the ancient writ of *error coram nobis*. It provides an expeditious remedy for correcting erroneous sentences without resort to habeas corpus. * * *

(Emphasis supplied.)

The nature of the writ of *error coram nobis* is that it is a civil proceeding in which the judgment of the court is *res judicata* at least of the issues tendered and joined. Cf. *Waley v. Johnston*, 316 U.S. 101, 105. In accord with this is the provision of the last sentence of § 2255 providing that if the relief by motion is denied the moving party may not apply for the writ of habeas corpus.²

That the Congress has the power to limit to the motion proceeding the consideration of the issues tendered by Jones as to the error of a court concededly having jurisdiction to entertain the prosecution of Jones and over Jones' person is apparent. The judgment in the conspiracy and aiding and abetting case shows on its face that the court had jurisdiction of the subject matter and of the person of Jones who appeared and pleaded not guilty.³

²See *Hallowell v. Hunter*, 186 F.2d 873 (Cir. 10); *McIntosh v. Steele*, 184 F.2d 721, 722 (Cir. 8); *Decatur v. Hiatt*, 184 F.2d 719, 720 (Cir. 5); *Tacoma v. Hiatt*, 184 F.2d 569 (Cir. 5); *Meyers v. United States*, 181 F.2d 802, 803 (Cir. D. C.); *Barrett v. Hunter*, 180 F.2d 510, 515 (Cir. 10); *Meyers v. Welch*, 179 F.2d 707, 708 (Cir. 4).

³The judgment reads as follows:

"On this 20th day of June, 1949, came the attorney for the government and the defendant appeared in person and by counsel, George H. Pratt;

"IT IS ADJUDGED that the defendant has been convicted upon his plea of not guilty, and a verdict of guilty of the offenses of Count 1: conspiring and agreeing with Guadalupe De Anda to steal and carry away, with intent to convert to their own use, certain goods and chattels from freight station and depot of West Coast Fast Freight, Inc., said goods and chattels being a part of an interstate shipment; Count 2: stealing said goods and chattels, etc., on or about Jan. 4, 1949; as charged in the 2 counts of the Indictment; and the court having asked the defendant whether he has anything

Hence no relief could be afforded Jones under the Great Writ as it stood at the time the Constitution was adopted. Under that Writ the court was confined to the face of the judgment and the process by which jurisdiction over the accused was had for the sole purpose of determining whether the convicting court had jurisdiction of the prosecution and the accused. The court could not even examine the indictment to see if it charged an offense not punishable criminally. See Chief Justice Marshall's opinion for a unanimous court in *Ex parte Watkins*, 3 Peters 193, 202, 209. Cf. *Frank v. Mangum*, 237 U.S. 309, 330.

It was not until 1867 that Congress created the new forms of relief on matters not appearing in the judgment roll "in addition" to that previously available. 14 Stat. 385.⁴ The determination of these rights has been held not *res judicata*. *Salinger v. Loesel*, 265 U.S. 224. It is obvious that since these additional rights were created by Congress, Congress could take them away or, as here, confine their litigation to the § 2255 proceeding.

The order of dismissal appealed from is affirmed on the ground that the district court had no jurisdiction to entertain the application for the writ of habeas corpus.

(Endorsed:) Opinion. Filed Feb. 28, 1952. Paul P. O'Brien, Clerk.

to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

"IT IS ADJUDGED that the defendant is guilty as charged and convicted."

⁴"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the several courts of the United States, and the several justices and judges of such courts, within their respective jurisdictions, in addition to the authority already conferred by law, [our emphasis] shall have power to grant writs of habeas corpus in all cases where any person may be restrained of his or her liberty in violation of the constitution, or of any treaty or law of the United States;"

file

Denman -

United States Court of Appeals
Ninth Judicial Circuit
United States Post Office and Courthouse
San Francisco 1, California

CHAMBERS OF
WILLIAM DENMAN
CHIEF JUDGE

June 10, 1952

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CHAMBERS OF THE
CHIEF JUSTICE

Honorable Fred M. Vinson
The Chief Justice
Supreme Court Building
Washington, D. C.

Re: Federal Judgeships
the Patronage of
Local Politicians

Dear Mr. Chief Justice:

Herewith is enclosed for your consideration a resolution concerning the repeated justice denying delays to litigants in a federal court, due to the submission of the Department of Justice to the disputes of local Democratic politicians in the distribution of what they claim as their judicial patronage.

The resolution was unanimously adopted by all the seven judges of the Judicial Council of the United States Court of Appeals for the Ninth Circuit.

It will be noted that with four vacancies waiting from a year to twenty months for the settlement of the patronage disputes of these local politicians, when Congress in June 1946 placed a 15-day limit for an appointment, it was made in that time.

It has become evident that only by a public discussion of the facts can the wrongs to these litigants be alleviated.

Very faithfully yours,

Chief Judge

RESOLUTION OF THE JUDICIAL COUNCIL OF THE
NINTH CIRCUIT RESPECTING POLITICAL PATRON-
AGE IN FEDERAL JUDGEShips, ADOPTED
JUNE 6, 1952

Whereas, six million people, practically double the population of Norway, have moved into the Ninth Circuit in the last 12 years causing the greatest increase in docketings in the United States District Courts in the history of federal litigation; and

Whereas, Congress to make possible the adjudication of the increased litigation in the United States District Court for the Northern District of California has created in the last six years three additional judgeships in that district; and

Whereas, there are in that district many outstanding members of the bar, competent and eligible for appointment to fill the vacant judgeships in that court; and

Whereas, a vacancy in one of the judgeships of that court occurred on the 30th day of July, 1947, which was not filled until OVER TWENTY MONTHS thereafter, causing arrearages and delay to many litigants in that court; and

Whereas, another vacancy in such a judgeship occurred on the 3rd day of August, 1949, which was not filled until OVER A YEAR had elapsed, causing further arrearages and delay to that court's litigants; and

Whereas, another vacancy on August 3, 1949, was not filled until SIXTEEN MONTHS had elapsed causing further arrearages and delay for the litigants; and

Whereas, another vacancy, occurring on March 18, 1951, now OVER FIFTEEN MONTHS thereafter has not been filled, causing other arrearages and delays to the litigants.

Whereas, in addition to the delay which denies justice to litigants able to wait for adjudication are the unjust and enforced settlements of the weaker litigants who cannot wait, to those stronger who can; and

Whereas, in interesting contrast to the above the statute creating a judgeship on June 15, 1946, required the vacancy to be filled before July 1, 1946, and the appointment was made before that date; and

Whereas, because of the many able attorneys eligible for appointment, the impression has been created at the bar and with the public that federal judgeships are but a part of the patronage of politicians, who, in all of these four denials of justice to litigants, have taken from A YEAR TO TWENTY MONTHS to settle between them the question of which politician shall have the appointee, thus bringing great disrepute to the federal bench:

NOW, THEREFORE, BE IT RESOLVED, that this Judicial Council of the Ninth Circuit strongly urge that the wronged federal litigants of the Northern District of California be promptly accorded the justice due them by the appointment of a judge to fill the present vacancy in that court.

[The resolution was unanimously adopted by]:

WILLIAM DENMAN,
Chief Judge;

CLIFTON MATHEWS,
Circuit Judge;

ALBERT LEE STEPHENS,
Circuit Judge;

WILLIAM HEALY,
Circuit Judge;

HOMER T. BONE,
Circuit Judge;

WILLIAM E. ORR,
Circuit Judge;

WALTER L. POPE,
Circuit Judge.

Full

UNITED STATES DISTRICT COURT

FOR THE
SOUTHERN DISTRICT OF NEW YORK
CHAMBERS OF

Dimock

JUDGE ~~SMITH~~ ~~PERKINS~~ E.J. Dimock
UNITED STATES COURTHOUSE
NEW YORK CITY 7

August 8, 1951

Honorable Fred M. Vinson
Chief Justice of the United States
Supreme Court of the United States
Washington 13, D. C.

My dear Mr. Chief Justice:

Thank you very much for your letter of August 3, 1951 in reply to my request for approval of participating in the decision of Contract Settlement Appeal Board cases heard by me prior to my induction as a United States District Judge. I am very grateful for the thought that you put on the matter and shall of course be guided by your views as to the propriety of my taking part in the decision of the cases.

Respectfully yours,

E. J. Dimock

August 3, 1951

Honorable E. J. Dimock,
Judge,
United States District Court,
New York 7, New York.

Dear Judge Dimock:

I have your letter of August 1st, relative to your serving on the Appeal Board of the Office of Contract Settlement, from which you resigned when you became a district judge. I do not know that my permission is needed for you to perform this service, but since you have presented the matter to me, I will set forth my views in regard to the matter.

In many instances involving the desire to have judges perform executive work, I have consistently adhered to the view that federal judges should not perform an executive function. I assume that you would have to be re-appointed and take the executive oath. It strikes me that there should be a separation of powers, and that a federal judge should not participate in such work.

I have had this view since I was confronted with the question in 1943 when I was on the Court of Appeals in the District of Columbia and was asked to serve as Economic Stabilization Director. I resigned from the judicial office. There was one instance where the man did not resign, and it caused a lot of conversation in the Senate. As I recall it, the Judiciary Committee of the Senate stated its objections to such intermingling of duties. However, my views were reached prior to their expression.

I can understand that you feel toward this like a number of other judges have felt about important work which they were requested to perform, but I do not think it is the proper policy.

Then, too, aside from any policy issue, I would like to point out that we have made request for additional judges for the Southern District of New York, and that the backlog of work there needs all of the time and attention of the present judges and those which we have asked for.

- 2 -

I have given you my frank views in regard to the matter, and I know you will take them in a friendly spirit.

With kind regards,

Sincerely,

(Signed) Fred M. Vinson

FMV:McH

UNITED STATES DISTRICT COURT

FOR THE

SOUTHERN DISTRICT OF NEW YORK

CHAMBERS OF

JUDGE ~~SIMON H. RIESNER~~ E.J. Dimock

UNITED STATES COURTHOUSE

NEW YORK CITY 7

August 1, 1951

My dear Mr. Chief Justice:

Prior to my appointment as a United States District Judge for the Southern District of New York, I was serving as a part time member of the Appeal Board of the Office of Contract Settlement, now a division of the General Services Administration. I resigned from that position effective the day before I took the oath as a District Judge.

There are several cases pending which were heard by the Appeal Board through a panel, of which I was a member, which have not yet been decided.

Claimants are entitled, under the Contract Settlement Act of 1944, in cases involving over \$25,000., to impanel three members, so that there are instances where my inability to participate might possibly require a retrial of the proceeding.

Under the circumstances, I request your permission to serve as a member of the Appeal Board of the Office of Contract Settlement, without compensation.

I have taken this matter up with Mr. Chandler, Director of the Administrative Office of the United States Courts, and with counsel for the General Services Administration, and I find that this procedure will be satisfactory to both of those organizations.

Respectfully yours,

E.J. Dimock

Hon. Fred M. Vinson
Chief Justice of the United States
United States Supreme Court Building
Washington, D. C.

Dobie

November 13, 1952

Dear Armistead:

On checking our files, I find that, through an oversight, your letter of September 15th was not acknowledged.

I read your William H. White Lectures with a great deal of interest and found the contents to be most informative. I am only sorry that I did not write to thank you for your kindness in sending them to me.

It certainly was a pleasure to see you at the Groner portrait ceremonies. I am looking forward to another game of bridge down Asheville-way - or sooner.

With kindest personal regards,

Sincerely,
(Signed) Fred M. Vinson

Honorable Armistead M. Dobie,
United States Circuit Judge,
United States Court of Appeals
for the Fourth Circuit,
Charlottesville, Virginia.

Dobie

UNITED STATES COURT OF APPEALS
FOR THE
FOURTH CIRCUIT

CHAMBERS OF
ARMISTEAD M. DOBIE
UNITED STATES CIRCUIT JUDGE
CHARLOTTESVILLE, VIRGINIA

Noted
FMV-9/26/52 -

September 15, 1952

Honorable Fred N. Vinson, Chief Justice,
Supreme Court of the United States,
Washington, 13, D. C.

Dear Chief:

I am enclosing reprint of the William
H. White Lectures which I delivered here last
December on the early federal judges in Virginia,
and which I hoped might interest you.

It was a very real joy to see you at
Asheville and I want to tell you again how much I
appreciated the kind words you had to say about my
speech before the Law Institute.

With warm regards,

Cordially,

Armistead M. Dobie

D/k

Encl:

RECEIVED
SEP 16 9 30 AM '52
CHAMBERS OF THE
CHIEF JUSTICE

To Chief Justice, Va. Sup. Ct.
with the warm regards of the Author.

Armistead M. Dobie

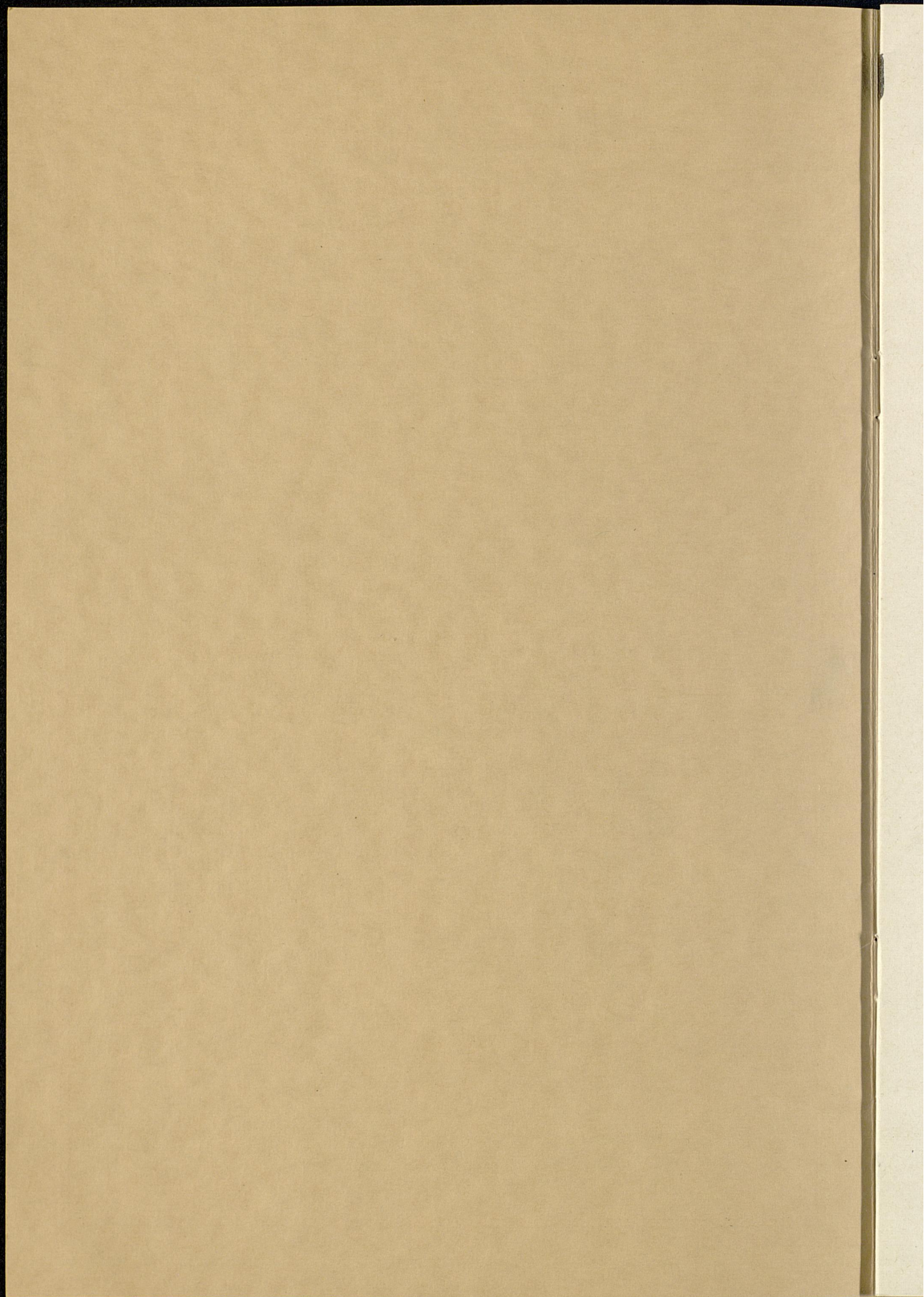
Federal District Judges in Virginia Before The Civil War

By

HONORABLE ARMISTEAD M. DOBIE

Judge, United States Court of Appeals, Fourth Circuit

Lectures delivered on the
William H. White Foundation at
the University of Virginia
December 4, 5 and 6, 1951



FEDERAL DISTRICT JUDGES IN VIRGINIA BEFORE THE CIVIL WAR*

By

Hon. ARMISTEAD M. DOBIE

United States Circuit Judge, Fourth Circuit.

Introductory

It is to me, and should be to anyone, a real pleasure to be privileged to lecture before the University of Virginia Law School on the William H. White Foundation. In my particular case, there are several unique reasons for this feeling.

In my boyhood days in Norfolk, Virginia, I knew all four of the donors of this Foundation, and the friendships thus formed were only mellowed and sweetened by the passing years. William H. White, Senior, whom the Foundation honors, was one of my childhood heroes. On the first occasion in which I can remember being in a court-room, I heard him, the then United States District Attorney for the Eastern District of Virginia, prosecute a sailor for murder on the high seas. His vivid and dramatic prosecution of that case impressed me tremendously. It obviously had the same effect on the jury. For, shortly thereafter, the sailor proved the grim truth of Oscar Wilde's sardonic words in "The Ballad of Reading Gaol":

'Tis sweet to dance to violins,
When life is young and fair.
To dance to lutes, to dance to flutes
Is delicate and rare.
But 'tis not sweet with nimble feet
To dance upon the air."

And, during its early years, I was quite closely connected with the management of this Foundation. We can, I think, point with pardonable pride to the lecturers who, during those years, added to the Foundation no little dignity and distinction. Among them, we find such outstanding men as Newton D. Baker, Samuel Williston, Roscoe Pound, George Wharton Pepper, Charles Warren and Homer Cummings. Surely that is an illustrious roster. Finally, in this connection, after teaching in the University of Virginia Law School for more than forty

* Lectures delivered on the William H. White Foundation before the University of Virginia Law School in 1951.

years, and having attained the scriptural age of three score and ten, I am barred from further teaching here by the Statute of Limitations. So this is my academic swan song.

When the founding fathers, who created the republic under which we live and move and have our being, established a federal judicial system, they embarked upon a novel and dangerous experiment. This system was to be apart from, but coordinate with, the executive and legislative branches of the federal government. And these federal courts were to sit side-by-side with the courts of the several States.

In some classes of cases, the jurisdiction of the federal courts is exclusive of the State courts; in others, the jurisdiction of the State courts excludes the federal courts. In many cases, the jurisdiction of the two systems, State and federal, is concurrent, when the plaintiff may sue in the particular forum, State or federal, which he prefers. While, in a few instances, where the plaintiff properly brings his suit in a State court, the defendant may gaily remove the case to a federal court. So you can see that, even as to jurisdiction alone, the picture is indeed a complex one. It has no parallel in any other civilized country in the world.

Manifestly, then, it was a concern of paramount importance that those who were to preside in these federal courts should be men of the highest judicial calibre; for, in very large measure, upon their shoulders rested the success or the failure of this unique juristic experiment.

The title of the three lectures that I shall give, of which this is the first, is "Federal District Judges in Virginia before the Civil War." My purpose is to make these men live, for a while at least, in the minds and hearts of those within the sound of my voice, which includes a rather wide area. These judges are, for the most part, unsung heroes. Few, very few, of their fellow Virginians even know their names, much less their fames. If I can, even in a small measure, rescue them from their undeserved anonymity, I shall indeed be very happy.

Cyrus Griffin

The first federal District Judge in Virginia was Cyrus Griffin. Appointed by President George Washington, he held the first federal court in the Old Dominion on December 17, 1789. Born in Richmond County, Virginia, in 1749, he was then just forty years old. The appointment had previously been offered to Edmund Pendleton, First President of the Supreme Court of Appeals of Virginia, but Pendleton, a distinguished lawyer and an eminent judge, declined President Washington's offer of the appointment. Certainly, Griffin brought to the federal ermine a wealth of cosmopolitan, public experience.

As was not uncommon in the case of young Virginians of his day, he was educated abroad. After studying at the University of Edinburgh, he read law in the Middle Temple. His stay in Great Britain

was highlighted by an unusual romance. Griffin fell madly in love with Lady Christian Stuart, daughter of a British Earl. His passion was duly reciprocated by the noble lady, but the belted earl severely frowned on the idea of an American son-in-law. True love, however, was not to be denied. Griffin and his enamorata promptly eloped and a runaway match resulted.

Of Griffin's life just after his return to Virginia with his titled bride, we know very little. Rather scant, too, is the record of his career as a practising lawyer. A probable explanation of this is the fact that he held so many public offices, there was scant time for any continuous or active career at the bar. But he must have convinced his contemporaries of his legal ability. Otherwise, he would never have been chosen for the important public offices which he, in rapid succession, filled with distinction.

Griffin took a rather prominent part in the pre-Revolutionary movement to secure the rights of the American Colonies. Due probably to his British education, he strove manfully to secure those rights by an amicable settlement with the mother country, without resort to war. Thus, in England in 1775, Griffin wrote and addressed to the Earl of Dartmouth an able monograph entitled "Plan for Reconciliation between Great Britain and her Colonies." His efforts, of course, met with no success.

While still in his late twenties, Griffin began his public career when he entered the Virginia Legislature in 1777. The next year he was elected to the Continental Congress, only to accept in 1780, an appointment by the Congress to his first judicial post as Judge of the Court of Appeals in Cases of Capture, over which he presided till the abolition of the court. Congress duly passed a resolution thanking him for the "ability" and "fidelity" he displayed as a judge. In 1782, he was chosen to preside over the provisional court assembled to decide the important boundary dispute between the States of Pennsylvania and Connecticut as to the Wyoming Valley.

The year 1786 again found Griffin in the Virginia Assembly for a short term, and once more he left the Virginia Legislature for the Continental Congress, to preside over that body until its dissolution. President Washington, in 1789, appointed him one of the Commissioners to attend the treaty between the State of Georgia and the Creek Indians. That same year, Griffin applied to President Washington for "appointment in the diplomatic service or as a judge of the Supreme Court." Neither of these requests was granted but Washington did appoint him first United States District Judge for the District of Virginia.

As was to be expected, litigation was not heavy during the early years of the first United States District Court, presided over by the first United States District Judge, in Virginia. Later, during the last years of Griffin's judgeship, there was a rather notable increase in

the court's business. As a pioneer federal judge, Griffin is entitled to high praise in that he laid firm foundations on which his successors were to build. Certainly he added no little to the prestige of the then untried federal courts, which too frequently were regarded with suspicion as hostile tribunals in many of the States. Among the many notable lawyers he admitted to practice before his court was John Marshall, afterwards to become the greatest of American judges.

It did not fall to Griffin's lot to write judicial opinions which have become landmarks in our law. In the most important cases in which he sat, as was the custom in those days but is now "more honored in the breach than the observance," a justice of the United States Supreme Court presided, completely overshadowing the District Judge. He did, however, sit in at least three of the best known cases ever heard in the history of the federal courts.

The most important of these, of course, was the celebrated trial in Richmond of Aaron Burr for treason, which fairly rocked these United States. Chief Justice Marshall, however, presided; so at best Griffin could play only a weak second fiddle. Beveridge's classic biography of the great Chief Justice, Vol. 3, page 398, in describing the Burr trial, contains this simple sentence: "By Marshall's side sat Cyrus Griffin, Judge of the District Court, who throughout the proceedings was negligible."

Another cause célèbre in which Griffin sat was *United States v. Callender*, 25 Fed.Cas. 239, No. 14,709. Callender was prosecuted for seditious libel, found guilty and sentenced to imprisonment and a fine of \$200. Justice Chase of the United States Supreme Court presided and completely dominated the case. Indeed, in the report of this case in *Federal Cases*, covering twenty-one pages, almost the only reference to Griffin is the notation: "Here Griffin, District Judge, being called on by Chase, Circuit Justice, to deliver his opinion on the question before the court, declared that he concurred with his brother judge." Among the legal giants who appeared as counsel in this case were Hay, Wirt and Nicholas. So domineering and arbitrary was Justice Chase that his conduct of the case was one of the incidents that led to his subsequent impeachment.

I quote again from Beveridge's *Life of John Marshall*, Vol. 2 page 188: "Judge Griffin, in 1793, sat with Chief Justice Jay and Justice Iredell in the great case of *Ware v. Hylton*. John Marshall appeared in this case as counsel for the defendant in error. The decision of the lower court was reversed so that Marshall lost." This case attracted even international attention. The headnote of that case, (3 Dall. 199) reads:

"The treaty of peace concluded between the United States and Great Britain in 1783 enabled British creditors to recover debts previously owing to them by American citizens, notwithstanding a payment into a State Treasury under a State law of sequestration. An individual citizen of one State cannot set up a violation of a public

treaty, by the other contracting party to avoid an obligation arising under such treaty; the power to declare a treaty void, for such cause, rests solely with the Government which may, or may not, exercise its option in the premises."

In two other cases of some consequence, though by no means comparable in importance to the three cases just discussed, Griffin also sat with Chief Justice Marshall: *Dunbar v. Miller*, 7 Fed.Cas. 1187, No. 4,130, 1 Brock. 85, and *Calloway v. Dobson*, 4 Fed.Cas. 1,083, No. 2,325, 1 Brock. 119. Again, in these two cases, Chief Justice Marshall wrote the opinion of the Court.

From the scant materials that are available, an accurate estimate of Griffin as a federal District Judge is quite difficult. The record, though, does disclose that he was no judicial giant. Equally clear is it that he was no pygmy. His tenure as District Judge spanned the last decade of the 18th. Century, the first decade of the 19th. He did not paint upon the juristic canvas of his time in vivid and dramatic colors; he did supply a solid background for those who came after him.

Our own Professor Armistead Gordon, Junior, thus ended his sketch of Griffin in the Dictionary of American Biography: "Accomplished, upright, dependable, industrious, he enjoyed fully the confidence and respect of his age, but after his death his services and standing were undeservedly forgotten. He was neither orator nor author, his work was not that which attracts popular notice; he has had no biographer, but, above all, he has been completely overshadowed by the giants who were his contemporaries." With that judgment, Dobie, Circuit Judge, heartily concurs.

John Tyler

The circumstances leading to the appointment of John Tyler as Griffin's successor were indeed unique. Livingston had filed, in the United States District Court for the District of Virginia, a suit against Thomas Jefferson, seeking damages in the sum of \$100,000. Griffin was then in the shadow of death. Jefferson, who cordially disliked Griffin (due partly to Griffin's association with, and admiration for, Chief Justice Marshall), thereupon wrote to President Madison, recommending Tyler in a remarkable letter. In this letter, after unfairly branding Griffin as a "cypher" and a "tool," Jefferson wrote: "It will be difficult to find a character of firmness enough to preserve his independence on the same bench with Marshall. Tyler, I am certain, would do it. He is an able, well-read lawyer * * * He was popular as a judge and is remarkably so as Governor * * * A milk and water character in that office would be seen as a calamity."

President Madison duly complied with Jefferson's request and Tyler was appointed. But Jefferson did not stop there. There was a vacancy on the United States Supreme Court due to the death of Justice

Cushing. Jefferson, wishing to also have a friend on that Court, in the event that *Livingston v. Jefferson*, Fed.Cas.No.8,411, went there on appeal, suggested that Madison appoint Levi Lincoln, who had been Jefferson's Attorney General. Again Madison complied but, fortunately, Lincoln, due to his advanced age and approaching blindness, declined the appointment. Advisedly I used the word "fortunately," for Madison finally appointed Joseph Story, unquestionably one of the greatest jurists ever to adorn our highest tribunal.

It will thus be seen that here we have an ex-President packing the federal bench. Here he was not seeking judges who would support some kind of "deal"—"old," "new" or "fair." Nor was he seeking a high office for an old crony. His motives were more sordid and mercenary; for they were grounded in his own personal economic interest.

John Tyler was born in 1747, in Charles City County, Virginia. He was thus slightly older than the man he succeeded as United States District Judge for the District of Virginia. He was educated at William and Mary College and studied law in Williamsburg under the tutelage of Robert Nicholas, a legal giant of those days. He married Mary Armistead. In 1776, Tyler raised a company of volunteers and accompanied Patrick Henry on a march against Lord Dunmore for the purpose of capturing powder which Dunmore had removed from Williamsburg. He later served with distinction in the Continental Army during the Revolutionary War.

After practising law with considerable success, he began a career in public office which occupied the best years of his life. Thus he was a judge of the High Court of Admiralty, the Virginia General Court and the Supreme Court of Appeals of Virginia. Also he served in the Virginia Legislature and became Speaker of the House of Delegates. Probably his most significant act, while in the Virginia Legislature, was in 1775, to offer a resolution calling a federal convention to meet in Annapolis. He was Vice-President of the Virginia Convention of 1788, when he joined Patrick Henry in opposition to the adoption of the federal Constitution, and in 1808, he succeeded Cabell as Governor of Virginia, retiring from that office in 1811 to become United States District Judge for the District of Virginia. After serving only two years on the federal bench, he died in 1813.

Judge Tyler was the father of John Tyler, who upon the death in 1841 of William Henry Harrison, became the tenth President of the United States. It is a remarkable commentary on the youthfulness of this country that just two years ago, Lyon G. Tyler, Jr., was my law clerk; yet that young man's grandfather was the tenth President of the United States.

A remarkable thing for one of his time and social station is that Judge Tyler was an ardent advocate, even in those halcyon days, of rights for women. An admirer and follower of Patrick Henry and

Thomas Jefferson, he, by that same token, had neither liking nor respect for Chief Justice Marshall. As Governor of Virginia, he repeatedly urged upon our Legislature the needs of education. Largely through his influence was created the celebrated Literary Fund, well known in Virginia song and story, but, unfortunately, too often the foot-ball of partisan politics. A strong supporter of the War of 1812 with England, he tragically died before the victorious end of that war.

Judge Tyler's tenure on the federal bench, only two years, was too short to enable him to add greatly to his juristic reputation. His fame, though, rested securely upon his prior career as soldier, legislator, statesman, judge and Governor of his native State. His grandson, the late Lyon G. Tyler (former President of the College of William and Mary and an eminent Virginia historian) has written of him: "Thoroughly imbued with the spirit of reform, he hated case-lawyers and wanted cases decided by appeals to principles, not to decided cases." Yet he consciously modelled the procedure in his Court on that obtaining in England. Indeed, he himself once wrote: "Let a stranger go into our courts, and he would almost believe himself in the Court of King's Bench."

Tyler, upon his ascent to the bench of the District Court, could hardly say that the office sought the man, nor could he in frankness express surprise when the federal judicial lightning struck. For Tyler had written to Jefferson: "Judge Griffin is in a low state of health * * * I really hope the President will chance to think of me in case of accidents, and, if an opportunity offers, lay me down softly on a bed of roses, in my latter days." During the more than twelve years that I have been a federal judge, I have found my job interesting, varied and even, at times, thrilling; but I would hardly call it (and I think my colleagues would concur) a "bed of roses."

It was the fate of Tyler, as was also true of Griffin, to sit with Chief Justice Marshall in one celebrated case, *Livingston v. Jefferson*, Fed. Cas.No.8,411, 1 Brock. 203, already mentioned. The key question in this case was whether Livingston's suit against Jefferson for alleged trespass to Livingston's land in Louisiana was a *local* action (or action *in rem*), which could be brought only in Louisiana (where the land was), or a *transitory* action (or action *in personam*), which could be brought in Virginia where the suit was filed. Livingston had in his favor justice, logic and reason; Jefferson was relying upon ancient precedents which upheld the sacro-sanctity of real property. Both Marshall, who wrote the main opinion, and Tyler, who wrote a concurring opinion, decided in favor of Jefferson. Livingston was represented in this case by Wickham, one of the greatest of all American lawyers; Jefferson's lawyers were Wirt, Hay and Nicholas, truly a great trinity.

Reams have been written about this case. I quote the most acute, and the soundest, comment on the case that I have been able to find

in the books, in Professor Scott's brilliant monograph "Fundamentals of Procedure in Actions at Law": (pages 14-15):

"By no one has the injustice of such a holding been more clearly presented than by Chief Justice Marshall in his opinion. He approved of the distinction drawn by Lord Mansfield but felt precluded by the English decisions from applying it. He said:

"I have not yet discerned a reason, other than a technical one, which can satisfy my judgment. If, however, this technical reason is firmly established, if all other judges respect it, I cannot venture to disregard it."

"It is interesting to remember that there existed between Jefferson and Marshall political enmity and personal animosity, and that Jefferson's private fortune was at stake in this litigation. It would have been very difficult undoubtedly for Marshall to depart from the English precedents when to do so would have involved a serious loss to Jefferson. Possibly therefore he leaned backwards. Judge Tyler, on the other hand, enthusiastically concurred with the English precedents. Indeed the only excuse for some of his language would seem to be found in the statement at the end of his opinion that he was unwell at the time he gave it."

Judge Tyler will also be remembered for two other of his decisions. As the first prize case in the War of 1812, he condemned the British ship *Sir Simon Clarke*, which had been brought into Norfolk harbor by Captain Murphy of the privateer *Globe*. After this decision he is reported to have remarked: "There, by the Lord, they'll (the British) find now the war isn't all on one side." In *Kamper v. Hawkins*, 1793, 1 Va.Cas. 20, he wrote, sitting in the General Court of Virginia, an opinion upholding the power of the court to hold a Virginia statute unconstitutional and void. A like decision had previously been reached, in the Virginia Court of Appeals, in the case of *Commonwealth v. Caton*, 1782, 4 Call. 5. These cases both ante-dated *Marbury v. Madison*, 1803, 1 Cranch 137, when Chief Justice Marshall earned undying fame by deciding that the United States Supreme Court could declare an Act of Congress unconstitutional and void.

In a memorial to Judge Tyler spread upon the Virginia Reports, 4 Call. xiii, it was stated: "He was very attentive to young lawyers upon their first coming to the bar, and did everything in his power to put them at ease, and inspire them with confidence." Surely, that is a sincere tribute to any judge. Governor Wise, 10 Green Bag 16, wrote of him: "He was a gentleman of great learning and mental force, with an unspotted name for honor and pluck." Glowing tributes have been paid to him by many notable Virginians including the great Spencer Roane and the distinguished John Randolph Tucker.

St. George Tucker

Certainly, in base-ball terms, the batting average of the United States District Court for the District of Virginia rose many points

on the appointment by President Madison in 1813 of St. George Tucker. Tucker was born in the Island of Bermuda in 1752. In 1771, at the age of 19 years, he moved to Virginia, to become the progenitor of one of the most distinguished families the Old Dominion has ever known. He was educated at William and Mary College, where he studied law under George Wythe, the first collegiate professor of law in these United States.

Tucker eagerly espoused the Revolutionary cause and had a distinguished career in the Continental Army in which he rose to the rank of Colonel. He was wounded at the Battle of Guilford Court House. His most brilliant exploit was his undertaking, at the instance of Governor Patrick Henry, an expedition to the West Indies, taking down indigo and bringing back much needed arms and ammunition. He successfully completed this perilous and hazardous mission. In his own words: "On my return I went at once to Williamsburg to report to Governor Henry, and when I went into his office to see him, he did not even ask me to take a seat. When I finished, standing, he uttered no word of commendation or thanks but only said: 'I think you paid too much for the indigo.' I was very indignant at his lack of courtesy." There is an interesting postlude to this incident. A descendant of St. George Tucker found some years ago this note in St. George Tucker's handwriting: "Governor Henry came into court to acknowledge a deed; he stood some moments near the Bar but was not asked by the Court to come upon the bench. Oct. 17, 1787." Old St. George Tucker was evidently not given to forgetting.

In 1778, he married the widow Randolph. This made him the stepfather of one of the most brilliant and eccentric characters in American history, John Randolph of Roanoke. Upon her death, more than ten years later, he married the widow of Hill Carter. After the victory of Yorktown, he resumed the practice of law, which had been interrupted by the Revolutionary War. He soon attained eminence at the Virginia Bar, which then had on its roster an unusual number of outstanding lawyers. He was counsel for Hunter in the great case of *Martin v. Hunter's Lessee*, 1 Wheat. 304, 317. In describing that case, Beveridge, *Life of John Marshall*, Vol. 4, p. 161, justly characterized Tucker as "one of the ablest lawyers of the South."

In 1781, he entered upon a long career in public office by becoming a member of the Virginia Privy Council. In 1786, he was a member of the Annapolis Convention which did no little spade-work for the Philadelphia Convention in 1787. The next year brought his first judicial experience on the General Court of Virginia. Two years later he became Professor of Law at the College of William and Mary. From 1804 to 1813, he served as President of the Virginia Court of Appeals, when President Madison appointed him United States District Judge for the District of Virginia. That position he held for twelve years until 1825, when he resigned on account of ill health. Two years later, in 1827, he died, at the advanced age of 85 years.

Tucker rendered yeoman service on a Commission to Revise the Laws of Virginia. In 1803, he published, in five volumes, his edition of Blackstone's Commentaries. Unquestionably one of the most important law-books of its day, it added immeasurably to his already distinguished reputation and gained for him the title of "the American Blackstone." Not the least interesting part of this work was an extended discussion of the federal Constitution. He further advocated the doctrine that the federal courts must follow the decisions of the State Courts on non-statutory questions of substantive law—a doctrine established by the United States Supreme Court only in 1938 in the great case of *Erie Railroad Company v. Tompkins*, 304 U.S. 64, 58 S.Ct. 817, overruling *Swift v. Tyson*, 16 Pet. 1, which had been the law for nearly a century.

Tucker wrote poetry which was graceful but hardly great, and translated into English some of the Odes of Horace. Much more important were his polemic and political writings. His monograph: "Dissertation on Slavery, with a Proposal for its Gradual Abolition in Virginia" (1796) was widely acclaimed, particularly in the North. Another of his tracts emphasized the growing importance of Norfolk as a port of entry. In his politics, he followed quite closely the doctrines of Jefferson, whom he greatly admired. His personality was one of unusual charm, his character was indeed beyond reproach. To him could be aptly applied the oft-used term "a gentleman and a scholar."

In judicial eminence, Tucker went far beyond his predecessors, Griffin and Tyler. His opinions on the Court of Appeals of Virginia fill nine volumes of the Reports (8 Va. to 16 Va.), 4, 5 and 6 Call, 1, 2, 3, 4, Heming & Munford, 1 and 2 Munford. Industry was certainly one of his judicial virtues. In just one volume of these Reports (15 Va., 1 Munford) I checked some forty-four opinions that he wrote on the General Court of Virginia. He wrote one of the opinions in *Kamper v. Hawkins*, 1 Va.Cas. 20, holding that the courts had power to declare a legislative act unconstitutional and void. Said he: "The constitution is a rule to all the departments of government, to the judiciary as well as to the legislature." His opinion, on the Virginia Court of Appeals, in *Turpin v. Locket*, 6 Call 113, upholding the validity of a Virginia statute ordering the glebe lands of the Episcopal Church to be sold and the proceeds applied to the use of the poor (though no longer important) attracted no little attention in its time. His opinions were, in the main, sound and learned. Certainly he knew his law. In some opinions, he manifested an overzealous admiration for the technical niceties of the law—a trait which his biographers have attributed to his early training in the office of a British lawyer in Bermuda. There were legal giants on our Court of Appeals in those days; but Tucker more than held his own among them.

Though Tucker added a lustre it had not hitherto possessed to the federal bench in Virginia, it was his fate (together with Griffin and

Tyler) to sit with Chief Justice Marshall in most of the important cases engaging his attention as a federal judge. In nearly all of the cases in which these two judges sat together, the Chief Justice wrote the opinion. In *Evans v. Jordan*, Fed.Cas.No.4,564, 1 Brock. 248, a significant case arising under the patent laws, Tucker had the courage to disagree with the great Chief Justice, who was unanimously sustained by the United States Supreme Court. 9 Cranch 199.

Soldier, lawyer, patriot, statesman, author, teacher and judge, he must hold high rank on the roll of those who, with fidelity and distinction, have served their State and their country. He was no meteor that flashed suddenly and brilliantly across the Virginia sky. Rather (to continue the celestial metaphor) was he a star of the first magnitude shining in the firmament with many and varied points of light.

LECTURE 2

George Hay

In 1825, George Hay was appointed by President John Quincy Adams as successor to St. George Tucker. Unlike all of his three predecessors, Griffin, Tyler and Tucker, Hay was without previous judicial experience. He was born at Williamsburg, Virginia, in 1785. His father kept the well known Raleigh Tavern there.

Soon after his admission to the Virginia Bar, Hay lost little time in establishing his reputation as an outstanding lawyer. His first incursion into public life came on his election to the Virginia House of Delegates. He appears to have taken an active part in the deliberations of that body.

His second wife was Elizabeth Monroe, daughter of President Monroe. The newlyweds for a time lived in the White House. Thus (*pro hac vice*, as the lawyers say) he was the Harry Hopkins of his day. Meade Minnigerode, in his book "Some American Ladies," gives an interesting account of the very prominent part played by Mrs. Hay in the social life of the Washington of her day. President Monroe appears to have held Hay in high esteem and is said to have often sought, and frequently relied upon, Hay's counsel.

As an author, Hay wielded a violent and vitriolic pen. His pamphlets on the freedom of the press and another on expatriation apparently were widely read. Under the pen-name of Hortensius (taken from the first name of his daughter Hortense), Hay wrote a number of polemics. A friend and partisan of Jefferson, he bitterly attacked Marshall and his Federalist following. He was also a member of the committee urging the War of 1812 with England.

Hay instantly sprang into public notice when Jefferson appointed him United States District Attorney for the District of Virginia. During his long tenure of that office, he appeared in many cases. The most important of these was, of course, the trial of Aaron Burr in

Richmond, in which Hay led for the prosecution, with the great William Wirt and Alexander MacRae as aides. Among Burr's counsel were John Wickham, Edmund Randolph and Luther Martin, certainly three of the most distinguished lawyers ever to appear in any court in this country. Beveridge, "Life of John Marshall," Vol. 3, page 501, in his historic account of the Burr trial, wrote of Luther Martin, "He had been drinking even more than usual throughout the proceedings, but never was he in more perfect command of all his wonderful powers."

Chief Justice Marshall, of course, presided at the trial, with Judge Griffin at his side. Hay's conduct of the case has been frequently criticised. The consensus of opinion seems to be that he was not quite equal to so momentous an occasion. Jefferson took an active interest in the trial, made numerous suggestions to Hay as to its conduct and bitterly criticised Marshall for the manner in which he presided. According to Loth, "Chief Justice John Marshall and the Growth of the Republic" page 249: "To the end of his life he (Jefferson) believed the Chief Justice had conspired to free Burr and prevent the real evidence from getting before the public."

Hay's fame will rest on his active participation in the political struggles of his day and on his long and distinguished career as a lawyer. With voice and pen, he eagerly fought for the tenets of Jefferson and against those of Marshall and the Federalists. It is difficult, today, to realize how fierce were the passions roused in the politics of Virginia during the first quarter of the nineteenth century.

As counsel, Hay appeared in at least four cases that attracted national attention. Mention has just been made of the Burr case, Fed. Cas.No.14,692a to 14,694a, which Hay, appearing for the prosecution, lost. He also lost the Callender case, in which he appeared for the defense. That case was discussed in the previous lecture. Callender, after his conviction, was pardoned by President Jefferson. Justice Chase, who presided at the trial, ran rough-shod over Hay and Wirt, Callender's lawyers. Chief Justice Marshall was an interested spectator at the trial, and he and Hay both testified as witnesses when Chase was tried before the Senate. Beveridge, "Life of John Marshall," Vol. 3, pages 189-190, makes this comment: "George Hay, who had been the most aggressive of Callender's counsel, was so anxious to help the managers that he made a bad impression on the Senate by his eagerness. It developed that the whole attitude of Chase had been one of sarcastic contempt; and that Callender's counsel (Hay and Wirt) were more piqued by the laughter of the spectators which the witty sallies and humorous manner of the Justice (Chase) excited than they were outraged by any violence on Chase's part, or even by what they considered the illegal and oppressive nature of his rulings."

Doubtless the sweetest court victory ever won by Hay was his success in *Livingston v. Jefferson*, also discussed in the previous lecture. Not only did he save the private fortune of his friend and men-

tor, Jefferson; but he vanquished Wickham who had worsted him in many trials. In one case tried in Richmond, Wickham scored so heavily over Hay that a wag was prompted to write this piece of doggerel:

“Wickham one day in open court,
Was tossing Hay around for sport.
Jock, rich in wit and Latin, too,
Cried, ‘Habet foenum in cornu.’ ”

This old Latin quotation means: “He has hay on his horn.” “Jock” was John Warden, a well known Scotchman.

From the standpoint of federal jurisprudence, the most important case in which Hay appeared as counsel was *Martin v. Hunter*, which dragged a long course through the State and federal courts. As to this case, I quote from *Dobie's Cases on Federal Procedure*, page 697, note 44; “a poor thing but mine own”:

“Provision was made for the review by the Supreme Court of decisions of the courts of the states in the original Judiciary Act of 1789. The constitutionality of this was denied by the Supreme Court of Appeals of Virginia, which declined to obey the Supreme Court's mandate. *Hunter v. Martin*, 1814, 4 Munf. (18 Va.) 1. The opinion of Judge Roane of the Supreme Court of Appeals of Virginia is a powerful statement of this side of the controversy. Thereupon the Supreme Court reaffirmed the validity of the statute. *Martin v. Hunter*, 1816, 1 Wheat. 304, 4 L.Ed. 97, and this view was clinched by the masterly opinion of Chief Justice Marshall in *Cohens v. Virginia*, 1821, 6 Wheat. 264, 5 L.Ed. 257. Now, of course, the power of the Supreme Court to review the decisions of state courts is hardly open to question.

“Had the view of the Virginia court prevailed, the resulting situation would have indeed been tragic. Instead of a single Federal Constitution, with one meaning wherever it prevails, the meaning given to that great instrument by the Supreme Court, we should have had a patchwork of motley interpretations by the state courts, which might well in many instances have made a hollow mockery of the federal government.

“This statute, in all the forms it has assumed from the original Judiciary Act of 1789 down to the Act of February 13, 1925 (43 Stat. 936), has been very carefully worded. The Supreme Court review which it authorizes is limited to the field of demarcation between the sovereignties of the state and federal governments. This line must be drawn by a single court with power to enforce its decisions. And the statute designates the federal Supreme Court as the court whose pronouncement is, and must be, final here. Only in this way, it is believed, could the Federal Constitution, treaties, and laws have become, through the course of the years, in any very real sense, the supreme law of the land.”

Hay's long service at the bar served him in good stead when in 1825, at the age of 60, he ascended the federal bench. His tenure of that office lasted only five years till his death in 1830. He appears to have made a competent and satisfactory, if not a brilliant, judge, who hardly made any significant contribution to our law. Once more, Marshall sat with Hay in the most important cases, and, in practically all of these Marshall wrote the opinion and left Hay to shine only in reflected glory.

Two of these cases may be briefly mentioned. *Stegall v. Stegall*, Fed.Cas.No.13,351, 2 Brock. 256, involving the legitimacy of children, was a sordid story of marital infidelity; but the children, happily, were finally declared legitimate after the Chief Justice's long opinion dealing with the strong common-law presumption of legitimacy. *Davis v. Palmer*, Fed.Cas.No.3,645, 2 Brock. 298, gave Marshall a chance to show his varied range of knowledge in a patent case involving the mould-board of the plough—, a field in which our own Jefferson was no novice.

Philip Pendleton Barbour

The pre-civil war federal District Court in Virginia reached the zenith of its glamor and glory when, as Hay's successor, President Andrew Jackson appointed Philip Pendleton Barbour. Richly gifted for judicial station by character, training, experience and ability, Barbour's life was a succession of triumphs in high public office, reaching its climax upon his accession to the highest Court in the land. Here, indeed was a son of Virginia to whom the Old Dominion could point with pardonable pride.

Barbour was born in Orange County, Virginia, May 25, 1783, of a distinguished family. He was of Scottish descent. His great-grandfather was one of the earliest settlers in Piedmont, Virginia. His formal education was received as a pupil of Reverend Charles O'Neil and afterwards as a student at the College of William and Mary. In 1800, at the callow age of 17, he moved to Kentucky, but, fortunately for his native State, he returned to Virginia the following year. In 1804, he married Frances Johnson and seven children were born of that marriage. Hardly less distinguished than Philip Barbour was his brother, James, who was in turn Governor of Virginia, United States Senator, Cabinet Member and Foreign Ambassador.

Barbour's political baptism of fire was received when he became a member of the Virginia House of Delegates. In that body, then composed of an unusual number of distinguished members, he swiftly became a power in debate, quickly broadened his influence and extended his reputation. From 1814 to 1825, he was a member of the federal Congress, serving on the Naval and Judiciary Committees, and finally becoming Speaker of the House. He left the halls of Congress to become Judge of the General Court, thus embarking upon a judicial career that ultimately led to a seat on the highest Court in the land.

Two years later, he resigned his seat on the General Court and was re-elected to Congress. In 1824, when Representative Netcher of Kentucky launched a violent attack on the Supreme Court, Barbour took an active part in the debate along with Clay, Webster and Randolph.

He was a member, and became President, of the Virginia Constitutional Convention of 1829, which numbered among its members Marshall, Madison, Monroe, Randolph, Tyler, Upshur and Tazewell. I am no worshipper of the past, yet I would not welcome the task of matching those great names among Virginians who are living today. Barbour was of counsel for Virginia in the great case of *Cohens v. Virginia*, 6 Wheat. 264.

In 1830, Barbour accepted an appointment from President Jackson to the federal District Judgeship for Virginia, stating at the time that he would abandon his political activities with reluctance. After some five years of service as District Judge, he was appointed (also by Jackson) and confirmed as an Associate Justice of the United States Supreme Court, a position which he held till his untimely death, at the age of 58, in the year 1841.

When John Marshall died in 1835, after a record tenure of 34 years as Chief Justice, there was nation-wide speculation as to his successor. Among those prominently mentioned and seriously considered was Barbour. The very suggestion of Barbour's name prompted this venomous outburst from crotchety John Quincy Adams: "The terror is that some shallow-pated wildcat, like Philip P. Barbour, fit for nothing save to tear the Union to rags and tatters, would be appointed in his (Marshall's) place." History has hardly approved this outrageous estimate of Barbour.

The choice, of course, fell on Roger Brooke Taney, of Maryland, who proved a worthy successor to the greatest of American judges. It is quite tragic that Taney's career as Chief Justice has been so unfairly appraised, due in large part to his opinion in the *Dred Scott* case, 19 How. 393, which was nothing less than anathema to the citizens of the United States dwelling North of the historic Mason and Dixon Line. Barbour, however, was appointed and confirmed as Associate Justice of the Supreme Court, in succession to Justice Duval. Barbour presided at the memorial meeting held in Richmond shortly after Chief Justice Marshall's death.

In addition to the high offices which Barbour filled with distinction, notable indeed were the positions which he declined. He would not accept a nomination as Governor of Virginia, an office which has always had a peculiar appeal to natives of the Old Dominion. Even stranger, perhaps, was his refusal of an appointment to the Court of Appeals of Virginia, when that Court was in the hey-day of its glory; for, as he afterwards so clearly proved, in mind and character he possessed to a marked degree those attributes that make for juristic

renown. Even more interesting to this audience is the fact that in 1825 Jefferson, without success, endeavored to persuade Barbour to accept a professorship of law in the then infant University of Virginia. Had Jefferson's persuasive powers prevailed, Barbour would doubtless have taken front rank with American teachers of law.

During his brief tenure as District Judge, lasting only five years, Barbour showed himself to be an exceptionally able trial judge. Ample proof of this are the facts already mentioned that he was seriously considered as Marshall's successor and was promoted to the Supreme Court. He was the last federal District Judge for Virginia who sat with Marshall, who seemed to overawe Barbour to a lesser degree than any of his four predecessors.

In *Ex parte Randolph*, Fed.Cas.No.11,558, 2 Brock. 447, Barbour wrote the principal opinion and (a rare occurrence) Marshall merely concurred with Barbour. This was an important habeas corpus proceeding involving the constitutionality of an Act of Congress. In *United States v. Moore's Adm'r*, Fed.Cas.No.15,802, 2 Brock. 317, a suit on the bond of a marshal, and in *Lewis v. Barksdale*, Fed.Cas.No.8,317, 2 Brock. 436, an action of ejectment concerning lands here in Albemarle County, though Barbour also sat, the only opinions were written by Marshall. Barbour sat alone and wrote a splendid opinion in *Case of dosSantos*, Fed.Cas.No.4,016, 2 Brock. 493, in which he held that a foreign government has no rights, by the law of nations, to demand of the United States extradition, in the absence of a treaty, of a subject of such foreign country for a crime committed in that country.

Barbour's judicial reputation will naturally rest upon his work on the Supreme Court. He sat there only four years and wrote only about twenty opinions. Yet he added immeasurably not only to his own reputation but to the renown of our highest tribunal. His opinions are found in four volumes of the *United States Reports*, 11-14 Peters, both inclusive, 36-39 U.S. Though rarely dissenting, he clearly preserved his independence of judgment. This is shown by the fact that in some instances when Barbour wrote the majority opinion, Taney and Story (the giants of the Court) dissented. Some of his most important opinions may be briefly mentioned.

New York v. Miln, 11 Pet. 102, was an important case in which Barbour upheld the validity (under the police power) of a State Statute, which was alleged to conflict with the Commerce Clause of the federal Constitution. *Toland v. Sprague*, 12 Pet. 300, decided an interesting procedural point—the invalidity in the federal courts of foreign attachments secured in the absence of personal service. *Georgetown v. Alexandria Canal Company*, 12 Pet. 91, involved a compact between the States of Maryland and Virginia and the obstruction of navigable streams. Often quoted is his opinion in *Holmes v. Jennison*, 14 Pet. 540, an extradition case decided by an evenly divided Court. *Smith v. Richards*, 13 Pet. 26, dealt with a contract for the sale of a gold

mine in our neighboring County of Goochland, Virginia. In *Burton v. Smith*, 13 Pet. 464, Barbour showed his complete mastery of the difficult subject of reversionary interests in Virginia real estate.

In his private life and in his politics, Barbour was essentially conservative, but he was in no sense reactionary. An ardent believer in the rights of the several States of the Union, he fought violently against what he believed to be undue encroachments on those rights by a centralized federal government. He did not hesitate, in that field, to engage in debate Chief Justice Marshall himself. Barbour is reported to have expressed the view that any State of the United States, if it so desired, had a perfect right to secede from the Union.

At the customary memorial exercises held before the Supreme Court upon the death of a justice, the tributes are always laudatory; generally they are rather formal and quite conventional. Not so in the case of Philip Pendleton Barbour, who richly deserved the encomia there bestowed. Said Attorney General Gilpin: "No judge had more completely gained the confidence and respect of those who were called to appear before him; the decisions of no one were ever listened to with more certainty that they were the enunciations of an enlightened intellect, of excellent judgment, the purest intentions and the kindest heart." Chief Justice Taney stated: "Justice Barbour was a member of this Court for only a few years; yet he has been long enough here to leave behind him, in the published proceedings of the Court, striking proofs of the clearness and vigor of his mind and of his eminent learning and industry. Those only who have been intimately associated with him, as members of the same tribunal, can fully appreciate the frankness of his character and the singleness and purity of purpose with which he endeavored to discharge his arduous duties."

Justice Story, after Barbour's death, described him as "a very conscientious, upright and laborious Judge, whom we respected for his talents and virtues and high sense of duty." Our own ex-Professor Malone thus closed his sketch of Barbour in the *Dictionary of American Biography*: "His mansion 'Frascati' in his native county was built some time before 1830 by workmen who had been engaged in building the University of Virginia, and had a serpentine wall around the garden. Prosperous in his later years, he lived in dignity and comfort as a country gentleman, loyal to the social, as well as the political, traditions of Virginia."

Peter Vivian Daniel

When President Jackson appointed, as Barbour's successor on the District Court for Virginia, Peter Vivian Daniel, there mounted the federal bench one of the most vivid, most romantic and most picturesque individuals in the history of American jurisprudence—a veritable stormy petrel in the law, life and politics of his day and

generation. If Andrew Jackson had been seeking a contrast to Barbour, he met with absolute success when his choice fell on Daniel.

Peter Daniel was born April 25, 1784, at "Crow's Nest," the home of his father, Travers Daniel, in Stafford County, Virginia. He was educated by private tutors at home, then went to the College of New Jersey (now Princeton University), where he was a member of the Clisosophic Society. He studied law in Richmond in the office of Edmund Pendleton, one of the greatest lawyers of his time. In 1808, he was admitted to the Virginia Bar. He married, in 1809, Lucy Randolph, daughter of Edmund Randolph, his legal mentor; and after her death in 1847, he married Mary Harris. He had three children by his first marriage, two by his second.

Certainly he lost little time in entering politics, which were to engage a large part of his time. In 1809, when he was just 25 years old, he entered the Virginia Legislature. Just three years later he was elected a member of the Privy Council, to become later Lieutenant Governor of Virginia and ex-officio Chairman of the Council. President Jackson, in 1834, offered Daniel the position of Attorney General of the United States, to succeed Taney. To the surprise of many, Daniel declined this offer.

In 1812, Governor James Barbour of Virginia appointed Daniel (along with other leading citizens of the State) to report the sentiment "on the present state of public affairs." The Committee's report stated "while peace was dear, the honor of our country was dearer" and vigorously declared for "a prompt, open and vigorous war against Great Britain."

The most dramatic episode in Daniel's life was his duel with John Seddon, an uncle of James Seddon, who became Secretary of War in the Confederate Cabinet. Daniel, it seems, had made a speech disparaging Seddon's character. When Daniel refused Seddon's demand for a retraction and an apology, Seddon challenged Daniel to a duel. Daniel promptly accepted the challenge and chose pistols as the weapons. The story goes that Daniel practised assiduously at pistol shooting under the tutelage of an expert pistol shot, and, just before the duel, remarked to one of his seconds: "I think I shall strike Mr. Seddon about the button on the white line (of his vest)". This prophecy was duly fulfilled, for Daniel killed Seddon on the first shot and escaped without a scratch.

Daniel was a warm personal friend of Andrew Jackson, whose political views he espoused and championed. In 1827, he was, with other prominent Virginians, a member of a committee which strove manfully (and successfully) to secure Jackson's election to the Presidency. Jackson did not prove ungrateful for he offered Daniel the Attorney Generalship of the United States, which Daniel declined, and later appointed him to the federal bench.

In 1836, as Barbour's successor, Daniel was appointed United States District Judge for the District of Virginia. He sat as District Judge for just five years till his appointment in 1841 to the Supreme Court.

Comparatively few of Daniel's opinions as District Judge seem to have found their way into the reports. He sat with Justice Barbour and wrote the principal opinion in the important case of *United States v. Myers*, Fed.Cas.No.15,844, 2 Brock. 516, in which he vigorously affirmed the principle that where the jurisdiction of a federal court has once attached, no subsequent change in the condition of the parties, in the progress of the case, will oust that jurisdiction; for the strongest considerations of utility and convenience require that the jurisdiction being once vested, the action of the court should not be limited but it should proceed to a final disposition of the case. Though Daniel did not add greatly to his reputation while serving as District Judge, he seems to have proved a competent and capable trial judge, serving a valuable judicial apprenticeship which led to his appointment in 1841 by President Van Buren as Associate Justice of the United States Supreme Court. Just as Daniel followed Barbour as District Judge, so did he follow Barbour on the Supreme Court.

In spite of Whig opposition, Daniel was confirmed by the Senate, and sat on the Supreme Court for 19 years, during one of the most important eras of our history, the years immediately before the outbreak of the Civil War. It is as Mr. Justice Daniel that he will go down to history.

On the Supreme Court, Daniel wrote approximately 185 opinions. Many of these were dissents for he proved to be the greatest dissenter on the Court. These opinions will be found in 22 Volumes of the *United States Reports*—from 18 Peters to 21 Howard, 41 U.S. to 62 U.S. Some of the most important of these will now be briefly discussed.

The most important case in which Daniel sat was the celebrated *Dred Scott* case, *Dred Scott v. Sandford*, 1856, 19 How. 393, which was regarded by many historians as hastening the outbreak of the Civil War. Here, Daniel, voting with the majority, went beyond any of his colleagues in dealing roughly with the poor old slave, who, Daniel stated, possessed "within himself no civil nor political rights or capacities." He continued: "To a slave as such there appertains, and can appertain, no relation, civil or political, with the State or the Government. He is himself strictly property, to be used in subserviency to the interests, the convenience, or the will of his owner." This, of course, brought down bitter abuse of Daniel in the North. Thus, shortly after the *Dred Scott* decision, a reporter in the *New York Tribune* wrote: "Justice Daniel, of Virginia, is old and long and lean and sharp in visage, and simply wears the aspect of a tremulous and fidgety old gentleman in glasses. His policies are those of a Virginia slave-holder, an obstructionist. Of course, he goes to the hilt on any point where the demands of an oligarchy are concerned."

In the *Genesee Chief v. Fitzhugh*, 12 How. 443, he bitterly dissented against Chief Justice Taney's majority opinion extending the federal admiralty jurisdiction to navigable lakes and rivers. In his dissenting opinion, 12 How. 464, Daniel stated: "My opinions may be deemed to be contracted and antiquated, unsuited to the day in which we live; but they are founded upon deliberate conviction as to the nature and objects of limited government, and by myself at least cannot be disregarded." Dissenting, in *Philadelphia, Wilmington and Baltimore Railroad Company v. Quigley*, 21 How. 202, he vigorously protested against opening the federal courts to corporations as citizens of a State. Once more dissenting, in *Barber v. Barber*, 21 How. 582, he attempted to set back the clock by relegating married women to their restricted rights under the old common law. Said he, 21 How. at page 602: "A married woman cannot during the existence of the matrimonial relation and during the life of the husband * * * be remitted to the civil or political position of a *feme sole*, and cannot therefore become a citizen of a State or Community different from that of which her husband is a member." Another of his well-known dissents, in *Pennsylvania v. Ravenel*, 21 How. 103, contained bitter strictures against trial judges invading the province of the jury, when he stated, 21 How. at page 111: "The weight or effect of the testimony, or the deductions to be drawn from it, were peculiarly and exclusively within the province of the jury; and the Court had no power to inform them, or intimate that evidence * * * should be construed in any particular way, or to say to them *a priori* that an interpretation different from that of the Court, as to the weight of evidence, would be absurd."

In Carson, "Supreme Court of the United States", Vol. 1, page 301, this legal historian has written about Daniel: "He wielded the pen of a ready writer, was a man of cultivated literary taste and retained through life his familiarity with the classics, quoting Latin freely in his opinions * * *. His views were marked by a certain degree of eccentricity, and do not seem to have been shared by other members of the (Supreme) Court * * *. He contributed but little to the development of the law and the value of his opinions is mainly historical. The number of his dissenting opinions is remarkable, and even where he concurred in the judgment pronounced, he rarely acquiesced in the reasons assigned, preferring to state them in his own way." That seems to me pretty fair as far as it goes. Carson, however, might have added that Daniel, a rugged conservative of high character, played a large part in the events of his day and time, and that he had the courage of his fierce convictions which he expressed in vigorous language. There were no "weasel words" in Daniel's vocabulary.

As to Daniel's probable successor on the Supreme Court, Warren, "History of the Supreme Court", Vol. 3, page 80, wrote: "The strongest and ablest candidate suggested was William J. Robertson, Chief

of the Court of Appeals of Virginia." Robertson, however, who lived here in Charlottesville, was not appointed. So Daniel will also be remembered as the last Virginian to sit on the United States Supreme Court. Virginia, the acknowledged Mother of Presidents, has, as the Mother of Supreme Court Justices, been sterile for nearly a century. To the best of my knowledge, in that role, she is not now pregnant.

Always conservative, frequently reactionary, sometimes quixotic, Daniel fought bitterly against change in the social, political and legal order. He was, indeed, a worshipper, though not a silent one, at the shrine of the *status quo*. His legal eye was focused on the past; his juristic vision gave him no glimpses of the future. He was as fiercely feared by his enemies as he was loyally loved by his friends. And no one can doubt that he firmly believed in the causes for which he so valiantly, albeit unsuccessfully, fought, during all the years of his stormy life.

John Young Mason

The next judge of the federal District Court was John Young Mason, appointed in 1841, who remained on the bench for a short tenure of only three years.

He was born in Sussex County, Virginia, April 18, 1799. At the early age of 17, he was graduated from the University of North Carolina, which later conferred on him the honorary degree of Doctor of Laws. After studying law at the Litchfield (Connecticut) Law School (one of the earliest American law schools), he was admitted to the Virginia Bar in 1819 and began the practice of law in Southampton County, Virginia. In 1821, he married Mary Anne Fort, and became the father of eight children.

The history of Mason's life is largely a story of the many high public offices that he held. His political life began in 1831, when he entered the Virginia Legislature. Finding legislative work to his liking, he then went on to the federal Congress where he served for six years, adding no little to his reputation and becoming Chairman of the important House Committee on Foreign Affairs. While in Congress, he introduced the Bill recognizing the independence of Texas. In 1838 he was defeated as a candidate for the United States Senate. Appointed to the federal District bench in 1841, after three years of service as District Judge, he resigned that office on March 5, 1844.

But Mason could not long remain a private citizen. Later that same year he entered the Cabinet of President Tyler as Secretary of the Navy. Another Cabinet position came his way the next year when he became President Polk's Attorney General. It was no mean compliment to Mason that he was the only member of President Tyler's Cabinet who was retained by President Polk. He delivered the eulogy upon the death of President Polk.

In 1849 he moved to Richmond, Virginia, where he practised law with conspicuous success. He also found time to serve in the Virginia Constitutional Convention of 1850 and to serve as President of the James River and Kanawha Company. Realizing the economic importance of a transportation system between Virginia and the Middle West, he urged the quick extension of the Canal to Ohio. He closed his public life as a diplomat, serving under appointment of President Pierce, as Envoy Extraordinary and Minister Plenipotentiary to France, where he signed, with Buchanan and Soulé, the celebrated Ostend Manifesto. He died in Paris October 3, 1859.

As a lawyer, Mason attained distinction in competition with an unusually brilliant Bar. There is little doubt that he would have attained even higher rank at the Bar, had not so large a part of his life been spent in public office. He appeared before the Supreme Court in *Head v. Providence Insurance Company*, 2 Cranch 127, and *Graves v. Boston Marine Insurance Company*, 2 Cranch 419. These were among the earliest cases involving significant questions of the law of corporations and marine insurance.

On the federal District Court, he proved an efficient, capable and satisfactory, if not a great, judge. His brief judicial tenure of just three years hardly enabled him to make any outstanding contributions to our law. His lucid opinion in the case of *Bean v. The Grace Brown*, 2 Fed.Cas. 1136, No. 1,171, however, has oft been cited and widely quoted. In that case, a ship, abandoned by its crew *animo revertendi*, was found by pilots and brought safely to port. Assessing the value of the ship and cargo at \$38,000., Judge Mason made an award of \$2,400. in favor of the salvors. John Randolph Tucker wrote of him, 1 Va.Law Reg.: "His style was eloquent and persuasive and on the bench his manners were models of judicial dignity and courtesy."

In the important events of his day and time, a formative period in the history of these United States, Mason played a gallant and conspicuous part. The list of public offices that he held is positively staggering. And it is upon his conduct of these offices that his fame will ultimately rest. In all of them he both practised and preached the maxim (now, according to recent disclosures in Washington, held in very light esteem) that a public office is a public trust, in which we should expect an ethical standard, in Justice Cardozo's striking phrase, above "the morals of the market place."

Mason's contemporaries have borne cheerful testimony to the charm of his engaging personality, his genial nature, his generous hospitality and his ever present sense of humor. Upon Mason's death, his services were extolled in an eloquent memorial address by Governor Wise of Virginia. And Bean thus concludes his sketch of Mason in the *Dictionary of American Biography*: "Courteous, generous and popular, Mason was a loyal Virginian, devoted to the institutions and the social and political ideas of the State."

LECTURE 3

James Dandridge Halyburton

Mason's successor as United States District Judge was James Dandridge Halyburton, appointed by President Tyler in 1843. He continued in that office until he resigned upon the secession of Virginia in 1861.

He was born, 1803, in New Kent County, Virginia. His father, Dr. William Halyburton, a distinguished physician, came to America from Scotland in 1785; his mother was born Martha Washington Dandridge, a niece of Martha Washington. At Harvard College, from which he graduated with honors, with election to Phi Beta Kappa, he was a class-mate of the celebrated Edward Everett. His legal education was received here at the University of Virginia Law School.

He practiced law in New Kent County with success, riding the Circuit with Judge John Christian, and became Commonwealth's Attorney of that County. Like so many of his predecessors as District Judge, he was a member of the Virginia Legislature. Twice married, his first wife was a Miss Hendren, his second wife was a daughter of Governor Giles of Virginia. His service as federal District Judge began in 1844 and continued for seventeen years. The very day Virginia seceded from the Union, he resigned his federal judgeship.

President Jefferson Davis promptly appointed him Judge under the Confederacy. In that capacity, when Jefferson Davis was sworn in as President of the Confederate States, the honor of administering the formal oath of office to him fell to Judge Halyburton.

Halyburton lost little time in setting in motion the wheels of justice in his new role of Confederate Judge, for he opened court in Richmond June 12, 1861, and the gilt letters "United States Court" were promptly taken down from the portico of the Custom House. He promulgated a new code of some fifty-two rules to govern practice and procedure in his court.

Unfortunately, we know too little of the courts of the Confederacy and of the judges who sat in them. One excellent book in this field is "Justice in Grey; A History of the Judicial System of the Confederate States of America," by William M. Robinson, Jr. Too true is it, as this author says in his preface: "The tale of courts and cases in the Confederate States has never been adequately told." From this book, pages 146, 181, 182, we learn: "In May 1862, when it appeared that McClellan's drive up the Peninsula might be successful, Judge Halyburton removed federal prisoners from the City Jail of Richmond to the jail of Pittsylvania County." "The federal court was crowded out of its accustomed seat and moved down the street one block to the State Court Building, on the Southeastern corner of Capitol Square, where Bank Street by a slight offset becomes Franklin Street.

Here Judge Halyburton held court until the building was destroyed by fire on September 6, 1863. The court then removed down Franklin Street two blocks to the corner of Fourteenth Street, where it finished its existence."

"Justice in Grey" gives brief descriptions of a number of cases tried by Judge Halyburton as a Confederate judge. These include libels in admiralty, under which several captured ships were condemned and sold as prizes of war, and cases involving the sequestration of property owned by enemies of the Confederacy. One person was found guilty of counterfeiting Treasury Notes of the Confederate States of America and was hanged—a severe penalty for this offense.

After the end of the Civil War, he resumed the practice of law in Richmond, with his brother-in-law, Thomas T. Giles. He also taught in the Law School of Richmond College with William Green, a distinguished lawyer of that day. Mrs. Dorothy Suits, a granddaughter of Judge Halyburton, has written to me: "I still have his law lectures as he wrote them for his students at Richmond College, hoping that some day one of my six sons will become interested in the law." Judge George Christian, in "Reminiscences of Some of the Dead of the Bench and Bar of Richmond", 14 Va.Law Reg. 656, 660-661, wrote of him as a law teacher: "He was eminently suited by his learning, but I suspect unfitted for it by reason of the fact that he was hardly dogmatic enough in his style to be a successful teacher." If by this, Judge Christian implied that dogmatism is an essential characteristic of a successful law teacher, I disagree with him exactly one hundred per cent. My observation is based on an experience of more than forty-five years in American Law Schools, in six of which I have been a teacher, and in three, a student.

During the last years of Halyburton's life, his activities were severely restricted by the effects of a paralytic stroke, from which he never recovered, but which he endured with cheerfulness, patience and fortitude. He died in 1879, and was buried at Richmond in Hollywood Cemetery, where sleep so many of Virginia's distinguished sons.

In 1927, a portrait of Judge Halyburton was hung in the United States District Courtroom in Richmond. The portrait was presented by George Bryan of the Richmond Bar, was unveiled by Daniel Suits, eight year old great grandson of Judge Halyburton, and was accepted, in an eloquent address by United States District Judge Lawrence Groner, afterwards Chief Justice of the Court of Appeals of the District of Columbia. In this address, Judge Groner said: "Judge Halyburton was born in the early days of the formation of this government, at a time when many great actors in the establishment of the government were alive. He associated with these men; he imbibed from them the principles which they themselves exhaled, not the least of which were an abiding conviction of the rights of the States, but at the same time a loyal reverence for the Constitution. He was appointed by a Virginia President, a near neighbor. He came to the

bench in the fullness of his learning and experience and his judicial career met fully the expectations of his friends."

As a judge, Halyburton was patient, kindly, thorough, painstaking and efficient. These qualities are reflected in his written opinions. The judicial pen that he wielded was neither trenchant, dramatic nor vivid. He could hardly be said to be either great or brilliant. Chief Justice Taney, who sat with him in a number of cases, esteemed him as a friend and admired him as a judge. And certainly Taney was a good judge of judges. When the two sat together, however, Halyburton was no "yes man" or "rubber stamp" to the Chief Justice. *United States v. Clements and Reid*, Fed.Cas.No.14,817, 3 Hughes 509, was a criminal case involving two questions—the admissibility of the evidence of an accomplice and whether the affidavits of jurors could be received to impeach their verdict. Halyburton did not hesitate to disagree with Taney on both of these questions.

Another testimonial to Halyburton's judicial efficiency was the fact that he was rarely reversed by the Supreme Court. In *Powhattan Steamboat Company v. Appomattox Railroad Company*, Fed.Cas.No. 11,363, however, his decision that a carrier is not liable for the loss of goods delivered to the carrier on Sunday, was unanimously reversed by the Supreme Court in a resounding opinion by Mr. Justice Clifford, 24 How. 247.

His contemporaries have with rare unanimity emphasized the purity of his character and his excessive modesty. He seems, indeed, to have lived (to use Kipling's striking phrase) in "simpleness and gentleness and honor and clean mirth." Judge George Christian, a contemporary, wrote of him, "Reminiscences of Some of the Dead of the Bench and Bar of Richmond," 14 Va.Law Reg. 656, 660-661: "Halyburton was a profound lawyer, a cultured classical scholar and one of the most polished gentlemen I ever knew."

John George Jackson

Two rather remarkable men remain for extended consideration—John George Jackson and John White Brockenbrough. These men were United States District Judges for the Western District of Virginia, after the State was divided into two judicial districts. It must be remembered that the Western District of Virginia was then far larger than it now is. In those days, Virginia included what is now the State of West Virginia, torn from the Mother State as a tragic result of the Civil War.

Jackson, the first United States District Judge for the Western District of Virginia, was born at Buckhannon, Virginia (now West Virginia) in 1774, of distinguished lineage. His father was an Indian fighter, Colonel in the Continental Army and a member of Congress. General "Stonewall" Jackson was one of his relatives. When Jackson was about ten years old, the family moved to Clarksburg.

After what was then considered a liberal education, Jackson studied civil engineering. So proficient did he prove in this field that in 1793, he was appointed surveyor of public lands West of the Ohio River, a great compliment to a youth only nineteen years old. In those days, preferment seems to have come readily to young engineers. You may remember another young Virginia civil engineer, who rose rather rapidly in war and peace. His name was George Washington.

Jackson's first excursion into active politics came when he was elected to represent Harrison County in the Virginia Legislature. In that body, he quickly became a leading figure, lending active support to the measures sponsored by the Republicans of that day. He also introduced bills providing for the establishment of Chancery Courts at Winchester and Clarksburg. Then he served in Congress from 1803 to 1810. Resigning from that body to re-enter the Virginia Legislature, he again returned to Congress, serving from 1814 to 1817, when he declined re-election.

In addition to his other activities, Jackson had found time to read law. He was admitted to the Virginia Bar in 1801 and lost little time in establishing a reputation as one of the leaders of this profession. Jackson fought a duel with pistols in 1809. His opponent was Joseph Pearson, of North Carolina. Pearson was badly wounded in this encounter and Jackson was lamed for the rest of his life. From Haymond's "History of Harrison County," I glean this item: "This wound caused him to go on horseback a great deal. Many of the old surveys made by him have the line and corner trees marked with the tomahawk, high up from the rest of the tree, showing them to have been made by a horseman." He was, nevertheless, commissioned in 1810 as Brigadier General of the Militia. An interesting event to us in Jackson's life was his sitting with Jefferson as a member of the celebrated Rockfish Commission that, in 1818, determined the site, here in Albemarle County, of the University of Virginia.

Jackson, in 1801, married Mary Payne, a sister of Dolly Madison. He thus became a brother-in-law of President Madison. This was the first wedding celebrated in the White House. His first wife died seven years later, and, in 1810, Jackson married Mary Meigs, daughter of Governor Return Meigs, of Ohio. Since, by his first wife, Jackson was the grandfather of Governor Jackson, of West Virginia, he enjoyed the distinction, if such it be, of being the brother-in-law of a President of the United States, the son-in-law of the Governor of one State, and the grandfather of the Governor of another State.

President Monroe, in 1819, appointed Jackson the first United States District Judge for the Western District of Virginia. Jackson continued in this office till his untimely death at Clarksburg, in 1825, at the age of fifty-one years. He was thus a federal judge for only six years. Not many cases of more than local interest seem to have been tried in his court and few of his opinions have found their way into print. One probable explanation of this was the destruction of the

judicial records by a fire in the court-house at Clarksburg. Accordingly, Jackson's reputation was made chiefly in fields other than jurisprudence, though he possessed in no small measure the qualities necessary for a successful career on the bench. And there is adequate evidence that he presided with dignity and fairness over the cases he was called upon to hear.

In the halls of Congress, Jackson proved a forceful speaker, a ready and resourceful debater. A friend of three Presidents, Jefferson, Madison and Monroe, he was highly esteemed by all of them. He championed, in Congress and out, the policies and measures for which his three presidential friends stood and fought. Not infrequently his voice was raised in defense against the attacks of one of the most vitriolic and brilliant of American statesmen, John Randolph of Roanoke. Quite justly, Jackson was generally regarded as one of the ablest and one of the most influential Congressmen of his day.

With remarkable foresight, he laid the foundations for the economic development of what is now West Virginia. He fought for improved water and highway facilities, for public improvements of many kinds, which have proved of incalculable benefit to his State and people. Mines, foundries, furnaces, factories, tanneries and mills—all were fostered and developed by his untiring energy and forward-looking vision. He built dams on the rivers around Clarksburg, in aid of navigation, and ran flat boats over these rivers to the neighborhood of Pittsburgh. Often he was called "the most remarkable man West of the mountains." Much can be said to show that he richly merited this title, for he proved himself a practical engineer, a successful lawyer, an eloquent orator, an eminent statesman, an able judge, a patriotic citizen and a sound economist. For versatility alone, that combination can rarely be equalled.

In an article appearing in the Clarksburg Intelligence, shortly after Jackson's death, it was stated that as judge, "he distinguished himself by the urbanity of his manner, the dignity of his deportment, the eloquence of his charges and the ability of his decisions * * *

As a husband, father, friend, in all the relations of life, public and private, he has faithfully discharged his duties."

John White Brockenbrough.

This brings me to the last, but by no means the least, of these judges, John White Brockenbrough.

He was born in Hanover County, Virginia, December 23, 1806. His father, William Brockenbrough, was a jurist of unusual distinction, serving in turn in Virginia as Circuit Judge, President of the General Court, and Judge of the Supreme Court of Appeals. From his father, he seems to have inherited a native ability for the law. He was a student at William and Mary College, then entered the University of Virginia at the opening of its first session. Then he studied in the

Law School conducted by the celebrated Henry St. George Tucker, at Winchester, Virginia.

Brockenbrough's studious habits soon established for him a reputation as a sound and thorough lawyer, which led to his selection as Commonwealth's Attorney for Hanover County. In 1834, he moved to Rockbridge County, where he continued to practice his profession with notable success. There he married Mary Bowyer, daughter of one of the most influential and prominent citizens of that County.

In 1837, he published in two volumes, Brockenbrough's Reports of the decisions of Chief Justice Marshall in the United States Circuit Courts sitting in Virginia and North Carolina. These reports added no little to his fame, for they were considered a valuable part of the library of every notable Virginia lawyer of that day, and proved a lasting testimonial to Brockenbrough's industry and professional skill. For a time, he was a member of the third estate, serving in succession to John Letcher as editor of the Lexington Valley Star.

In 1845, he was appointed United States District Judge for the Western District of Virginia, by President Polk, according to the Lexington Gazette, "when judges were selected for their ability, legal learning and personal dignity." I commend that quotation from the Gazette to Presidents of the United States, present and future, whose duty it is to appoint all federal judges. I am bitterly and unalterably opposed to the idea that the federal bench is a convenient and suitable repository for political lame-ducks and unemployed cronies. Brockenbrough served as District Judge until the outbreak of the Civil War, a period of sixteen years, when he (as was the case with Judge Halyburton) resigned his federal judgeship to accept from Jefferson Davis an appointment as a judge of the Confederate States. In a Lexington newspaper of those days, there is a rather vivid account of his trying and sentencing a number of people who were found guilty of aiding deserters from the Confederate Army. His service as a judge of the Confederacy closed his judicial career.

Brockenbrough was designated by the Virginia Legislature a member of the Peace Congress, appointed in the hope (that too tragically turned out to be vain) that the Civil War might be prevented. He was quite successful in another and happier mission. Washington College in 1865 chose him as its emissary to extend on its behalf the invitation to General Robert E. Lee to become the president of that educational institution. For his skill in that enterprise, he was thanked in a formal resolution by Washington College's Trustees. He made the trip to Powhatan County, where General Lee was then sojourning, on horseback. The story is told that, having no suitable attire of his own, Judge Brockenbrough had to borrow a proper suit of clothes for that momentous occasion.

In 1849, he founded the Lexington Law School. Its reputation spread swiftly and soon he numbered among his pupils a remarkable group of young men who, afterwards, proved to be ornaments to the

bench and bar. Its operations were suspended during the Civil War; but, in 1866 General Lee induced Judge Brockenbrough to incorporate his law school into the Law School of Washington College. A few years later, John Randolph Tucker became a colleague of Judge Brockenbrough. I could not express for the distinguished Law School of Washington and Lee University a finer hope than that it should long continue in the spirit and tradition of a magnificent trinity, Brockenbrough, Tucker and Lee.

In 1873, Judge Brockenbrough retired from the teaching of law and again entered into the practice of law in Lexington. On February 20, 1877, at the age of seventy-one, after an exceedingly full life, he died. He is buried in the Lexington Cemetery.

He has been widely, and justly, acclaimed as among the few really great American teachers of law, who were revered and beloved by their pupils. It is said that he made a practice of having his pupils attend court while he was sitting in important cases so that they might not only study the law in books but also see the law in action. Judge Brockenbrough not only established a moot-court but he gave one of the first courses in Federal Jurisdiction and Procedure ever offered in any Law School. That is of particular interest to me since I taught that course in the University of Virginia Law School for more than thirty years. He was ahead of his time, too, in insisting that an adequate law library was essential to a high grade law school. In his teaching, he made wide use of the reports of cases. Indeed, the claim has been made that he was at least the forerunner of the Case System of legal instruction, which under Dean Langdell became the glory of the Harvard Law School and is now almost universally used in American law schools.

It is a sad blot on the academic escutcheon of Washington and Lee University that Judge Brockenbrough was peremptorily dismissed when he was old and poor. Shortly before his death he wrote, trying to collect an unpaid bill from an old student: "My parlor furniture is under levy of the tax gatherer * * * unless provision is made for the payment of arrears in taxes at once, I will be subjected to the mortification of having it sold for a song." Truly this was a tragic end to a distinguished career. This dismissal of Judge Brockenbrough could not have happened in the lifetime of General Lee.

As a judge, Brockenbrough's reputation shines with a clear, bright and steady light. To a marked degree, he possessed the qualities of an ideal jurist. The claim has been made that no decision of his was ever reversed by the Supreme Court. I have not been able to check this claim; I certainly cannot deny it. His opinions are clear and concise. A few of them deserve brief mention. In *Brown v. Huger*, Fed.Cas.No.2,013, an important case involving land boundaries, he laid down the doctrine that, in cases where they are inconsistent, course and distance must yield to a natural or artificial monument. *Campbell v. United States*, Fed.Cas.No.2,373, upheld the constitu-

tionality of the federal statute which made the circulation of counterfeit coin a federal crime. In *United States v. Sterland*, 27 Fed.Cas. 1307, No. 16,387, he refused, in a criminal trial, evidence of a witness (who died before the second trial) given at a former trial. *Vint v. King*, Fed.Cas.No.16,950, demonstrated his consummate skill in handling an extremely involved and complicated will case.

In 1936, a portrait of Judge Brockenbrough was hung in Rockbridge County Court House. In presenting this portrait, Dean Moreland thus closed a splendid address: "Living a long life, which extended over some of the most critical periods of our country's history, as lawyer, judge, statesman, scholar and teacher, he played a splendid part." His friend and colleague, John Randolph Tucker, wrote of him: "Profound student of law, patient and thorough in preparation, vigorous and impressive in argument." John W. Davis, probably the most distinguished living alumnus of the Washington and Lee Law School, has written of Judge Brockenbrough: "My father was enrolled among his pupils. * * * My father often spoke of Judge Brockenbrough in terms of respect and affection and during a long life at the bar, a likeness of Judge Brockenbrough adorned his office wall." And Professor Charles A. Graves, who knew him well, penned this tribute: "As an advocate, his logic was severe and powerful, his pathos profound and stirring. In grace and courtliness of manner, he was unsurpassed. This was the noblest Roman of them all."

Judges Pendleton, Caldwell and Pennybacker

I have discussed at some length ten federal judges who sat on the federal district bench in Virginia before the Civil War. These include all the judges who sat when Virginia was a single district, all those, after the State was divided into two districts, who sat for the Eastern District of Virginia, and two judges, Jackson, the first, and Brockenbrough, the last, who sat in the Western District of Virginia. To make the record complete, I must mention briefly the three judges who sat in the Western District between Jackson and Brockenbrough—Judges Pendleton, Caldwell and Pennybacker.

Jackson's successor was Philip Clayton Pendleton, a member of the distinguished family of that name. He is interesting to us as a member of the Board of Commissioners for building the University of Virginia. Since he held only a single term of court, he is of little consequence as a federal judge. So, without in any way wishing to disparage him, I must pass him by with this very brief comment.

Pendleton was succeeded by Alexander Caldwell, who sat for fourteen years, from 1825, to 1839. Born in New Jersey in 1774, he moved, when he was quite young, with his family to the vicinity of Wheeling. After serving an apprenticeship in the office of Philip Doddridge, a distinguished lawyer of that day, he swiftly built up a large practice at the bar of Wheeling. According to Bishop Meade's "Old Churches, Ministers and Families of Virginia," Vol. 2, p. 338: "Judge Caldwell

was a man of high character and standing in every position in society, but above all was a humble Christian."

In a day when oratory was in flower, Judge Caldwell was indeed master of the magic word. Of his oration when Lafayette visited Wheeling in 1824, a chronicler of that time has written: "Those who heard the speech never forgot it because of its practical nature and the beautiful language with which his ideas were clothed."

This same writer refers to "his wise and just rulings while on the bench." Though none of his opinions seems to have crept into the reports, he earned and deserved a reputation as an excellent judge, who upheld the best traditions of the federal bench, though he clearly fell short of judicial greatness. Particularly was he known for his sympathy with, and his solicitude for, the poor and under privileged who appeared in his court.

Quite a man of parts was Caldwell's successor, Isaac Samuels Pennybacker, who served as District Judge for six years, from 1839 to 1845. Born in Shenandoah County, Virginia, 1807, he was educated in "old field" schools, Washington College and the Winchester Law School, and commenced the practice of law, in which he attained conspicuous success and influence, at Harrisonburg.

His public career began with his election to Congress at the tender age of twenty-nine, in 1837. After serving one term in that body, he was, in 1839, appointed United States District Judge for the Western District of Virginia by President Van Buren. He left the bench to enter the United States Senate in 1845, but died in 1847, after serving only two years in that august body. He is buried in Woodbine Cemetery, Harrisonburg.

He declined President Van Buren's offer of the Attorney Generalship of the United States, refused appointment as Justice of the Supreme Court of Appeals of Virginia, and resisted the efforts of his friends and admirers who sought to make him Governor of Virginia. He was a member of the Board of Regents of the Smithsonian Institute in Washington. Surely, official honors in large measure came to him during his short life of just less than forty years. A salty and picturesque character, Pennybacker is described by Wayland, "The German Element of the Shenandoah Valley of Virginia," page 137, as "one of the most distinguished lawyers and politicians of his generation." Certainly he was a man who exercised a wide influence not only in, but far beyond, the confines of the community in which he lived.

Brief though it was, Pennybacker's tenure of judicial service added no little to his already distinguished reputation. In the Federal Cases, only one of his opinions is reported but that opinion, covering less than a page, is a model of incisive brevity. In *re Cease*, Fed.Cas.No.2,540. He there held that, under the then existing federal law, a person who owed debts in a fiduciary capacity, though he also owed some other debts, could not be adjudicated a bankrupt.

