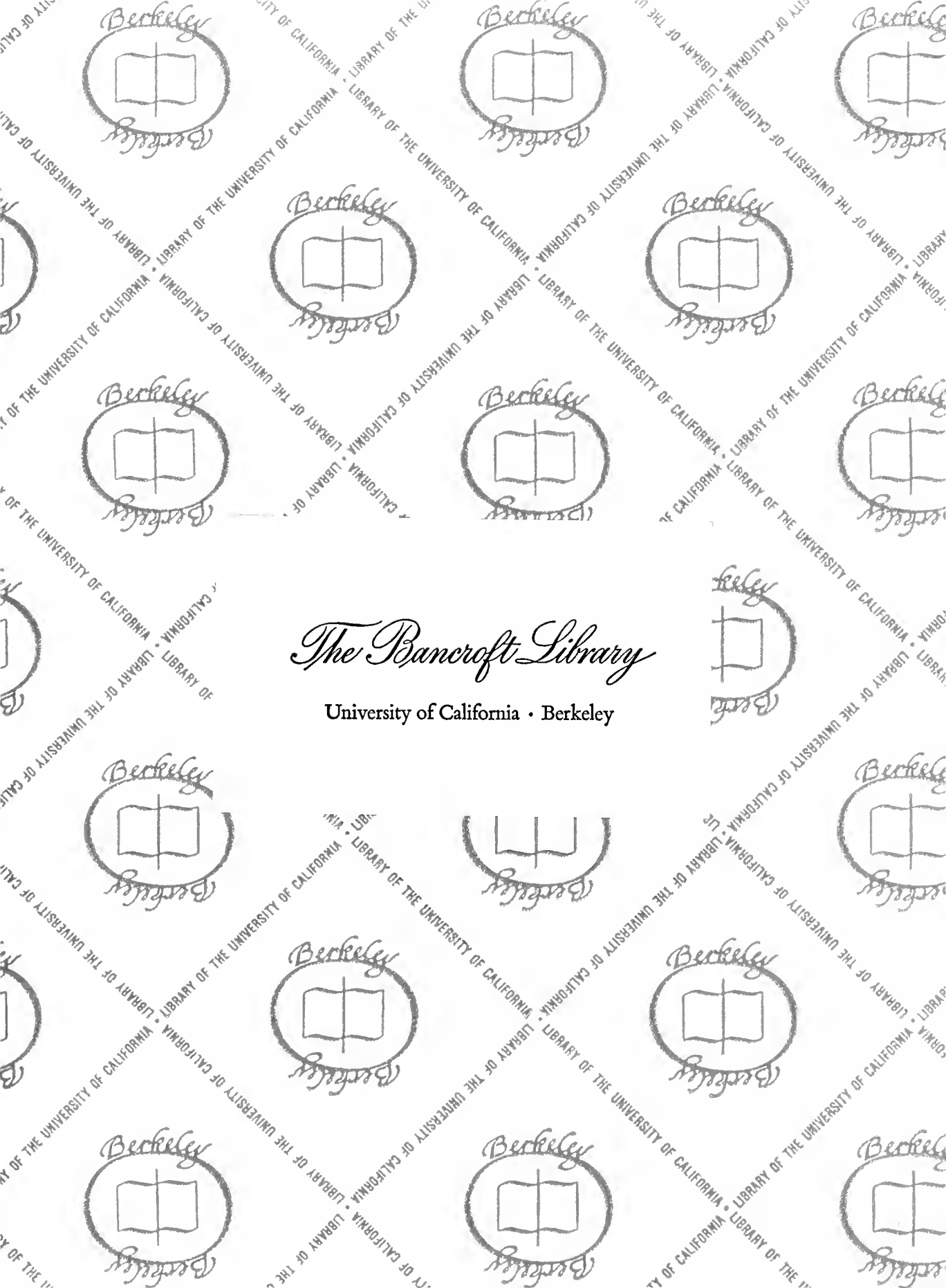
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Berkeley, California

Earl Warren Oral History Project

Warren Olney III

LAW ENFORCEMENT AND JUDICIAL ADMINISTRATION IN THE EARL WARREN ERA

With an Introduction by
Herbert Brownell

Interviews Conducted by
Miriam F. Stein and Amelia R. Fry
1970 through 1977

It is recommended that the oral history be cited as follows:

> Warren Olney III, "Law Enforcement and Judicial Administration in the Earl Warren Era," an oral history conducted 1970 through 1977 by Miriam F. Stein and Amelia R. Fry, Regional Oral History Office, The Bancroft Library, University of California, Berkeley, 1981.

WARREN OLNEY III

ca. 1955

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PREFACE

The Earl Warren Oral History Project, a special project of the Regional Oral History Office, was inaugurated in 1969 to produce tape-recorded interviews with persons prominent in the arenas of politics, governmental administration, and criminal justice during the Warren Era in California. Focusing on the years 1925-1953, the interviews were designed not only to document the life of Chief Justice Warren but to gain new information on the social and political changes of a state in the throes of a depression, then a war, then a postwar boom.

An effort was made to document the most significant events and trends by interviews with key participants who spoke from diverse vantage points. Most were queried on the one or two topics in which they were primarily involved; a few interviewees with special continuity and breadth of experience were asked to discuss a multiplicity of subjects. While the cut-off date of the period studied was October 1953, Earl Warren's departure for the United States Supreme Court, there was no attempt to end an interview perfunctorily when the narrator's account had to go beyond that date in order to complete the topic.

The interviews have stimulated the deposit of Warreniana in the form of papers from friends, aides, and the opposition; government documents; old movie newsreels; video tapes; and photographs. This Earl Warren collection is being added to The Bancroft Library's extensive holdings on twentieth century California politics and history.

The project has been financed by four outright grants from the National Endowment for the Humanities, a one year grant from the California State Legislature through the California Heritage Preservation Commission, and by gifts from local donors which were matched by the Endowment. Contributors include the former law clerks of Chief Justice Earl Warren, the Cortez Society, many long-time supporters of "the Chief," and friends and colleagues of some of the major memoirists in the project. The Roscoe and Margaret Oakes Foundation and the San Francisco Foundation have jointly sponsored the Northern California Negro Political History Series, a unit of the Earl Warren Project.

Particular thanks are due the Friends of The Bancroft Library who were instrumental in raising local funds for matching, who served as custodian for all such funds, and who then supplemented from their own treasury all local contributions on a one-dollar-for-every-three dollars basis.

The Regional Oral History Office was established to tape record autobiographical interviews with persons prominent in the history of California and the West. The Office is under the administrative supervision of James D. Hart, Director of The Bancroft Library.

Amelia R. Fry, Director
Earl Warren Oral History Project

Willa K. Baum, Department Head
Regional Oral History Office

30 June 1976
Regional Oral History Office
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University of California at Berkeley

EARL WARREN ORAL HISTORY PROJECT

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EARL WARREN ORAL HISTORY PROJECT
(California, 1926-1953)

Single Interview Volumes

Amerson, A. Wayne, *Northern California and Its Challenges to a Negro in the Mid-1900s*, with an introduction by Henry Ziesenhenne. 1974, 103 p.

Breed, Arthur, Jr., *Alameda County and the California Legislature: 1935-1958*. 1977, 65 p.

Carter, Oliver J., *A Leader in the California Senate and the Democratic Party, 1940-1950*. 1979, 200 p.

Carty, Edwin L., *Hunting, Politics, and the Fish and Game Commission*. 1975, 104 p.

Chatters, Ford, *View from the Central Valley: The California Legislature, Water, Politics, and The State Personnel Board*, with an introduction by Harold Schutt. 1976, 197 p.

Dellums, C. L., *International President of the Brotherhood of Sleeping Car Porters and Civil Rights Leader*, with an introduction by Tarea Pittman. 1973, 159 p.

Faries, McIntyre, *California Republicans, 1934-1953*. 1973, 155 p.

Graves, Richard, *Theoretician, Advocate, and Candidate in California State Government*. 1973, 219 p.

Huntington, Emily H., *A Career in Consumer Economics and Social Insurance*, with an introduction by Charles A. Gulick. 1971, 111 p.

Jahnsen, Oscar J., *Enforcing the Law Against Gambling, Bootlegging, Graft, Fraud, and Subversion, 1922-1942*. 1976, 212 p.

Johnson, Gardiner. In process.

MacGregor, Helen S., *A Career in Public Service with Earl Warren*, with an introduction by Earl Warren. 1973, 249 p.

McGee, Richard Allen, *Participant in the Evolution of American Corrections: 1931-1973*. 1976, 223 p.

McLaughlin, Donald, *Careers in Mining Geology and Management, University Governance and Teaching*, with an introduction by Charles Meyer. 1975, 318 p.

Olney, Warren III, *Law Enforcement and Judicial Administration in the Earl Warren Era.* 1981, 523 p.

Patterson, Edgar James, *Governor's Mansion Aide to Prison Counselor,* with an introduction by Merrell F. Small. 1975, 79 p.

Pittman, Tarea, *NAACP Official and Civil Rights Worker,* with an introduction by C. L. Dellums. 1974, 159 p.

Powers, Robert B., *Law Enforcement, Race Relations: 1930-1960,* with an introduction by Robert W. Kenny. 1971, 180 p.

Rumford, William Byron, *Legislator for Fair Employment, Fair Housing, and Public Health,* with an introduction by A. Wayne Amerson. 1973, 152 p.

Sherry, Arthur H., *The Alameda County District Attorney's Office and the California Crime Commission.* 1976, 146 p.

Small, Merrell F., *The Office of the Governor Under Earl Warren.* 1972, 227 p.

Sweigert, William, *Democrat, Friend, and Advisor to Earl Warren.* In process.

Taylor, Paul Schuster, *CALIFORNIA SOCIAL SCIENTIST,* Three Volumes.
Volume I: *Education, Field Research, and Family,* with an introduction by Lawrence I. Hewes. 1973, 342 p.
Volume II and III: *California Water and Agricultural Labor,* with introductions by Paul W. Gates and George M. Foster. 1975, 519 p.

Warren, Earl, *Conversations with Earl Warren on California Government.* In process.

Wollenberg, Albert, *To Do the Job Well: A Life in Legislative, Judicial, and Community Service.* 1981, 396 p.

Multi-Interview Volumes

PERSPECTIVES ON THE ALAMEDA COUNTY DISTRICT ATTORNEY'S OFFICE, with an introduction by Arthur H. Sherry. Three volumes.

Volume I: 1972, 137 p.
Mullins, John F., *How Earl Warren Became District Attorney.*
Balaban, Edith, *Reminiscences about Nathan Harry Miller, Deputy District Attorney, Alameda County.*
Hamlin, Judge Oliver D., *Reminiscences about the Alameda County District Attorney's Office in the 1920s and 30s.*
Shaw, Mary, *Perspectives of a Newspaperwoman.*
Shea, Willard W., *Recollections of Alameda County's First Public Defender.*

Volume II: 1973, 322 p.
Chamberlain, Richard H., *Reminiscences about the Alameda County District Attorney's Office.*
Jester, Lloyd, *Reminiscences of an Inspector in the District Attorney's Office.*

INTRODUCTION by Herbert Brownell

Warren Olney's memoirs in the Earl Warren Oral History Project add significantly to the story of the life and times of his good friend, the chief justice. But they reveal, too, the highlights of Warren Olney's own professional and public activities that will not only be useful to historians and legal scholars but also will illuminate his own career. His career was that of an outstanding lawyer and teacher and of a public servant of great integrity who served the nation and his state of California with distinction. He was a man of deep convictions and high standards, with a capacity for unselfish friendship and service to his community.

I became acquainted with Warren Olney shortly after the election of President Dwight D. Eisenhower. The president-elect requested me to recommend someone to head the criminal division of the Department of Justice and, accordingly, I undertook a nationwide survey of attorneys who had demonstrated their ability to enforce the criminal laws in their community. Outstanding among the successful prosecutors of the country at that time was Warren Olney, who had a rich experience in the field by designation of Earl Warren and whose standards of conduct and professional qualification were unimpeachable. Accordingly, I arranged a meeting with him in New York where we discussed the problems facing the Department of Justice in the field of criminal enforcement and I concluded that he was ideally fitted for the post of assistant attorney general. President Eisenhower, after meeting with Mr. Olney, offered him the appointment and he accepted. His acceptance was an act of dedication to the public service because it required him to disrupt his personal and professional plans and leave congenial surroundings in California to move to Washington and assume a difficult and controversial assignment.

The criminal division of the Justice Department at that time comprised a large central staff in Washington and required supervision over the United States Attorneys and their staffs in every state of the union. In addition to enforcement of the federal criminal statutes, the division was charged with heavy responsibilities in the field of civil rights, internal security and corruption in the government. During the years that he headed the criminal division, he improved its standards of integrity, its administrative efficiency, and brought new energy and leadership to the office.

In the field of civil rights, he inherited a staff of only three or four attorneys with an inadequate budget and inadequate federal statutes which frustrated any attempt to enforce the constitutional safeguards in the field of civil rights. Before he left the office, he had contributed significantly to the formulation and passage of the Civil Rights Act of 1957, which was the first civil rights act enacted since the reconstruction days following the Civil War. He laid the groundwork for the enforcement of new statutes which

eliminated the roadblocks for blacks to exercise their voting rights. He also performed yeoman service in connection with the great constitutional crisis in the field of civil rights involving the opening of the public schools in Little Rock, Arkansas, to black children.

In the field of government corruption, he established high standards of nonpartisan enforcement of the federal criminal laws and successfully prosecuted, in some cases with his personal participation, several notable cases involving government officials who had transgressed the law. In the field of labor racketeering, he brought the first substantial cases under the Hobbs Act and established the standards for prosecution in this area.

In the field of internal security, he faced a plethora of statutes passed in the late 1940s which were not only very controversial but appeared to violate constitutional rights of individual citizens by imposing severe restrictions on their freedom of speech and association. He brought about a test of these statutes including the Subersive Activities Control law, the McCarran Act, and allied measures, which resulted in landmark decisions by the Supreme Court defining the limitations of government intervention in this field.

All in all, he made an outstanding contribution to federal law enforcement, one which is having a continuing beneficial effect by reason of the improvements in prosecuting methods and administrative efficiency which he established. But most of all, during this period of his life Warren Olney demonstrated by personal example the formula for an ideal public servant--professional skill, integrity and zeal. He displayed warm personal qualities of friendship with his co-workers and deserves a lasting tribute of his fellow citizens for his devotion in public service.

The segment of his lifetime activities encompassing his years in the Department of Justice constituted a small part of his lifetime contribution in the field of the administration of justice. In the course of my friendship with him, I learned that the qualities that he displayed during those years governed his conduct throughout his career and I am very pleased that his memoirs will be available at The Bancroft Library for scholarly research as well as for general reading.

Herbert Brownell
United States Attorney General
1953 to 1957

24 October 1979
New York, New York

IN MEMORY OF WARREN OLNEY III by Scott Elder

For many of us memories of Warren commence when he was a boy in knee-pants mounted on his bicycle. Etna Street, where I lived, was around the corner and down a block from Warren's family home on Dwight Way. It swarmed with children and the street was our playground. Warren would come riding down to join us in a game of one-o'-cat, field hockey, or some other. He was a free spirit, though, and ours was not the only such group that he visited. He had friends and acquaintances everywhere, so it seemed. He was left-handed, and as "Lefty" he was known by all. Distinguished though he became, "Lefty" he always liked to be called by his friends of those days.

He was a friendly and outgoing boy and the best of companions, but still with a quiet reserve until he knew you well, and an underlying seriousness. His individuality was never submerged in any group and he was impervious to peer pressure.

Warren was strongly attached to all his family. He had great admiration and affection for his father and grandfather, whose namesake he was. Family outings of many kinds made a lifelong impression on him. Probably from these came his love of the out-of-doors and wilderness, his interest in wildlife, and his taste for adventure. Or perhaps it was his nature to find adventure in so much that he did. Saturday hikes exploring the Berkeley hills, a memorable spring camping trip on Mt. Diablo, and, later, trips packing in the mountains, tracing an earthquake fault, or an emigrant trail--to all such he gave that touch. Certainly the spirit of adventure was present in his approach to many of the tasks of his public life.

Warren's school years were normal enough except that he was slow to show an interest in girls. Almost the first to receive any particular attention from him was Elizabeth Bazata, and he needed to find no other. Their wedding took place while he was still a student in law school. More than two years ago they celebrated their Golden Wedding Anniversary. Always they were full and equal life partners and close companions.

Law was not the only vocation that Warren considered. Another one was to become an historian. History was one of his great interests, on which he read widely and with a marvelously retentive mind. As an avocation, he did indeed become an historian of no small erudition, amazing us often by his ability to discourse extemporaneously in colorful detail on almost any historical subject. Related to his love of history was another great interest--archeology.

Warren was not a particularly enthusiastic law student, which once led one of his professors, ironically enough the professor of criminal law, to comment rather gloomily on Warren's prospects in the profession. Little did the good professor know his student. Real-life experience fired Warren's drive, if firing was needed. This he gained quickly on his first job, as a deputy district attorney in Contra Costa County, and, after a very few years, in Alameda County under Earl Warren, then district attorney there. The work as a prosecutor suited Warren admirably. It gave scope to his love of independence, his resourcefulness and originality. It appealed to his interest in people and fulfilled his sense of social responsibility. He embraced it with relish and dedication.

Measure his success by the value placed on Warren by his chief, Earl Warren, who at every subsequent stage of his career in public office called on Warren for an extraordinary public service. Appointments by others, each successively higher, came to him too, and eventually his service record included the following: assistant attorney general of California in the criminal division; counsel to the California Crime Commission created by Governor Warren to investigate organized crime; professor of criminal law at Boalt Hall of Law, Berkeley; deputy attorney general of the United States in charge of criminal matters; director of the Administrative Office of the Federal Courts. In these posts he made a mammoth contribution to the administration of criminal justice and to the improvement of the legal system. But in addition to all that, he served three war-time years overseas in the Marine Corps; was in private civil law practice during two separate periods; and during his retirement years served as special master for a federal district court in New York. What a unique and utterly remarkable career for only one man!

Warren had, rather than self-confidence, an absence of self-concern. Free from blockages, integrated, at peace with himself, when he had a job to do he faced it and set about doing it. No prospect intimidated him. He worked deeply absorbed in what he was doing, unsparing of himself. Afterwards, he was unpretentions about what he had done. He was warm in his appreciation of his co-workers and their efforts and interested himself in advancing promising careers.

His work in Washington brought him new honor and distinction and many new friends, including intimates in high places. Nothing during those years there changed him at all. He returned here unaffected, as natural and unassuming as always.

Washington, which so often permanently captures those who go there to work in government, could not hold Warren and Elizabeth. Their children and grandchildren here were the reason. Even as such family relationships naturally go, closer ties than theirs are not likely to be found. Warren's new leisure

left him free to enjoy them. That he did heartily at every opportunity, of which there were many. Wonderful vacations with great collections of offspring and spouses of offspring became a tradition. To me they seemed to resemble the family outings of Warren's boyhood, of which he so often spoke. His fond recollections of them will surely have their rich counterparts in the memories of his own family members.

We, too, each of us individually, will have our own abundant store of recollections. Happily, it will be easy to remember Warren Olney III.

Scott Elder

6 January 1979

Berkeley Independent and
Gazette, December 23, 1978

OBITUARY NOTICES

Famous law reformer Warren Olney III dies

BERKELEY — Warren Olney, III, once a prominent prosecutor for the state and federal governments, died Wednesday at his Berkeley home. He was 74.

Mr. Olney helped reform sentencing practices by the federal judiciary and was credited by Chief Justice Warren Burger as being "responsible for new ideas in the judicial administration."

A protege of Justice Burger's predecessor, the late Earl Warren, Mr. Olney was Warren's deputy when the latter was district attorney of Alameda County and California attorney general; he later was Warren's administrator at the U.S. Supreme Court.

Born in Oakland and raised in Berkeley, Mr. Olney received his bachelor's and law degrees from UC-Berkeley, where he later taught law and criminology; in recent years, he helped organize the Earl Waren oral history project at the Bancroft Library.

He began his career as deputy district attorney in Contra Costa County, then joined District Attorney Warren's staff in Alameda County and later practiced law briefly with his father's firm in San Francisco before joining Attorney General Warren in Sacramento.

A veteran of service in the Pacific with the Fourth Marine Air Wing in World War II, he attained the rank of lieutenant colonel. After the war, he became chief counsel for a study of organized crime in California and in 1953, President Dwight Eisenhower named him assistant attorney general in charge of the criminal division in the Justice Department.

Mr. Olney drafted the 1956 Civil Rights Act, forerunner of the 1960's legislation. In 1958, Olney was named by Chief Justice Warren to take charge of the administration of federal courts. In this job, he began training programs for judges and pioneered efforts which led to the founding of a federal judicial center near Lafayette Park in Washington.

Returning to his Berkeley home in 1967, he became West Coast advisor for the American Society of Composers, Authors, and Publishers. He belonged to San Francisco and California Bar Associations and received an honorary degree from Mills College.

Mr. Olney's grandfather, was a former mayor of Oakland and a founder of the Sierra Club. His father, Warren Olney, Jr., was an associate justice of the California Supreme Court.

Survivors include his widow, Elizabeth; two daughters, Elizabeth Anderson of Berkeley who is an attorney in Oakland, and Margaret Olney of Berkeley, an author; and a son, Warren Olney, IV, reporter for KNBC-TV in Los Angeles. There are six grandchildren.

Memorial services are scheduled for Saturday, Jan. 6, at 11 a.m. in the chapel of Berkeley's First Congregational Church at Dana and Durant Avenues. The family suggests memorial donations to the Smithsonian Institute or to the Friends of Alta Bates Community Hospital in Berkeley.

Obituaries

Warren Olney III, Judiciary Reformer

Memorial services will be held in Berkeley January 6 for Warren Olney III, member of a distinguished California family of lawyers, and himself a major force in bringing about reforms in criminal justice.

Mr. Olney died Wednesday at his Berkeley home. He was 74.

While his goal was always to be a law professor, Mr. Olney responded to calls for public service on several occasions. On one of them, in January, 1953, he was asked by President-elect Dwight Eisenhower to serve as assistant attorney general in charge of the Criminal Division of the U.S. Department of Justice. In that post he served with Warren Burger, now chief justice of the United States who said yesterday on hearing of Mr. Olney's death: "He was responsible for new ideas in the judicial administration."

Born in Oakland, Mr. Olney did his undergraduate and law school work at the University of California at Berkeley.

He served with the late Earl Warren as Alameda county deputy district attorney when Warren was district attorney; as deputy attorney general when Warren was attorney general of California, and as administrator at the Supreme Court during Warren's term as chief justice of the United States.

Mr. Olney's interest in the law came naturally: His grandfather was president of the San Francisco Bar Association and once served as mayor of Oakland. His father served as an associate justice of the California Supreme Court.

Mr. Olney served in the Marine Air Wing for three years during World War II, seeing action in the Pacific theater, and left the service with the rank of lieutenant colonel.

In 1947, Mr. Olney became chief counsel of California's Special Crime Study Commission on Organized Crime, and quickly gained a reputation as an ardent foe of gangsters.

After three years he returned to Berkeley as a professor of criminal law and criminology. In 1951, when a new Crime Commission was appointed, Mr. Olney was again called upon to be its chief counsel.

Two years later, President Eisenhower asked him to serve as assistant attorney general.

"I've never asked for any of these jobs," Mr. Olney told The Chronicle in 1953, "each of them has come as a challenge. I see this new one as the most challenging of all."

In 1958, Chief Justice Warren named Mr. Olney to take charge of the administration of federal courts. His activist approach to the job led to the founding of a federal judicial center in Washington, concentrated on courses for the federal judiciary.

Mr. Olney is survived by his wife, Elizabeth, and three children, Elizabeth Anderson of Berkeley; Margaret Olney of Berkeley, and Warren Olney IV, reporter for KNBC-TV, Los Angeles.

Services will be held at 11 a.m. January 6 at the First Congregational Church, Dana street and Durant avenue, Berkeley.

The family prefers memorial contributions to the Smithsonian Institution in Washington, D.C., or to Friends of Alta Bates Community Hospital, 1 Colby Plaza, Berkeley.

INTERVIEW HISTORY

Warren Olney III, whose oral history memoir is bound herein, was much more than simply a memoirist for the Regional Oral History Office's Earl Warren Project. He helped initiate and organize the project, which eventually numbered over one hundred interviews documenting Earl Warren's California career in public office. He served as an invaluable advisor in choosing interviewees and suggesting the critical areas to be covered in their oral histories. Most of all, with his own lifelong love and knowledge of history, he provided an oral history memoir that is a rich source of information and a model of a carefully presented document that is as accurate as he could make it.

Because of Mr. Olney's importance to the Earl Warren series, the interviews with him spanned almost the entire period of the project. The interviews commenced with two sessions on July 28 and 30, 1970, conducted by Amelia Fry, and covered his distinguished family, Berkeley, California childhood, and education at the University of California, Berkeley. Subsequent interviews, held in 1972, 1974, 1976, and 1977, were conducted by Miriam Stein, for a total of eighteen sessions. Most of the sessions were held in the den of the spacious Olney home in north Berkeley. When circumstances dictated, recordings took place in his law office in Oakland, where he kept some of his papers and memorabilia.

Mr. Olney's careful preparation for the interview series and his devotion to accurate detail are evident on every page of the memoir. He gathered together his extensive collection of papers: clippings, scrapbooks, correspondence, reports, government and legal documents, and photographs, and carefully reviewed them, taking special care to double check doubtful facts and accounts with other documentary sources or eyewitnesses. When sources new to him came to his attention (books, for example, discovered by the interviewer), he eagerly reviewed them and incorporated this material into his account. He had a clear concept of the information that was important to capture for the record, and he conducted his interview sessions with economy and efficiency.

The tapes were transcribed, then edited lightly for clarity by the interviewer. Mr. Olney was nearing the end of a long and careful review of the transcription when he passed away on December 20, 1978. He had made extensive additions and corrections, with two goals in mind: to provide as historically accurate a document as possible, and to provide a memoir for his family. However, since Mr. Olney's revisions were not completed, the reader is urged to apply extra diligence.

In the summer of 1978, Mr. Olney was interviewed by writer and legal scholar Dori Dressander, in preparation for her book on civil rights during the Eisenhower administration. During these interviews, Mr. Olney reviewed and expanded upon his recollections of several events he had discussed in the Regional Oral History Office's interviews. Upon completion of her book, Miss Dressander will deposit transcripts of her interviews in The Bancroft Library, and the reader is urged to consult them in conjunction with this volume. Footnotes herein indicate where the Dressander interview corrects or clarifies points in this volume.

Mr. Olney's extraordinary memoir documents important aspects of 20th century California and federal history of law, criminal justice, and law enforcement. It also sheds valuable light on the development of Earl Warren's career, describes the contributions of the distinguished Olney family, and vividly describes the adventures of a boy growing up in early 20th century Berkeley.

Miriam F. Stein
Interviewer-Editor

10 December 1979
Regional Oral History Office
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University of California at Berkeley

I GRANDPARENTS

[Interview 1: July 28, 1970]*

Fry: Why don't you start out and tell us about your grandparents.

Olney: My paternal grandfather was Warren Olney, Sr. He was born in a small log cabin in Indian country in Iowa in 1841. He was one of eight children, and was the eldest. His father, William Olney, the second of that name, had been born in upper New York State. As a boy he had come with the senior William and the rest of the family in a flatboat down the Allegheny River and the Ohio River to Marietta, Ohio, where they remained for a few years, and then moved farther west to Illinois.

The senior William moved the whole family to Iowa when it was first opened up for settlement. The younger William married there and settled on a remote tract taken from the Sacs and Fox Indians by the treaty ending the Black Hawk War. He built a one-room cabin where my grandfather was born on March 11, 1841. All of this is related in the little autobiography my grandfather started to write just before he died. Have you seen that?

Fry: No.

Olney: Maybe I'd better show it to you. [shows interviewer book, Warren Olney, 1841-1921**]

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*For a guide indicating the sequence of interviews as taped, see page 488.

**Available in The Bancroft Library.

Olney: This was published just for the family in 1961. On his eightieth birthday Warren Olney started to write the story of his life for the benefit of his grandchildren. He had hardly got started when he died, but he had written quite a little about his boyhood in Iowa. He was staying out at the Mt. Diablo Country Club, but he got ill while he was out there with bronchitis, and died as a result of it. So he never finished this. This little beginning was written in longhand.

At the time of his death they were going to throw those handwritten pages away, and I grabbed them and kept them. Some forty years later my aunt, Ethel Olney Easton, got interested in publishing her father's account of his experiences at the battle of Shiloh. I showed these handwritten pages to her and said, "If you're going to publish that, you'd better put in these pages, too." This account was for members of the family. There's a great deal of detailed information about his early life, his father, and his forebears in there, too. As much as he knew.

Fry: Good. Then all we need to put on the tape is information that will supplement this.

Olney: Yes. My grandmother was Mary Craven. She and my grandfather met at a little college, Central College, in Iowa, just before the Civil War, and were married after the war. She came, then, to California with him. Her background is quite similar to his.

My mother's father was Dr. John Knox McLean. There's a little book about him. He was born in Jackson, New York, in March of 1834. He graduated from Union College in 1858 where he was elected to Phi Beta Kappa. Then he entered Princeton Theological Seminary and graduated with a Doctor's degree. He came to California in 1871 and became minister of the First Congregational Church in Oakland in 1872 where he served for twenty-three years. He then became president of the Pacific Theological Seminary, now known as the Pacific School of Religion, which he served for seventeen years. He died in 1914.

Fry: Can you give me the title of that book?

Olney: It's called John Knox McLean: A Biography. It's by John Wright Buckham, printed in 1914 by Smith Brothers in Oakland.*

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*Available in The Bancroft Library.

Olney: His wife, my grandmother, was Sarah Matilda Hawley. She was born and brought up in Salem, New York. She met my grandfather there when they were both very young. She married my grandfather when he was pastor of the Congregational Church of Springfield, Illinois, where he served for four years. She lived to be ninety-eight.

Fry: Why did her family come out here?

Olney: She was married in the East. She knew my grandfather in the East, and her family didn't move out here. The rest of both families remained in Salem.

Fry: Are the McLeans' reasons for coming out recorded?

Olney: Yes. They had been in a church at Springfield, Illinois, when Grandfather got a "call" to the First Congregational Church here in Oakland. The church had a vacancy. They asked him to come, so he came and took it over. He served for twenty-three years and he was succeeded by Dr. Charles R. Brown, who carried the church on for ten or fifteen years, and then became dean of the Divinity School at Yale. The Browns became very close friends of my parents as well as my grandparents on both sides.

II FATHER: WARREN OLNEY, JR.

Background

Olney: My father was born on October 15, 1870 in San Francisco. He was the oldest of five children, three sons and two daughters. The family moved to Oakland. They built a house at 427 29th Street in Oakland when he was quite young.

My grandfather had done quite well as a lawyer. He hadn't practiced very long in San Francisco, but he had done well enough to build his own home. He sent my grandmother with the children on a lengthy trip to Iowa to visit her relatives and his. Without her knowing it, he went ahead and got an architect, and designed and built this house on 29th Street in Oakland. [laughter]

Fry: A brave and bold man.

Olney: Poor Grandma came home and was faced with this house about which she had never been consulted, and she lived in it the rest of her life. We've never understood how this could be done! [laughter] It was a nice old home, and we all got to love it very much, especially the grandchildren.

Lest you get the impression that my grandfather was the family autocrat, I think I should tell you another story about the family. For some years my grandfather Olney owned a ranch out in Stone Valley at the base of Mt. Diablo. It was not a large acreage, but Grandfather planted a walnut orchard and raised oats and a few other crops, as I remember. Grandmother had a vegetable garden with corn and the most delicious watermelons I have ever tasted.

However, the ranch was hard to get to from Oakland. The best way was to take the S.P. [Southern Pacific] train to Martinez and then take a branch line that ran south through the San Ramon Valley,

Olney: getting off at Danville. You needed someone to meet you with a horse and buggy at Danville as the ranch was a good three miles from the station. The only other way to reach the ranch was to drive by horse and wagon over the Fish Ranch Road through Walnut Creek and Alamo, and this was an all-day trip, although it was not really much longer in time than the railroad.

Notwithstanding these difficulties, Grandfather and Grandmother spent a good deal of time at the ranch, and they very much liked to have their children and grandchildren out there with them. The ranch was not very popular with Grandfather's daughters-in-law or even with his daughters. The men liked it well enough, when they could get out there, and, of course, we grandchildren adored it.

It must be admitted, however, that under Grandfather's ownership the ranch had acquired certain rather unattractive features. For example, the original entrance was by a curving road across a pleasant field to the front door. For reasons unknown Grampa fenced this off so the only approach was from a road to the side of the house. On making this approach one first crossed a rickety old bridge across the creek and arrived at a large and odiferous hog pen with only a rail fence keeping the hogs and slop off the road. The entrance to the house by this route was through the kitchen.

The house was a two-story clapboard affair made out of lumber that was supposed to have been brought around the Horn and certainly looked like it. The rooms were papered, but the bedroom ceilings were for some reason covered with an Osnaburg-like material that sagged between its fastenings. There were mice in the walls and they would come out at night and race squeaking across the sagging cloth on the ceilings. My mother, for one, did not enjoy lying in bed watching their little footfalls on the cloth above her.

In 1910 or 1911 Grandfather took an extended trip to Egypt, Palestine, and Europe. He took my grandmother and their then unmarried daughter Ethel with him. He gave his general power of attorney to my father to meet any emergency while he was gone. He left home talking about retiring to the ranch when he returned from Europe.

His train had hardly crossed the Sierra Nevada when my father, acting under the power of attorney, put the ranch up for sale to the cheers of all the family, the grandchildren excepted. Poor Grampa came home to no ranch. As you can see, Grandfather did not have his own way all of the time or even much of the time, although he would from time to time take the bit in his teeth.

Olney: In 1920 my father was a candidate for re-election as associate justice of the supreme court of California, having been appointed to that position March 1, 1919 by Governor W.D. Stephens to fill the vacancy caused by the resignation of Justice Sloss. In connection with his re-election campaign a short biographical statement was published which gives his educational and professional history in succinct form. It reads as follows: [reproduced on following page]

I have quoted that biographical sketch only because it gives the facts about my father's education and early career more accurately than I could off the top of my head. Incidentally, the political campaign for which the sketch was prepared is something of a curiosity.

Father's campaign for re-election was managed by Jesse H. Steinhart of San Francisco and was simplicity itself. The voting was to be at the general election in November 1920, but the campaign began as early as January. On the 26th of that month Father's candidacy for re-election was announced by Mr. Steinhart by means of sending a letter on the subject to every lawyer in the state. The letter was signed by forty-five lawyers from all parts of the state. These were all outstanding lawyers of the day and the list was a very potent one.

The addressees were asked to respond to Mr. Steinhart if they were willing to assist in Father's re-election and the response was excellent. To the best of my knowledge, all they were ever asked to do was to spread the word about Father and to ask the local newspapers to publish the announcement of his candidacy and some of the biographical material. I do not believe there was ever a campaign fund established. I have no recollection of any billboards, newspaper advertisements, or even election cards--although it does seem as though there must have been something along that line. Of course, radio and TV did not exist.

I do not recall Father addressing any political meetings as part of his campaign, but I do know that between January and the election in November, Father made an effort to visit as many county courthouses around the state as possible where he would call upon the superior court judges. These were out and out campaign visits and

Biographical Sketch of Warren Olney, Jr.

Warren Olney, Jr., was born in San Francisco October 15, 1870. He was the son of Warren Olney, a prominent lawyer of San Francisco, well known throughout the state and a veteran of the Union Army in the Civil War. He married in 1899 and has three children.

Warren Olney, Jr., was educated in and graduated from the public schools of Oakland, California, after which he attended the University of California for four years, spent one year in graduate work at Harvard, and completed his legal education at Hastings College of Law, graduating at the head of his class from that institution.

After graduating from law school in 1894 he engaged in the practice of law with his father in San Francisco.

One year later, in 1895, he was appointed assistant professor of law at the Hastings College of Law, and continued in that position until 1902.

In 1902 he resigned from that position and became a lecturer at the newly founded School of Jurisprudence at the University of California, from which position he resigned later on in order to devote himself exclusively to his private practice. In 1907 he became general attorney for the Western Pacific Railroad Company, then being built into the state.

In 1910 he became a member of the firm of Page, McCutchen, Olney and Knight, of San Francisco, which firm was later to be known as McCutchen, Olney and Willard, and from which firm Mr. Olney resigned upon his appointment to the Supreme bench in 1919.

In 1911 Mr. Olney was appointed attorney for the Board of Regents of the University of California, from which position he likewise resigned upon his appointment to the bench.

Mr. Olney, at the present time, is one of the Trustees of the Hastings College of Law, of San Francisco.

During the war Mr. Olney was appointed a member of the State Registration Bureau, which had charge of arranging for and carrying through the matter of registration for the draft, and upon the organization of the Draft Boards he was appointed a member and became chairman of the Federal Exemption Board of Division One, Northern District of California.

He was also appointed a member of and became chairman of the State Military Welfare Commission and served in that capacity throughout the war. He also served as a member of the Advisory Cabinet of the State Council of Defense.

In February, 1919, Mr. Olney was appointed associate justice of the Supreme bench, to fill the vacancy created by the resignation of Mr. Justice Sloss.

Recently Mr. Olney was one of the persons agreed to by both sides to arbitrate the differences between the street and interurban railway company operating on the east side of San Francisco Bay, and its men, in regard to wages, hours and working conditions. Justice Olney was made chairman of the board and within less than thirty days after its appointment the board made an award, which has received the commendation of both sides for its fairness and justice.

Olney: there was no subterfuge about it. My brother and I accompanied my father on a number of trips about the state during this period and he never missed a judge or a courthouse. We, of course, waited outside during these visits. It seems hard to believe now that any campaign for a state-wide office in California could ever have been so simple.

Representing the University of California Board of Regents

Olney: I do recall that Father was attorney for the Board of Regents when I was a boy. I see here the years were 1911-1919. I remember that because by virtue of it my brother and I had permission to swim in the University of California swimming pool. [laughter] Nobody else could among our friends.

I do recall that it was during this period that Mr. and Mrs. Peder Sather were making gifts to the University, and my father was not only counsel to the Board of Regents, but he was personal attorney for Mrs. Sather. He was her attorney at the time she made her decision to give the money for the campanile. My father told me that he had endeavored to persuade her not to give the money for that purpose, but to give it for faculty endowment. But she wanted to have a physical monument to her husband, as well as giving something for the University. Father later thought the campanile was so successful that he became reconciled to her having left the money for that purpose. He thought it was a pretty good campanile when they got it built.

Fry: Professor Leon Richardson told in his interview about going over and picking out the bells in this large expansive field, in Holland, I believe.

Olney: Yes.

Fry: I wonder if he had talked to your father. Do you remember them discussing this question?

Olney: Well, I don't. But he was over at our house and we were at their house very often. So I'm sure they did talk about it.

Of course, I remember President Wheeler, but until I read this here [interview outline], I was never aware of the fact that he went to pieces in office. I didn't know that. I didn't know there was any three-man troika that had to try to fill in at that period.

Olney: We also knew General--he wasn't General then--David Prescott Barrows. He was a graduate of Pomona College, and my mother's father, Dr. McLean, was one of the founders and original trustees of Pomona College. My mother served there as dean of women, at one time. My mother knew David Barrows when they were both children attending my grandfather's church in Oakland.

The Barrows family moved to the Ojai Valley at an early date. I am under the impression that David Barrows was a student at Pomona during the year or so that my mother served as dean of women, but I am not sure about this. On further thought, I must be wrong about this because they were of the same age.

At any rate, they knew one another very well.

Fry: When was she dean of women there? It was before you went there.

Olney: It was before she was married. She was just out of school and had had only one year teaching English at Stanford University. She was hardly more than a glorified housemother! [laughter] Pomona was a very small college. There were only a few students, and the duties weren't onerous. That was the period when my father was courting her. He used to come to see her at this dormitory, Smiley Hall, and she'd entertain him in the parlor while all the girls would sit on the stairs and watch them through the transom. [laughter]

Fry: A reverse chaperone.

Olney: Dr. Barrows, you know, went to the Philippines and was there for a long time, directing education there. When they came back to Berkeley, we saw a great deal of them. They moved into a house on Regent Street, which was only a few blocks from our home on Dwight Way. Our two families once celebrated the Fourth of July together with a picnic in Strawberry Canyon shortly after the Barrows' return from the Philippines.

Fry: Is it true that President Barrows read the Declaration of Independence in a resounding basso on the Fourth of July? His granddaughter told me that this is what she remembered; she had to sit through this on every Fourth of July. [laughter]

Olney: Well, I wouldn't doubt it. His granddaughter, however, must be talking about occurrences many years later--probably at their ranch in Acalanes Valley.

Fry: Do you remember that?

Olney: I wouldn't doubt it. That makes him sound as though he was a very stuffy man. He was anything but. He was not. He was a very friendly, genial, sympathetic, kindly man, very much interested in students and all young people.

Fry: Yes. I remember reading that we practically had a riot on campus among the students when he decided to resign and go back to teaching, because they all wanted him to remain as president.

Olney: Yes. That's true. I have always entertained a very great affection and admiration for him, and I used to think that he had led the kind of life that I would like to lead. He was a very active man. He'd been to the Philippines, and he also was on the American Expeditionary Force that went to Siberia in 1919 or 1920 during the Russian Revolution.

Fry: Didn't he also go to Mexico?

Olney: Yes, he went to Mexico. He was a good friend of Madera's, the assassinated president. After his retirement, in typical fashion, he went to Africa and took a trip down the Niger, which I thought was a great thing to do.

When World War II came along, I was married, of course, and I had children of my own, but I thought I ought to go into the service, and he was the one that I consulted about it. He was always identified with the army and with the National Guard. I told him that I wanted to go into the service, but not as a lawyer, and not for an office job. I thought I wanted to go into the marine corps, because that was a fighting outfit.

We had a long discussion and he gave me a lot of very sound advice. He said he'd seen the marines during his whole career. He said it sounded disloyal to the army to say so, but he said it was just exactly what I had in mind. The marines were indeed the fighting outfit, and that the chances of my seeing some action were far better in the marine corps than they ever would be in the army.

Fry: Was he president when you were at UC, or had he just stepped down?

Olney: No. He was president the first year, anyway, that I was at UC, and that was the year that he left the presidency and went back into teaching. Then William Wallace Campbell was the president, until I graduated.

I took Dr. Barrows' courses, of course, just because I liked him so much.

Fry: What did he teach?

Olney: Political science, and it seems to me I had a history course from him too. But political science was the usual course that he taught.

Fry: He led such a vigorous, active life that I've always associated him with Teddy Roosevelt, but I don't know whether he really was a Rooseveltian type in his outlook and beliefs or not.

Olney: Well, he wasn't a flag-waver like Teddy Roosevelt, a big-stick man, and that kind of stuff. David Barrows wasn't that type. He was a very patriotic man, and in those days that kind of patriotic enthusiasm wasn't regarded with scorn the way it is now. So he may well have recited the Declaration of Independence on the Fourth of July. I know that we always made a great day out of it. We always got a lot of firecrackers and blew up stuff. [laughter]

Fry: I've heard people say that in addition to this he was a pretty good scholar, and had a good, critical mind.

Olney: Well, I'm not in a position to evaluate it.

Fry: You were on the other end of the generation.

Olney: Yes.

Western Pacific Railroad

Olney: Now, going back, there's little else about my father's connection to the University that I recall. I remember his work with Western Pacific, of course, and that he was their general attorney and general counsel. The Western Pacific was the last one of these transcontinental railroads that was completed. The first train didn't come over the tracks full of passengers until 1910. It was recent enough so I can recall it.

During the building of the railroad, and afterwards, there was a lot of litigation because contracts would be made for the building of tunnels, or fills, or things of that sort. Payment was usually so much per yard of material that was moved, and the amount of payment would depend on what kind of rock it was, whether it was soft or hard, and things of this kind. So there were always a great many disputes and unsettled questions about practically every fill and curve and tunnel that they had on the railroad.

Olney: To settle these things, they naturally took geologists to go out and actually make an inspection of the rock and the fill, and take measurements, samples, and all that sort of thing. Since there were no trains running on the line, and tracks were down, they used to hitch a locomotive to the president of the railroad's private car, and they'd all go snorting up the line until they got to the place in question. Then the geologists would get out with their little hammers and knock a few rocks off and take samples, and do a little surveying, or something of this nature. Father took my brother and me on those trips many times.

Fry: You got to go along!

Olney: Oh, yes. Sometimes we could ride in the cab of the locomotive. One time we borrowed the private car, and I guess we were gone for maybe eight or ten days. We went up to Blairsden, where the Feather River Inn now is. The car was put on a siding there, and we went on a fishing trip up to Gold Lake. I have pictures of that, with my father, grandfather, brother, all in this buckboard that we took up to Gold Lake. Then we came down from the lake and the railroad would drop our car down through the Feather River Canyon, and put our car off on a siding where we could go fishing for a day or so at a time. There was no highway or road in the Feather River Canyon at that time, only the railroad. Since the railroad wasn't being used, there was nobody. The fishing was simply superb.

So I remember my father's being counsel, all right, for the Western Pacific.

Fry: There goes my image of you as a rugged third- or fourth-generation back-packer. [laughter]

Olney: The president's car was the most luxurious form of travel I've ever seen. I've never experienced anything like it. That was a great thing.

In those days, winter sports weren't very popular that I know of, but Father got interested in them, and so we took the private car and got the Southern Pacific to take it up to Truckee. They left us off on the siding up at Truckee one winter, and we lived in this car and went sleighing and skiing and tobogganing, and things like that. An elegant time. We would come back and live in the car. It had a cook, and a porter to handle all the berths. [laughter]

Not all our trips were in the private car. Most of the one-day trips were in a caboose. This was fun too because we could climb up to the little house on top and look out the windows ahead over the oiler and locomotive and see where we were going. The caboose was chummy too, but it didn't really rate with John and me because it didn't have any such food as we were given on the private car.

Fry: Could I ask you a serious question about Western Pacific? If Western Pacific was that late, 1910, that was when the railroad commission was established, I believe, in 1911. Apparently the Western Pacific doesn't share in the inglorious past of Southern Pacific in the political history of our state. Is that right?

Olney: They were competitors, I would say.

Fry: So it didn't control the legislature?

Olney: Oh, no! It had nothing to do with that. The Western Pacific was never a political power like the Southern Pacific.

Fry: I've noticed in the memorial* that there was a sentence or two by one of the men who wrote the memorial about your dad in which he mentioned "private interests," and I didn't know what this meant. I suppose he was talking about the fact that your dad, before he went on the court, had been a lawyer for Western Pacific. The memorial said that his association with private interests did not make any difference, and that your dad was a very outspoken man who always adhered to what he thought was right, regardless of his associations.

Olney: Well, I think what they were referring to was not just the Western Pacific, but that my father had always represented business interests of one kind or another. Western Pacific was one, but he represented the Great Western Power Company, and then he was not infrequently special counsel for Pacific Gas and Electric Company, and for Southern California Edison in their water case, and things like that. The firm also represented a great many steamship companies; they had an admiralty section in the firm. They were attorneys for the Kern County Land Company, and Shell Oil Company, and companies like that.

Fry: I see. Then the point is well taken, that once he was on the bench he was able to see the whole picture, not just the successful business interests.

Olney: He was appointed to the state supreme court as associate justice by Governor Stephens, due to the resignation of Judge Sloss. He enjoyed his work on the court very much. I was old enough at that

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*See Eustace Cullinan and Hon. Curtis D. Wilbur, "Warren Olney, Jr. Memorial" in the Warren Olney, Jr. papers in The Bancroft Library.

Olney: time to be driving a car, and Father had a car. It was a great big seven-passenger Cole Aero Eight. Several times when the court would meet in Los Angeles I drove him down in that buggy.

I can recall one occasion when the San Diego Bar Association had a lunch for the supreme court, and we drove most of the court down in the Cole Aero Eight. I drove them down, but Father liked to drive, and coming home he did the driving. Along about Orange, somewhere in Orange County, the siren blew behind us, and the cop came alongside, and pinched nearly the whole state supreme court. [laughter] For speeding.

Those judges had to run for office, you know. Judge Frank Kerrigan was sitting on the court pro-tem at that time. He was going to have to run in six or seven weeks, or something like that, and he was very concerned when this whistle blew. I remember his saying, "Let me handle this, boys!"

When the car stopped, out he gets. He had his card, and he introduced himself to the officer and said, "I'm Judge Kerrigan, associate justice of the state supreme court." The officer looked very skeptical at him, so he had these others get out, and he introduced them, "Justice So-and-So, and So-and-So." Each presented his card. Finally he got down to Angelotti, who was the chief justice, and by this time the cop's chin was down to his waist. He didn't know what to do. He finally scratched his head, shut up his book, and said, "Well, just don't do it again." [laughter] He got on his motorcycle and drove off.

Judge Angelotti would never let me forget that incident. "Warren," he said, "you lost the chance of a lifetime--you just lost it." I said, "What do you mean?" He said, "You had your camera right with you. You should have had that officer line us all up there in front of the car, and taken a picture!" [laughter]

Fry: That would have set you up for life.

Olney: Yes. I'd have done well on the supreme court. [laughter]

Fry: I'll bet that's a big family story in that officer's family too.

Olney: Yes. I'll bet it is.

Fry: Could I back up a minute? When your dad was appointed to the Board of Regents, was that an appointment by Hiram Johnson?

Olney: He was elected president of the alumni association and was a regent ex officio.

Fry: I think that was later, wasn't it? At that time the president of the alums was not--

Olney: He was counsel for the regents. I don't think he was appointed--

Fry: He was not on the board, but he was counsel?

Olney: Yes. He was the lawyer for the regents.

Fry: That wasn't anything Hiram Johnson would have done, then?

Olney: No. The regents picked their own lawyer.

Fry: Then later on he was a member of the regents ex officio?

Olney: Yes.

Political Matters

Fry: Was he close to Hiram Johnson, would you say?

Olney: Yes, he was. Father was very much interested, and so was my grandfather, in the graft prosecutions in San Francisco in 1908, or along in there, which was when Hiram Johnson got his start. (You know Johnson was assisting [Francis] Heney [assistant district attorney of San Francisco] in that prosecution. Heney was shot at the trial, and Hiram Johnson took over.) My father and Johnson became good friends. Then Johnson had a lieutenant governor, John Eshleman, and Father was a very good friend of Eshleman's, a very good friend of his indeed. Eshleman became the first chairman of the railroad commission.

I remember Hiram Johnson coming to our house for lunch one time, an occasion when they were having some problem with the deaf school that's up there on Warring Street, between Dwight and Derby [in Berkeley]. It was a school for the deaf, dumb, and blind at that time. The president of the school was a Dr. Wilkinson. He was the father of Mrs. Maude Richardson, Leon Richardson's wife.

There were some kind of charges that were brought against Dr. Wilkinson that required an inquiry that brought the governor to Berkeley. The whole thing was explored. It was without any basis, as I recall, but I remember Johnson being at the house, and my father and the governor being very friendly indeed.

Olney: After World War I, when the League of Nations was proposed by Woodrow Wilson, my father and grandfather believed that that was the only hope we had of avoiding another war like World War I. They were very much interested in supporting the League and did everything they could, made speeches and gave money and whatnot.

Hiram Johnson, of course, opposed the League. He was just as bitter as could be. Johnson was always a very bitter kind of man. You're either for him or agin' him, in his mind, and if you weren't supporting him and were supporting the League, why, he just had no use for you. My father supported Herbert Hoover, because of this League issue, when he ran for the Senate against Johnson and was defeated.

Fry: When Hoover ran against Johnson?

Olney: Sure, Hoover ran against Johnson one time and was beaten, before he was president. It was in the primaries he ran, the Republican primary, I think.

Fry: That must have been the final straw, at any rate.

Olney: Yes. My father and Johnson were never able to make up this difference they'd had.

Fry: During all this, did Hiram Johnson come to your house more than once?

Olney: Well, I remember once distinctly. I'm not sure whether he came more than once. I think he did, though.

Fry: Would you rate your father as a progressive in a Hiram Johnson sense?

Olney: Well, my father started out being a Democrat. I know he was a delegate to the Democratic state convention that endorsed William Jennings Bryan when he was running against McKinley. My mother was a Republican and my father was a Democrat. My mother acquired a very large, extraordinarily ugly tomcat, whom she named Bryan. [laughter]

Father was very interested in supporting Hiram Johnson, and so was my grandfather, and they also were very keen in supporting Theodore Roosevelt, although my grandfather had been very much opposed to McKinley because of his involvement in the Philippines. Grandfather thought our sending troops to the Philippines to suppress the native insurrection was a ghastly mistake. He had the same feeling about our involvement in the Philippines that

Olney: many people have about the Vietnam War. He just thought that was morally indefensible, as well as being politically unsound. He thought we would regret that we ever got involved in that. Grandfather put an article in the Oakland newspaper that is about as strong a denunciation of our national conduct as I have ever read. I still have a copy of it. But Roosevelt, on the other hand, they liked very much even though he was a big navy man, and seemed inclined to get us involved everywhere.

Grandfather and Father had a hard time knowing from one election to the next just who they were going to support. They changed their views many times about people and about issues. But I would describe both of them as being very progressive for their day. Neither of them were opposed to change, and both of them realized that the regime, and the system under which they were living, was anything but perfect; it needed improvement.

Fry: Did they support Wilson in 1912 against Taft?

Olney: No, they supported Roosevelt. I remember that. That's the first election I can remember anything about. I do not believe either of them ever supported Wilson. I think they harbored a great distrust of the man.

In the 1916 election--that, of course, is the one in which Charles Evans Hughes came out here to California and made the mistake of giving Johnson the brush-off. [laughter] But we weren't in California at the time of the election. My parents took my brother and me on a three-months' tour of the East. It was a purely educational sight-seeing tour for us boys. We were in Boston at the time of the election, and witnessed the torch parade. I guess it was the last political parade with torches that they ever had in Boston. It was a big one, celebrating Hughes' election. Then we woke up the next morning to find our state had beat him. I don't know which side they were on at that time.

Both my father and grandfather felt that our involvement in World War I was inevitable. We simply could not afford to see the Allies defeated. They never supported Wilson on any slogan that he kept us out of war. But whether they voted for Hughes or

Olney: not, I don't know. I think they might have. My father was probably glad he was in the East, and didn't have to vote, unless it was on an absentee ballot, because he would have been torn both ways.

Fry: If your father was a delegate to the Democratic state convention when Bryan was running, did he ever get that active in partisan politics again in the state?

Olney: I don't think so. He was never a delegate, that I know of, to any other convention.

He was more active, though, than that fact would suggest. His profession, and his work, and his clients brought him into contact with people in public office and with people who were supporting and responsible for candidates, to a great extent, and he was always very concerned about candidates, opposing some and supporting others. He would do this privately, and it was effective, that way.

Fry: I understand that there was a complaint on the part of Southern California party leaders that a great deal of the money traditionally came from a group of men in San Francisco that wielded influence because they could choose their own candidates of either party and work up a good enough campaign fund that they could help them get elected.

Olney: I think that was true.

Fry: Yes. Maybe you can give us information on who these people were?

Olney: No. I can't.

Spring Valley Water Company

Olney: You were wondering about my father's clients. There was an important one that I'd forgotten to mention and that's the Spring Valley Water Company. The Spring Valley Water Company, and its precedessor, The Spring Valley Water Works, was a privately owned corporation which had been in the business of supplying water for domestic and industrial use to San Francisco since the 1850s. It had built and owned all of the reservoirs and water pipes for delivering water to the city and also owned all the possible sources of water for the city which might be developed in San Mateo and Alameda counties. It had a water monopoly in the city of San Francisco.

Olney: There was, understandably, constant friction between the water company and the city over the water company's rates which were set by the city's board of supervisors. There had been a number of proposals over the years for the city to build its own water system with sources in the Eel River, the Sacramento, Lake Tahoe, or one or another of the Sierra rivers. The Tuolumne River, with a reservoir to be built in Hetch Hetchy Valley, was regarded as the most feasible of these proposals.

The Spring Valley Water Company had long been one of Mr. E.J. McCutchen's clients, but after Father and Mr. McCutchen became partners Father did an increasing amount of work for Spring Valley and a number of its officers. The matter is of some interest here because my father and grandfather were on opposite sides of this very important and explosive issue. Spring Valley was the principal opponent of the city's plan to dam Hetch Hetchy and bring its water to San Francisco and my father's firm was the company's legal counsel. My grandfather, on the other hand, was very active in organizing support for the Hetch Hetchy project. The following is a brief statement of the background of the controversy:

In the fall of 1908, in order that San Francisco might proceed with its Hetch Hetchy plans, a joint resolution had been introduced in Congress providing for the exchange of lands between the city and the federal government lying within Yosemite National Park. This was a requirement of the permit the city had received from the Secretary of the Interior. The city had secured options to purchase a number of privately owned tracts within Yosemite National Park boundaries and stood ready to exchange them, acre for acre, for the government's land on the floor of Hetch Hetchy Valley. By the trade the city would have its ownership of land in the national park confined to the floor of Hetch Hetchy, while the government would acquire all the privately held land outside Hetch Hetchy.

Dr. A.H. Giannini, who was chairman of the Supervisors' Committee on Public Works, and Marsden Manson, the city engineer, were sent to Washington to appear before the Public Lands Committees. They were assured there would be no difficulty in securing the passage of the joint resolution to effect this land exchange.

The hearing before the House committee opened with City Engineer Manson presenting the city's petition followed by a statement from Dr. Giannini. Secretary of the Interior Garfield gave his reasons for granting the permit to the City of San Francisco. At this point a hurricane of protest blew up. Letters and telegrams were received from individuals and conservation organizations from all over the country protesting the invasion of a national park for water and power development and the loss of Hetch Hetchy Valley by

Olney: flooding. The leaders in this well-organized blitz of protest were mostly Sierra Club members. They included John Muir, William E. Colby, C.T. Parsons, J.N. Le Conte, and William F. Badè. These were among my grandfather's closest and most valued friends.

The city representatives did not know who had stirred up the storm of opposition at the hearing, although they seem to have suspected the Spring Valley Water Company, since that company had opposed the Hetch Hetchy project from the beginning.

The tremendous protest caused an adjournment of the hearings. A day or so later the committee held an executive session and immediately afterwards Dr. Giannini reported to Mayor Taylor that while the city's representatives were not invited, they had noticed on passing through the hall that the meeting was being held and that Mr. E.J. McCutchen, attorney for the Spring Valley Water Company (and my father's partner), had appeared without announcement or notice and was addressing the committee, presenting legal objections and opposing the resolution of exchange.

Dr. Giannini called for reinforcements for the city and Mayor Taylor immediately responded by sending to Washington a five-man committee composed of Warren Olney, Sr., ex-Mayor of Oakland; James D. Phelan, ex-Mayor of San Francisco; City Attorney Percy V. Long; Walter McArthur, editor of Coast Seaman's Journal; and J.D. Galloway, C.E.

In January, 1909, the hearings were reconvened. Again the committee was deluged with letters and telegrams from all parts of the country and Mr. McCutchen was also on the ground representing the Spring Valley Water Company. He charged that the city's real object in seeking the Hetch Hetchy permit was to use it as a club to force Spring Valley to sell its system to the city at the city's own price. A strange alliance was in evidence between the Sierra Club and other conservationists and the Spring Valley Water Company. The effect of their joint efforts was to prevent the City of San Francisco from developing a municipally owned water system.

The protests were too much. The city representatives could see there was no hope and they requested that the resolution be withdrawn from further consideration and returned home.*

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*My source for the above statements: Taylor, Ray W., Hetch Hetchy, The Story of San Francisco's Struggle to Provide a Water System for Her Future Needs, Orozco, San Francisco, 1926.

Olney: Of course, this was not the end. The city continued its fight for Hetch Hetchy. Grandfather became incensed at his old Sierra Club friends who had organized the protest against the resolution in Congress. He was convinced that they had permitted themselves and the club to be used as a front by the Spring Valley Water Company in its determination to keep San Francisco from owning its own water supply. He led nearly half the membership in resignation from the club in protest against the club's abetting the machinations of Spring Valley. The conservation issue he regarded as a fake and mere smoke screen for the water company's selfish purposes.*

I was much too young to know anything about the matters I have just recited, but this fight went on for years, the city finally winning out when the Raker Act was signed into law by President Woodrow Wilson in 1913. But I was old enough at this time to discover, along with all of Grandfather's other grandchildren, that the split of opinion in our family about something called "Hetch Hetchy" was so great and was such a sore subject that it must not be mentioned in Grandfather's house.

Nevertheless there was no hint of estrangement between my grandfather and father over Hetch Hetchy or over the part the Sierra Club was playing and I think this throws a revealing light on both these men. Their attitudes toward one another always evidenced the warmest affection and the greatest respect whatever their differences may have been about Hetch Hetchy.

Fry: How did your father feel personally about Hetch Hetchy?

Olney: He felt that Hetch Hetchy should not have been flooded. He felt that conservation-wise it was going to be needed. Grandfather didn't. Also, my father did not have the same deep antagonism to all private water companies that my grandfather did. Grandfather just thought private water companies were an abomination, that by the very nature of water--water was so necessary--no community ought ever to have its water supply in the hands of any private concern, where they could tell the community what they had to pay for water. He thought that was completely wrong.

Fry: You mentioned to me, before we turned the tape recorder on, about your grandfather's experiences when he ran for mayor of Oakland.

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*See Appendix A.

Olney: Yes. This is what soured him on water companies--old man [William] Dingee of the Oakland Water Company and later the Contra Costa Water Company and the Peoples Water Company. In 1902 Grandfather was elected mayor of Oakland on the water issue. I still have one of his campaign addresses which explains his view on water companies. He just lumped together Spring Valley and every other privately owned water company in the state.

Fry: You said the board of supervisors had the right to set the rates, and this led to a great deal of bribery.

Olney: Yes. Yes. In Oakland it surely did and, I believe, in San Francisco also.

Fry: Who was head of Spring Valley Water Company? Was it anyone important? Groping back in my memory here I connect this with something.

Olney: Well, I'm wondering if it wasn't Bourn. There was a man named Bourn; Father was his counsel too. The Spring Valley Water Company was reorgznized more than once and it had several presidents over the years. I remember the names of A.H. Payson and S.P. Eastman as having been Spring Valley presidents at one time or another, but the only one I can remember as a person was W.B. Bourn (known in mining circles as Billy Bourn).

He was the owner of the fabulously rich Idaho-Maryland Mine in Grass Valley. In 1909, and I suppose for some years before and after, Mr. Bourn was president of the Spring Valley Water Company and was also, I believe, its principal stockholder. He built a magnificent brick mansion surrounded by water company property in San Mateo County which he named Faloli. The mansion still stands in the woods, but I think it is now owned by the City of San Francisco.

Years later--in the 1920s--Mr. Bourn bought the Lakes of Killarney in Ireland, including the castles and villas on the estate. For some years he and Mrs. Bourn resided there raising horses. Eventually he made a gift of the entire estate to the National Trust and now it is publicly owned.

The only reason I remember Mr. Bourn is because of his automobile. About 1909 or 1910, when I was only five or six years old, and while he was president of Spring Valley and my father was counsel for the

Olney: company, Mr. Bourn owned a seven-passenger Pierce-Arrow touring car with a chauffeur. He loaned the "machine," as it was usually called in those days, and the chauffeur to my father to make an inspection of the company's works in the Pleasanton-Suñol area accompanied by his family.

We were living in Berkeley at the time and my recollection is that we took the streetcar to First and Broadway where we met the Pierce-Arrow and its driver as they got off what was known as the "Creek Ferry"--the only ferry capable of carrying horses, wagons, and automobiles.

This, I believe, was my first ride in an automobile. My mother wore a large hat with a heavy veil to keep it on. My father wore a cap and both parents wore dusters and really needed them, there being no paved road. My brother and I had nothing extra except the tremendous thrill of the automobile ride.

We traversed Dublin Canyon and emerged onto the flat land just northwest of Pleasanton. Here we inspected a large artisian well and some underground percolation galleries that Spring Valley had developed. Then we drove south through Pleasanton on our way to Suñol. Several miles out of town our road went underneath the railroad tracks followed by a sharp turn to the left. As we rounded the turn, we suddenly encountered a lady in a buggy going the opposite direction. Her horse shied and stood on his hind legs, overturning the buggy and throwing the lady to the ground. The chauffeur jammed on the brakes and Father leaped from the car and seized the horse's bridle. We all got out to pick up the pieces. The young lady did not seem to be badly damaged, although the experience certainly did not freshen her up. We learned that her home was less than a mile away, so the buggy was righted and we took her home. I think she rode in the Pierce-Arrow and Father drove her horse and buggy.

After this harrowing experience, we went on to the Water Temple at Suñol. Here we were taken underground once more into the percolation galleries and then to watch the mixing of waters from many sources in the temple as they started their long trip through the Spring Valley pipes to the San Andreas Reservoir and San Francisco.

On the water company property and about a half a mile from the Water Temple was an old ranch house which the company kept staffed for the use of visitors. We had limitless quantities of fried chicken prepared by a Chinese cook, followed by ice-cold water melons. While our elders stayed in the house and, I suppose, talked about business, my brother John and I climbed trees and played on the expansive lawns around the house.

Olney: From here on my memory of that day grows dim. It seems probable that we went up Alameda Creek to where the Calaveras dam was being built--a distance of about three or four miles--but I cannot say that I remember this. Indeed, I cannot remember how we got home. although I think it was through Niles Canyon. (The canyon was familiar to John and me because we had been through it several times in the Western Pacific private car.) The vagueness of my memory from this point on is due, I suspect, to my being asleep. The excitement of that first automobile ride, the thrill of all the pouring waters, the rearing horse and overturning buggy, to say nothing of the fried chicken and watermelon, was more than enough, I am sure, to exhaust a five- or six-year-old boy. This is, of course, why I remember Mr. Bourn's presidency of the Spring Valley Water Company.

Fry: At any rate, Bourn was very close to your father?

Olney: Yes. My father represented Bourn on many of his personal matters and occasionally but not regularly on his mining interests. I remember when the Argonaut mine had that terrible fire at Jackson they got into a lot of litigation over that, and Father represented the Argonaut. I am not sure, however, that Mr. Bourn had any interest in the Argonaut.

Fry: So your father was able to be counsel and attorney for these interests, but at the same time, on public issues he seemed to be on the side of general public interest.

Olney: Oh, yes. He was. He never let the representation of his clients determine his views on public issues.

Fry: That's what that sentence meant, then, in his memorial.

Associate Justice, California Supreme Court

Fry: Are you ready to go on to his period as associate justice?

Olney: Sure. I can take you over that very briefly, because I can only add to what I already said. Father was appointed associate justice of the supreme court of California on March 1, 1919 by Governor Stephens to fill the vacancy caused by the resignation of Justice Sloss. In November 1920 he was elected without opposition for a new term. In July 1921 he resigned to re-enter private practice. I know that he enjoyed his work very much on the court; that there were times later on when he would read decisions of the court and

Olney: wish he was still on there, because he didn't always agree with them, but he left simply because he couldn't live on his salary. At that time associate justices got paid $8,000 a year. He had three children that he was trying to educate. He thought we were expensive! [laughter]

Fry: That was just about the time you three kids were going to college, wasn't it?

Olney: Yes. Then, there was another thing that used to annoy him very much. There was then a provision in the state constitution that supreme court justices could not be paid unless they submitted affidavits that none of the court's cases had been pending more than ninety days, or something like that. There was one member of the court in particular who was very dilatory, and who would have an awful time making up his mind, and he'd get way behind, and it meant that none of the justices could get paid. Sometimes they were well over a year in arrears in their pay. They had to finance this with loans from the bank, which Father felt was a pretty tough way of trying to finance himself and his family on such a low salary.

Fry: Yes, you'd lose part of your salary right there in the interest rates. Was this set by the legislature at that time?

Olney: It was in the constitution. It got in there, I think, on an initiative along about 1911 with many of these other attempts at reform.

Fry: As an effort at court reform.

Olney: Something like that. [laughter]

Fry: Well, I noticed the memorial says that shortly after your father resigned, they were able to get the remuneration increased.

Olney: Well, that might be because he resigned! [laughter]

Fry: Yes, maybe that's what he accomplished.

What department did he have? Were the departments divided up into types of cases then?

Olney: In the court? No.

Fry: There's a note here that he was the bar association president at some time. Do you know anything about that?

Olney: Yes. He was president of the San Francisco Bar Association.

Fry: Were there any particular issues that he became involved with?

Olney: My grandfather had been president of it, too, before that. No, I don't know of any issues.

Fry: All right.

Service on the Draft Board

Fry: The World War I experience that he'd had on the draft board must have been a difficult one for him.

Olney: Yes, that was. It was a review board that he was on.

Fry: My notes say that he was a member of the State Registration Bureau, in charge of registration for the draft, chairman of the District Exemption Board of Division 1, and it was these draft exemptions, apparently, that his board had to review.

Olney: Yes. That's right. It was a little different set-up than we've had since. It was exemptions that he was concerned with. I remember his doing it, of course, and spending a lot of time on it, but that's all I remember about it.

Fry: Do you know what the State Military Welfare Commission was, of which he was chairman?

Olney: I've never even heard of it, although I notice it is mentioned in his Biographical Sketch of 1920.

Fry: He was chairman from 1917-1918, and I don't know whether this was a part of the draft set-up or not.

Olney: I do not know.

Fry: There was a reference to labor, too. There's a speech in The Bancroft Library in which he addresses the annual conclave of the building trades council and assures the members that they are making progress and warns against mistakes of violence, and of not living up to agreements. He assures them of the necessity of the right to picket, and says that this is being accepted more and more.

Olney: I don't recall that. I don't know of a reason for it. There was a time when he was an arbitrator of a strike. I think it was the Key System strike. It had been a rather bitter strike. It was settled finally by arbitration, and he was one of the arbitrators. I think that probably a speaking invitation of this sort came out of his having arbitrated that strike.

Fry: Well, they printed it right on the front page of their labor paper, so I gathered that he must have been looked upon as somebody very important and relevant at the time.

Olney: The only thing I remember about the arbitration--I don't even know how it came out--was that a day or two after it was over, and the decision was announced, during the afternoon, a package was delivered at our house. It was a big package. When Father came home he opened the thing up. I'll never forget his horror! [laughter] It was a great, big, silver punch bowl, with a big ladle and everything else. It was inscribed to him, and it was from one of the parties in the arbitration!

Oh, gosh, he was fit to be tied. He got that thing back in the box and he got it out of the house. He returned it immediately. This was at dinner-time, but he wouldn't even eat his dinner until that thing was out of the house. Oh, was he burned! [laughter]

Fry: You don't know which side it was that sent it to him?

Olney: No.

Fry: That could have been a real trap.

Olney: Oh, yes.

Now what's next?

Antitrust Action

Fry: He was called by the Attorney General of the United States to be counsel or something for a radio case. There's just a small reference to this. Maybe you could describe what that was?

Olney: Well, this is one of the more important things that he did. What year was that?

Fry: I don't have the date on that. It's not listed in his small biographies in Who's Who.

Olney: William D. Mitchell was the attorney general at the time, and John Lord O'Brien was the assistant attorney general in charge of the antitrust division.

Fry: Was this when you were in his law office?

Olney: Oh, no.

Fry: It was before that?

Olney: Well, now, let me see. Herbert Hoover was the president; that's when it was. Yes, I guess I was out in Martinez. This must have been '27, '28, '29, or '30--somewhere along in there. Yes, that would be right.

Fry: All right, that gives us a clue, then.

Olney: Herbert Hoover, I'm quite sure from what I've been told by my father's partners and others, wanted to put my father on the United States Supreme Court, when a vacancy came along. But he thought he might have trouble doing it, because Father's clients had been exclusively from the business interests, and he'd never represented labor unions. He represented corporate interests.

This antitrust suit was brought by John Lord O'Brien, the assistant in charge of the antitrust division, William D. Mitchell being the attorney general. It was against Radio Corporation of America, General Electric, the telephone company (American Tel), Westinghouse, and there may have been some more large corporate defendants like that in the case. They were charged with forming a patent pool in which they had pooled all their patents, and would issue licenses only to people who would take a license for all the patents in the pool. The government claimed that was a violation of the antitrust law, and filed suit accordingly. The people who were on the short end of the deal were the smaller radio manufacturers like Zenith and Admiral--I remember them, in particular. This was before TV, but there was an awful lot of money involved in that lawsuit, a terrible amount of money involved in it and in the consequences of it.

The attorney general asked Father to become special assistant and to take charge of this lawsuit against these big companies, for the government.

Fry: Is this frequently done, bringing in an outside person?

Olney: Sure. In fact, I did it myself, sometimes. I mean, I both retained people and I've been retained. It's frequently done.

Fry: I see. Am I correct in seeing your connection here between the fact that Hoover wanted to appoint him to the Supreme Court but was afraid of his business connections, and this job?

Olney: I think he gave him this job as a sort of an Air Wick. In this litigation he would be representing the public, against entrenched business interests of this kind.

Fry: Against the business interests, so that he could appoint him with fewer questions from the Senate.

Olney: I think that's what he had in mind, yes. But I'm only guessing at that.

Anyway, Father took the case, and this meant he had to go back there to Washington and Wilmington where the case was to be tried. It's a long, long story. There's a book called The Corrupt Judge, written by a man who collected all the known cases of corruption of federal judges.* This radio case got mixed up with some of these judges who were indeed corrupt, and a lot of this is in the book.

The case ran along for a long time. It was successful. It ended up on the eve of trial with a consent decree. The defendants came in and consented to a permanent injunction against this pooling that they'd been engaged in. The decree is still on the books. It's still in effect and it's still binding, and every once in a while the government has to haul somebody up on a charge of contempt for violating the decree in some way.

Fry: So this had the same significance as legislation?

Olney: Oh, yes. It was a landmark case in radio. It resulted in breaking up a large illegal patent pool and patent monopoly.

My father went to Washington on this litigation, and he and my mother were overnight guests of the Hoovers in the White House several times in connection with it. After it was settled, they returned here, and then a vacancy came up on the United States Supreme Court. This was through the retirement of Mr. Justice Edward T. Sanford. There was the usual speculation about who was going to be appointed.

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*Joseph Borkin, The Corrupt Judge: An Inquiry into Bribery and Other High Crimes and Misdemeanors in the Federal Courts.

Olney: I received a letter some years ago from one of my father's partners about this. I asked him about it once, because he had told me about some questions that had been asked of him by people in the Justice Department. He had been aware that they were considering my father for filling that position. But the nomination finally went to Judge John Parker, the chief judge of the Fourth Circuit Court of Appeals. The Senate refused to confirm Judge Parker due mainly to the opposition of John L. Lewis and the United Mine Workers. Up until this past year, this is the only nomination to the Supreme Court that was ever turned down by the Senate! [laughter]

Then President Hoover nominated Owen J. Roberts, of Tea Pot Dome fame, to fill the spot and he was confirmed without controversy.

When I went back to Washington and became director of the Administrative Office, Judge John Parker was still chief judge of the Fourth Circuit Court of Appeals and, as such, a member of the Judicial Conference. When I met him, since I had the same name as my father, he spotted me immediately, and was very friendly and very kind to me. He remarked to me about my father. I think he was trying to sound me out a little as to how much I knew. I didn't know anything, hardly, but I think also he was wondering if I was aware of the fact that my father had been considered for the same appointment he had been considered for. [laughter]

Fry: Is there anything in the press at that time about this?

Olney: No.

U.S. Supreme Court Advisory Committee on Rules of Civil Procedure

Fry: Later on you started working in your father's office again in the '30s, and while you were there he was a member of the United States Supreme Court's Advisory Committee on Rules of Civil Procedure for the U.S. District Courts.

Olney: Yes. That's a much more important thing than it sounds. Here's a documentary history of it. [hands interviewer a book]

Fry: The name of this is "Rules of Civil Procedure for the District Courts of the United States: A Documentary History, 1934-1938." Now this has Warren Olney, Jr.'s name on it. Does each copy have a name on it?

Olney: Each member of the committee was given a bound copy with his name on it.

Fry: So if someone is looking this up, is that all they need to know, what I just read?

Olney: Yes. This is very well known. These rules are still in use.

Fry: Apparently this had very far-reaching effects on rules.

Olney: Yes, it did, and on procedure in litigation in state as well as federal systems, because the federal rules worked so well that state after state adopted them. They're used in most states as well as the federal courts now.

What had occurred was that the federal courts had tried for years to have rules that were the same as the rules of the states in which they sat. With forty-eight states you had forty-eight separate systems of federal rules, and some were good and some weren't. Then there was a difference in jurisdiction in civil litigation between ordinary law courts and the chancellor's court, the equity courts. In the federal court the same judge would sit as a judge in equity, or a judge at law, but the two systems were different, and the rules were different; the pleadings were different. Then they also sat as admiralty courts, on maritime matters, and they had still another separate system of rules.

Instead of leaving this to the Congress, or the legislature (which is almost an impossible way of going about it), Charles Evans Hughes, who was the Chief Justice of the United States, conceived the idea of the Supreme Court having an advisory committee to make a complete revision of the rules of procedure in civil cases that would be applicable to all federal courts and disregard the rules of local state courts, and also that would abolish this procedural distinction between equity and law.

They assembled a committee of about sixteen to eighteen people. They were judges, lawyers, and scholars from all parts of the country, trying to get a geographical distribution, and also a difference of experience and point of view and whatnot. The chairman of the committee was William D. Mitchell, a Democrat who had been attorney general under Presidents Coolidge and Hoover. He was attorney general at the time my father had the radio case, for example.

Olney: From '34 to '38 they proceeded to work on the subject with periodic meetings. They worked like the dickens, as you can see from these things. They had a staff that saw this thing through, and they finally came up with a set of rules which was approved by the Supreme Court, and then was adopted and put into effect. I have here a copy of the American Bar Journal from April, 1939. I couldn't figure out at first why I had kept this, but it's simply because of the article they have on the new rules.

Fry: Is it true that those rules used some of the western state rules as a model?

Olney: Yes, they did in some respects, in such things as discovery (that is, methods of finding out what your opponent's case is about so you can be reasonably prepared when you get into court) they did follow procedure which was very, very like the California procedures. That was one of the western contributions.

On the other hand, there were other procedures, such as starting a lawsuit without even filing a complaint in the clerk's office, and things of this kind--the service of process--which were entirely eastern innovations. They were complete novelties to us. I remember Father coming back from one of the meetings and telling about this procedure, and we were both scratching our heads and wondering how in the world that thing would ever work! But he said, "The fact is that it does. It does work and, of course, it's so much cheaper and so much simpler than what we've been doing. I'm very much impressed."

Fry: So they put that in too?

Olney: Oh, yes.

If my father was reviewing his own professional activities, I think he would regard his work on that committee as one of the more important things he did.

Fry: I understood that also this was significant because it tended to remove rule making itself from the legislative branch.

Olney: That's true. That's right, yes.

Fry: And has this been followed pretty much, since?

Olney: Oh, yes. The Congress doesn't monkey with it, not any more.

Fry: It's not monkeyed with any more, but what about state legislatures?

Olney: We've always had a code of civil procedure, which was enacted by the legislature, which gave some additional rule-making authority to the court. Just what it is now, I don't know. I haven't been in the California courts for so long, and there have been many revisions. I don't know what they're doing. But the procedures in state courts in California and in the federal courts today are so alike that a lawyer has no difficulty in going from our court to another.

Fry: Can a lawyer also handle a case in any part of the country?

Olney: Yes, indeed. I guess my father was still a member of the committee when he died in '39, because the committee was still functioning, with Attorney General Mitchell as chairman, when I went back to Washington in 1953.

Fry: It was? So this '39 article, then, was not a swan song, or its final report?

Olney: Oh, no. The committee continued. They didn't have any terminal facilities. [laughter] There wasn't any provision for getting rid of them. After the rules were adopted, they would, nevertheless, meet every once in a while to see whether or not there was anything that needed revision. After about five years they did come up with one or two suggested revisions. I think they had mostly to do with condemnation cases, which the Supreme Court didn't like, so they wouldn't approve those.

But they still kept the committee on. It got to be a very embarrassing thing, because the members got altogether too old. They got in their dotage, and they just kind of fumbled around. As they would die off, the vacancies wouldn't be filled, and there'd be only a few left.

One of the first things that Earl Warren did when he became chief justice was to abolish this ancient committee. They had really performed magnificently. Their achievement was very, very great, and everybody knows it. After they were terminated, the federal courts were without any advisory committee for a couple of years. The Chief Justice felt he had to do that--to go without one--in order to avoid any appearance of having fired the old committee, you see, and gotten a new one. There was nothing they could do with that old committee. They had to get rid of it that way.

Then they reconstituted a new set of committees. Each member of these committees was appointed for a fixed term. I had a great deal to do with these new committees. The Chief Justice decided

Olney: that he would get legislation from the Congress authorizing the Supreme Court to have committees of this kind, so that their expenses could be included in the judicial budget and appropriations. When I became director, that legislation was pending. It hadn't been enacted, and my first job was to try to get that through, which I did.

Fry: You became an instant lobbyist for the Supreme Court?

Olney: Right.

Fry: Who helped you get the legislation through? Were our California Senators helpful?

Olney: Well, no. They were mostly judges who helped me on it, people like Judge John Biggs, chief judge of the Third Circuit Court of Appeals, and Judge Albert Maris of the same court, and others. This wasn't controversial. It was just a matter of satisfying Congress that something good would come out of it. They had the very good example of the first committee. Under that legislation the Chief Justice appointed an overall committee on rules with Judge Albert Maris as chairman and subsidiary committees on civil rules, one on criminal rules, on bankruptcy rules, on admiralty rules, and--there's a fifth--I guess it was evidence. They were advisory committees that functioned in the same way as the old committee.

Fry: These are all for procedures, right?

Olney: Yes. The admiralty rules committee, for example, succeeded after three years of awfully hard work in coming up with a set of rules, that were adopted, which merged the procedures in admiralty with those of general civil litigation, so there's now only one set of rules. The distinction is abolished, much to the disgust of the admiralty bar, who liked their special titles and things of this kind.

Fry: They had a very special thing going there.

Olney: Sure! [laughter] The reports of all these committees on special subjects went through Judge Maris' overall committee to coordinate the whole thing, and to avoid any overlaps or duplications, and to work for consolidation of procedures.

Fry: That was instead of evidence?

Olney: We had an evidence committee later. We're getting pretty much off the subject. I was merely giving you this so you'd see that it is an important thing that my father was doing, and why he regarded the work of the rules committee of which he was a member as important work.

Fry: Were all of these new committees under your wing?

Olney: Each committee had its own reporter and staff. We merely did the housekeeping for them.

Water Resources

Fry: We're completely free now to just discuss those things that you feel were other dimensions of your father. He was involved in some committees on water. He was on the California Joint Federal-State Water Services Commission, appointed by Governor Young, in 1929. In 1931 Governor Rolph appointed him to the Honorary Advisory Committee of the Water Resources Commission, and I wonder if you remember anything about that?

Olney: Yes, I do. The water problem at that time was primarily in the Colorado River. The Hoover Dam was being discussed and considered, and worked on. Then there were some flood control problems and other problems in the San Joaquin and Sacramento Valleys. It was about that time that the first suggestions and the first studies were made of the feasibility of having a water system like the one they have in the valley now, with Shasta Dam and the system of canals going right down to the southern end of the valley and on to Los Angeles. It was the very beginning of preliminary considerations and discussions of that kind.

My father had conducted a large number of water cases. That's why he was on these committees.

Fry: Were those his cases for power companies, the Pacific Gas and Electric Company account?

Olney: Yes, primarily. For example, one of the major water cases in the state is the so-called Herminghaus case, Herminghaus vs. Southern California/Edison. It involved water rights on the Kings River, I think it was, and it was an immensely important lawsuit with very, very far-reaching consequences. The real question at issue was the extent to which the common-law doctrine of riparian rights would apply in the state of California as against the rights of appropriation. Now, in common law there isn't any such thing as getting

Olney: water rights by appropriation. That comes from Spanish law, primarily, and Mexican law, and from the West. Father succeeded in losing the Herminghaus case in the state supreme court so that, of course, made him a recognized authority on the subject.

[Interview 2: July 30, 1970]

Fry: In 1929 it was the California Joint Federal-State Water Services Commission that your father was appointed to by Governor Young, apparently. Was he especially close to Governor Young?

Olney: They went to college together, and Governor Young used to live in Berkeley, down on Etna and Derby Streets for a time. Father had a lot of stories about Governor Young. I remember one in particular about Young being caught as a freshman on the streetcar that ran along College Avenue. Some sophomores took him off the streetcar and tied him up and put him in a bush. My father, who, I think, was a senior at that time, and some others came along and found C.C. Young and others there, all tied up, and turned them loose. [laughter] I think that was their first meeting. But they knew each other after that, of course.

Fry: Joe Beck was very proud of the part that he played in grooming C.C. Young for governor, and he wanted to tell us all about this on tape, and then he died before we could get to him. Beck felt that Young was one of the outstanding governors.

Olney: Well, I have no way of evaluating governors. I know that during the time he was governor, and afterwards, he was regarded as a very good governor, a great improvement on what had gone before. Stephens was regarded as a far better governor than Friend Richardson, who succeeded him. But that's only in the circle of people who I happened to hear talking about governors.

Fry: I'd like to back up. You had mentioned to me that you were aware of your father being involved in the 1922 fight. Was it a public versus private power and water fight? It was a referendum.

Olney: There was an initiative measure to try to get state approval for a water development program that involved the water resources in Northern California as well as on the Colorado River, as I recall. I only know that my father took an active part in trying to support that, in spite of the fact that he was not infrequently retained by the power companies. That's all I remember about it.

Fry: He was supporting the public--

Olney: Yes. He was in favor of the initiative, which was defeated.

Fry: Then you think that this other committee, in 1929, was the study commission that Young appointed.

Olney: Well, I'm thinking about this, but my recollection is that there was a series of political fights after '22 in an effort to get various water plans, more or less similar, approved. They were beaten by the well-organized opposition of the power companies, every time.

This commission that you speak of was sort of a compromise, an interim device, as I recall. They decided that instead of trying to propose a specific, definite program, they ought to lay a foundation by an adequate, intelligent study of the problem, with recommendations from a body whose recommendations would carry some public weight.

That, I think, was the purpose of it, not to support any particular program, but to look at them all and evaluate them all, and then try to make recommendations as to what the state should do, as far as its future was concerned. They came up with one proposal in 1931, a water resources program which eventually was carried out. It included both the Central Valley and the Colorado River.

Fry: Yes. In 1931 what was called the State Water Plan was presented to the legislature. In 1933 it was finally passed, and then it became the Central Valley Project, and this is what we're still arguing about today.

The 1931 committee that he was on must have been a continuation of this 1929 study commission.

Olney: I dare say.

Fry: The governor changed. Governor Rolph was in, and it became the Honorary Advisory Committee of the Water Resources Commission. By that time the purpose would have changed, I guess.

Olney: Frankly, I don't remember. At the time that these things were happening--that is, from '20 onwards--I was married, and living in Martinez and north Berkeley, and only knew about these things from what I read in the paper and what my father might occasionally say to me about it.

Fry: Okay. Then the most we can do is just establish the fact that he was involved in these first steps in getting the water plan underway.

Olney: Yes, he was.

Fry: Probably if anyone wants to know anything more they can go to the reports of these commissions and find out. But the interesting thing about your father is that he was able to represent PG&E and Southern California Edison in cases, and at the same time maintain his own integrity in his public opinions on the power issue.

Olney: I remember that the power companies were sort of lying in wait for the proponents of the measure, because they thought that even though the public were to build the dams and the transportation of water, and that kind of thing, they could control the distribution of power. They alone had the lines, and they thought that they could prevent public power from being introduced into the picture, and that's what they were really concerned about. Now, after that was passed in '31, there was an awful fight about that, particularly from Shasta Dam.

I remember my uncle, Louis Bartlett, ex-mayor of Berkeley, was very, very strongly in favor of public ownership of the power lines. My recollection is my father was not. I'm not sure about that. I would think that he may well have opposed public ownership of those electric power lines, but I don't recall. But I didn't want to give you a wrong impression.

Fry: Do you know what your father felt when the Hetch Hetchy Dam was built, and then the power came through and was sold at San Francisco instead of being retailed directly from public power lines to the reisdents of San Francisco? After a big fight, PG&E finally got the right to distribute that power. Do you remember his talking about that?

Olney: I don't remember what his views on it were, but at that time he was counsel for, and his firm represented, the Spring Valley Water Company. They were not in the power business, however. I think that was before the consolidation of Great Western Power and PG&E.

Fry: Yes, I think it was before that.

Olney: At that time he was representing Great Western Power, not PG&E. I don't think Great Western Power got itself concerned in that fight, because their lines didn't come down here. They were up around the Sacramento area. So I doubt if he had anything to do with that. No doubt he had some views about it, but I don't know what they were.

Views on "Court Packing"

Fry: Then the other thing that we didn't mention last time and that I wish you could tell us something about was the work that he did to alert the general populace about the dangers of a president [Roosevelt] adding judges to the Supreme Court.

Olney: He felt very, very strongly about that and thought that it was the responsibility of the bar to alert the public as to what was involved in it. He thought that the crux of the plan was simply to overturn decisions of the Supreme Court that the administration didn't agree with. There'd been a whole series of decisions holding the NRA [National Recovery Act] unconstitutional, the AAA [Agricultural Adjustment Act] unconstitutional, and a few other things like that. He felt that this was merely a political move to stack the court and to reverse those decisions. He and a former president of the American Bar Association, and others in the East who were equally concerned, tried to organize a campaign against the court-packing plan through bar organizations. My father made a speech or two on the subject and wrote a good many letters, and things like that, in connection with it.

Fry: We have one of those speeches in the Olney papers in The Bancroft [Library], and then you gave me one of his speeches last time I was here.

Olney: I've always thought it was interesting that the Attorney General of the United States who proposed that plan was Robert Jackson, who later became himself a justice of the Supreme Court. My father was very active in beating that plan in Congress. When I went to Washington, Robert Jackson was the leading spirit in an American bar crime commission, and he asked me to be a member of that commission [laughter], which I did!

Fry: You didn't have any problems working with him, I gather, even though your father had fought against him.

Olney: None whatever. He was a very delightful man to work with.

Fry: Had his views changed at all on this question? Or did you ever approach him on it?

Olney: I think they had. I never asked him about it. It was all past history at that time. It was very curious the way it worked out. This happened because Roosevelt, who had been in office for a long time, had not made a single appointment to the Supreme Court, and there didn't seem to be any prospect of it. Very shortly after this, he made a large number of appointments to the Supreme Court and soon it had a majority of his appointees.

Fry: So he accomplished the purpose.

Olney: But the whole idea of a president or an administration trying to get its ideas through the Supreme Court by stacking the membership of the Court has never worked. Furthermore, a president never can anticipate how any of those justices are going to vote, whether he's appointed them or not. A great many presidents have gotten very great surprises from their appointees.

Hunting and Packing

Fry: I think that's the last thing on our outline about your father, unless you'd like to add what sort of a man he was like to be around. Was he lively and bubbly, or was he quiet and gentle? Kind of give us a Reader's Digest type of description of him! [laughter]

Olney: Well, he was not "bubbly". He was reserved, but not quiet. He was always very active physically. He played tennis regularly up until the time he was sixty anyway, maybe older. Then he took up golf, and he played golf up until the time he died, and he enjoyed that very much. He'd been a football player in college, and then a referee for football games after that. He enjoyed trout fishing and deep-sea fishing very, very much, especially trout fishing.

When he was a young man he did a good deal of traveling around the mountains in California. He took many, many pack trips. His particular area was the Cascades, up around Mount Shasta, and places like that. I know he climbed Shasta at least four or five times. He used to love the place.

Incidentally, my mother's father, Dr. J.K. McLean, climbed Mount Shasta at least three times. On one occasion he remained on the summit for two or three days, keeping company with a man from the United States Geological Survey. The Survey was trying to exchange heliographical signals between Mount Shasta, Mount St. Helena, and some peaks near Lake Tahoe (Mount Lola) for triangulation

Olney: purposes. Of course, they had to wait for the right day for visibility, but they succeeded. The flash from Shasta to St. Helena was reported to be the longest distance heliograph signal received up to that time. The official report of this incident makes mention of Dr. McLean's assistance and suggests naming a small knob on the summit for him.

Father and his friend Charlie Bentley--this was before either of them were married--they'd go up to Redding or Red Bluff and pick up a couple of mules and put their sleeping bags and food on them and they'd go right into those mountains and be gone for weeks at a time.

They covered enormous distances. My father used to scratch his head in later years and wonder how in the world they ever got so far in a single day as they did on some of those trips! [laughter] But they stayed away from trails pretty much--they just went across country and saw a great deal of it.

Fry: He, as a young man, was a charter member of the Sierra Club.

Olney: That's right.

Fry: Was he active in the Sierra Club outings? It sounds like he more or less went off on his own.

Olney: Yes, he was. He and my mother went on either the first or the second outing the club had.

Fry: With John Muir?

Olney: I don't know about Muir. Will Colby led it. They went into the Kern Canyon that year. I know my mother went on only one of the trips. I'm not sure how many Father went on. Most of the trips that he took were on his own, rather than with the club.

Fry: Yes. It sounds like he was enough of a pro that he enjoyed sort of going with his mules and his friends.

Olney: Along in 1918 he had occasion to meet Jay Bruce, who was the official mountain lion hunter for the State of California. He met him up at Wawona.

Fry: You mean that the state hired a person to hunt down mountain lions?

Olney: Sure. He was on salary, and then he also got a bonus of $20 for every lion that he turned in. He'd be called to different counties of the state where the lions appeared, and he'd go out and hunt them.

Olney: My father got acquainted with Bruce and liked him, and then my brother and I and my father went on hunting trips with Bruce three or four times. The longest trip was in the area just north of Yosemite. We started from Buck Meadows on the Big Oak Flat Road and went north across the Tuolumne River, up above Hetch Hetchy into Cherry Valley and back. Cherry Valley is covered with a reservoir now. We were gone a couple of weeks, something like that. This was in the summer of 1919.

Bruce came up to Shasta County at least two or three times, and made his headquarters at the Bollibokka Club that my father and others founded. It's on the McCloud River. With that as the headquarters, Bruce made a lot of trips out there. He must have been there a couple of weeks. My brother and my father and I went out with him two or three different times in the spring of 1919, using the club as a headquarters.

Fry: He was a real expert, wasn't he, in getting around in the mountains, and knowing them?

Olney: Oh, yes, he was--yes, he did.

Fry: I mean, lacking a railroad mogul's private car, this would be the next best thing, I guess, going out with a man like this!

Olney: Well, it was if you wanted to hunt. As a young man, Father did a lot of deer hunting. We had a lot of deer heads and rattlesnake skins around the house when I was a boy that Father had mounted as trophies. I've done a lot of squirrel shooting and things like that, and the idea of hunting mountain lions was very appealing to me. But on this trip into Cherry River, Bruce's dogs had been without any meat for a couple of weeks. He'd been feeding them on pancakes, and they were getting pretty ratty and weak. He had authorization from the Fish and Game Commission to shoot animals for food purposes if he needed to.

Fry: Had he deliberately kept his dogs on pancakes, so they would get hungry?

Olney: Oh, no. This was because we hadn't gotten anything; we hadn't caught up with anything. So he decided--there were plenty of bears around--that he'd shoot a deer or a bear to get some meat. We treed a bear, and I was given the great privilege of shooting this bear. He was up in a big yellow pine tree, way up on a high branch, standing on a branch with one paw against the trunk of the tree, looking down at us, with these dogs snapping around down below. [laughter] I got a great thrill out of being allowed to zero in on that bear.

Olney: I shot him right through the head. Down he came with a tremendous crash, you know, and the dogs all pounced on him and worried him and whatnot, and the more I looked at this, the more he looked like a baby with a fur coat. Oh, I had the most awful revulsion. I just felt like a murderer. And I've never been able to do any shooting since. It cured me!

Fry: It's interesting that the viewpoint of the whole Sierra Club has changed to an anti-hunting, preservation-of-wildlife view, too, since then.

Olney: Oh, well, yes, certainly. Of course, this was 1919 that I'm speaking of. Our population was very small. We had animals all over the place.

Fry: You were seventeen years old?

Olney: Yes. Mountain lions were thought to be something that ought to be exterminated: they killed deer, they killed sheep and lambs and things of this kind. Why, there was a bonus of $20 a head for anybody that killed one!

It's closed season on mountain lions in California today. It's the same old story of finding that the predators have a very important, necessary place in the balance of nature. But we didn't think in those terms at all. We've had to learn these things the hard way.

Fry: And then you had your very personal lesson!

Olney: Oh, yes! It wasn't any ecological thought that I had; it was just that I thought it was so cruel and horrible.

Fry: Yes. Bears are sort of appealing animals, too.

Olney: They are, yes.

Fry: At any rate, I gather that you were able to have a lot of outdoor life and activity when you were growing up.

Olney: Oh, yes.

Fry: And you learned to carry a pack on your back?

Olney: A knapsack, yes, and a bedroll once in a while.

Fry: How many pounds did you carry?

Olney: I don't know, but I don't recall ever having to carry very much. Most of the packing I did was after we got married, during the Depression. We didn't have money for a vacation, and Elizabeth and I would do the same thing that my father used to do. We went up in the mountains and we'd just get a mule or a horse and pack it and walk, did our own packing. We covered nearly the whole Sierras that way.

Fry: You did?

Olney: The only area that we haven't explored thoroughly is the Kern, which is the most southern part. We've covered everything else, and a lot of it many times. We did this for well over ten years. Then when our children were ten--we didn't take them before they were about ten--we did the same thing with them, too, took them along.

Fry: Backpacking equipment is greatly improved now. When you first started out, the bedrolls were extremely heavy, and I wondered what difference you see in this now?

Olney: Well, they were heavy, and that's why we always took an animal and never did any backpacking. We could get an animal--a mule or a pack horse--for $1.50 a day. If you took it on a weekly rate it was less than that. Our food was very carefully planned out. We used to use the Sierra Club list that Dr. Hildebrand got together, and used that as a base. We had our own modifications, but it was very light, very compact, and very adequate. It really kept us in fine shape. But we used a mule or horse always because of the heaviness of the bedroll, and things of this kind.

Elizabeth and I developed a pretty efficient division of labor in packing the animals. She always put on and fitted the harness. She put on the saddle blankets and also put on the pack saddle and set them and cinched them with great care. I balanced and loaded the kyaks or pack boxes or whatever we were using. I loaded the bedrolls and utensils and we slipped on the canvas cover for the load together. Then I tied the whole load together with the diamond hitch--that being the only hitch that I knew how to throw. Our system worked very well. On our many trips not one of our animals ever developed a saddle sore or any other injury or ailment. Furthermore, we never lost a pack or even had one slip. I usually led the lead animal with the others tied in a string. At night we always staked our lead animal, relying on the others to stay around, which they usually did.

Fry: Did you ever get snowed in?

Olney: We got snowed on, but we never got snowed in. Just snow that fell during the night, or something like that.

III WARREN OLNEY III: BACKGROUND

Childhood

Fry: I guess we'll go on into chapter three, if we're not already in it, on your childhood.

Olney: Life in Berkeley when I first remember it was very different than it is now. I'm speaking about the years around 1909 and 1910 when I was five and six years old and we were living in a house which is still standing at the corner of Warring Street and Channing Way. One of my most vivid recollections of this period is my dislike for the clothing which I had to wear. My clothes were no different from what other boys in the neighborhood were wearing and I suppose they disliked theirs as much as I did mine.

My regular garb started with a porous knit union suit. Over that I wore a pantywaist with garters. The garters held up long black stockings which were mandatory. Our pants were always knickerbockers that fastened above the knee and were of corduroy or some other reasonably tough material. We wore a shirtwaist that tied around the waist with a string which was tucked into the top of the pants. More often than not we wore neckties. We wore button shoes that came up above the ankles and had to be fastened with button hooks. They were supposed to be black, but they rarely were because of the scuffing they took. A good part of the time we had large holes in the knees of our stockings due to falling down when at play. Sometimes we wore little leather knee guards over our knees that fastened with elastic bands and that were supposed to protect the stocking in case of a fall.

When we got really dressed up, my brother and I were put in sailor suits with sailor collars in the back and large, floppy sailor hats. These clothes were as uncomfortable as they sound, and how we loathed them.

Olney: About this time a family from New Zealand moved into our neighborhood. Their boy, Noel Izet, was clothed New Zealand style. A loose shirt with open collar and short sleeves, short pants and wool socks that ended below the knees and low, brown shoes. Just about the sort of clothes that everyone wears today. How we envied Noel. We thought he was the luckiest boy on the block.

Transportation in our neighborhood was very different from what it is now. There was indeed one automobile in our neighborhood, belonging to the McFarlands, complete with chauffeur, but no one else had an automobile. Just a block below us on Piedmont Avenue, north of Channing Way, lived a Miss Fish. She lived in an elegant house and garden and had a stable with a pair of matched horses and a fine carriage with a top that could be put back. She had a coachman to drive it and to care for the horses. Occasionally she would take one or two of us neighborhood children for a ride, something that we really enjoyed. We would sit on the front seat facing Miss Fish and riding backwards with a pair of pug dogs that she usually had as passengers. No one else in the neighborhood owned any private transportation.

My Grandfather McLean's church was still located at 12th and Clay Streets in Oakland some five miles away and my mother, of course, made sure that my brother and I went to Sunday school there. To get there we walked down Channing Way two blocks to College Avenue and took the streetcar for five cents.

There were residences along College Avenue as far as Alcatraz but no places of business. From Alcatraz to the top of the Broadway hill where College Avenue meets Broadway in Oakland, it was mostly open country. A very pretty creek with live oaks on its banks ran where the Chimes Theater was later built and there was a wooden bridge for the streetcar to cross. From the top of the Broadway hill down to 14th and Broadway there were scattered residences with a great many vacant lots.

At 22nd Street and Broadway was the Key Route Inn. This was the terminus for the Key Route trains which ran to the Ferry Terminal located where the eastern end of the San Francisco Bay Bridge is now. There were, of course, many other Key Route trains fanning out to Berkeley, Elmhurst, and Piedmont. However, on 22nd Street in Oakland the line ended at Broadway and there the company had built this large inn some three or four stories in height right over the car tracks. The architecture was supposed to be Elizabethan. It was fully equipped with guest rooms and a dining room.

14th and Broadway was the center of business in Oakland at that time. In the basement of the large building on the northeast corner there was a barber shop and this was the most accessible

Olney: barber shop to our home in Berkeley. Mother took my brother and me there for our haircuts. There must have been some four or five barber chairs. In back of the chairs were glass cabinets with shelves loaded with shaving mugs. The safety razor had not been invented and most men got their daily shave in the barber shop. Regular customers had their own mugs, usually with their names on them, and their own shaving brushes. Berkeley did have a barber shop on Shattuck Avenue near Addison Street, but the transportation was so lacking that it was quicker and easier to go for a haircut in Oakland than it was to get to the barber shop in Berkeley.

My father was, of course, commuting daily to San Francisco. He would have to walk down Channing Way to College Avenue and catch a streetcar that went south on College to Alcatraz Avenue and then west on Alcatraz to Adeline Street. Getting off at Alcatraz and Adeline, there were two lines of transportation to San Francisco. One was the Key Route with its electric cars which ran to the terminal I have already mentioned. The other was a steam railroad of the Southern Pacific Company which ran to the Southern Pacific mole where its Transconinental trains met the ferry. The mole was not far from where the BART tunnel goes below the surface on its way under the bay. For a long time the fare to San Francisco was ten cents each way. Both the Key Route and Southern Pacific ferries had restaurants aboard and the Key Route was noted for its corned beef hash.

When the family went to Grandfather Olney's home on 29th Street in Oakland, as we often did on Sunday, we almost always took the streetcar. There was no taxi service, but there was a livery stable in town. It was located on Kittredge Street across from the present California Theater. The stable had a cab which was pulled by a single horse and was usually driven by a Mr. Fitzpatrick. Father and Mother used it only on the most formal occasions and then had to make arrangements at least a day ahead of time.

At this time there was a huge vacant area in the neighborhood of 40th and Shafter Streets in Oakland. This lot was used by all the circuses and traveling shows that came to town. I can remember being taken to one by my Grandfather Olney and it was notable indeed. It was Buffalo Bill's Wild West and the cast included Buffalo Bill himself; Annie Oakley, the famous rifle shot; and a troop of Indians who had been present at Custer's last stand. I still remember Annie Oakley's incredible marksmanship. Little glass balls were projected into the air at great heights and at all angles and she would break them one after the other with a rifle shot, never missing.

Olney: The Indians were a tremendous sensation. They were there in full regalia, riding their horses bareback, and they whooped and hollered as they tore around the ring chasing a stagecoach with Buffalo Bill and others and exchanging blank shots at each other, making a most satisfactory racket.

By 1911 and 1912 the transportation situation began to change. Grandfather Olney bought a Rauch and Lang electric automobile for Grandmother. The body was finished like an elegant carriage. It had plate glass windows all around, very good light grey upholstery, a small glass vase for flowers, and silk roller shades for all the windows.

The driver steered the car with a horizontal lever. He pushed the lever forward to turn left and pulled the lever back towards himself to turn right. The power was applied with a vertical lever at the left side of the driver's seat. The lever was pushed forward to make the car go and pulled back to turn the power off. The tip of the lever had a button which rang a loud bell instead of a horn. Top speed on the level was about fifteen miles an hour and the driving range between charges was about forty to forty-five miles. At first Grandfather used to take the car to the shop to be charged, a distance of three or four blocks, and a recharge took not less than four hours. Soon Grandfather had his own charging unit installed in the barn where the horse stalls had been.

The electric came equipped either with pneumatic tires or with solid rubber tires. Grandfather chose the latter to eliminate the problem of punctures and blowouts. This had some curious results. The solid rubber tires were flat on the street with vertical sides and the distance from the wheels on one side to the other was just a little bit shorter than the standard distance between railroad and streetcar rails. In the blocks along College Avenue between Russell Street and Bancroft Way, asphalt paving had recently been laid. I believe this was one of the first asphalt pavings to be laid in Berkeley. This was all very well for streetcars and the ordinary automobile with pneumatic tires, but the electric, with its flat, hard rubber tires and slightly narrower width, could get caught between the rails and be unable to get out no matter how hard the steering lever was pushed or pulled. More than once we were treated to the sight of Grandmother or Grandfather moving gently along in their electric on College Avenue, past our house where we were then living, and forced to go all the way to Bancroft where the car tracks made a turn. When the tracks turned, the electric would jump the rails and get out of the trap. The electric enabled Grandmother to go marketing and to visit the cemetery, but it wasn't good for much else.

Olney: In a few years Grandfather bought a gas car for himself. This would have been about 1913 or 1914. This was a Studebaker Roadster. Grandfather said that Studebaker had made very fine wagons during the mining days and if they made good wagons they probably made good automobiles. Grandfather's car had the gearshift and clutch that was usual at the time. But the way he operated it was not so usual. He had been told to depress the clutch, put the shift in first gear, and release the clutch, and then do the same thing with second and third gear.

He did this in the most literal fashion. He would step on the clutch, put the shift into first gear, and then simply take his foot off the clutch, starting the car with a jerk that was enough to snap one's head off. Then, speeding the car up, he would again depress the clutch and with the same deliberation put the shift into second gear, taking his foot off with a second jerk that was nearly as violent as the first. The same thing took place when he put it into high, only the jerk wasn't so severe. Somehow Grandfather never learned to drive the car any other way.

He wasn't a very popular driver and I guess his little Studebaker didn't like it much either. One Sunday, when the whole family happened to be assembled on his front steps and front lawn, he drove the car in from the street on his way to the barn in the back. There was a depressed gutter at the edge of the street, which would give the car quite a bounce if it was moving at any considerable speed. On this day Grandfather hit the gutter and both the rear wheels fell off. My father and my uncles laughed so hard, I thought they would expire. Later examination in the shop showed that these jerky starts of Grandfather's had so twisted the axles that they had finally twisted the wheels to the point where they both broke off.

Our house on Warring Street had no yard or space around it. The vacant lots in the neighborhood were fast being built upon, with the result that there was no place for us boys to play, excepting in the street. This distressed my mother, with the result that we moved from Warring Street to a larger house at the corner of College Avenue and Dwight Way.

This house had a very large L-shaped fenced back yard with plenty of room for a garden, and back of that a great deal of open space for us boys to build tree houses, dig tunnels and earth fortifications, and build swings and pigeon lofts, all on our own property. At the back of the lot on Dwight Way was a garage. But since we had no automobile, the garage was rented to my father's friend Charles Merrill, who did have one. The Merrills lived in a very large house which they had built for themselves on Warring Street,

Olney: but it had been constructed without any garage. Their chauffeur, known to us as Hongy, had a good four-block walk to the garage every time the Merrills wanted to use the car.

About the first privately owned automobile to appear in our Dwight Way neighborhood was the property of the William Gorrills, who were old friends of my parents and known to us as Uncle Billy and Aunt Kitty. They had won the car in a contest and it was a Ford Model T. Since the self-starter had not yet been invented, it had to be cranked by hand.. Not infrequently the motor would backfire when starting and this would cause the crank to fly around like crazy in a reverse direction. Two or three arms were broken before it was realized that after giving the crank a strong pull to turn over the motor, the handle should always be released like a red-hot coal so that the arm would be out of the way in case of a backfire. Broken arms for Ford owners were about as common in those days as broken legs are for ski enthusiasts today. It could be safely assumed that a man with his arm in a sling was the owner of a Model T.

About 1916 or 1917 my father decided to buy a car. He considered seriously getting an Ohio electric but finally settled on a gas car made by the Dodge Brothers. This was quite a unique car; it had a four-cylinder motor with a self-starter. It had an electric horn with a button that was located on the lefthand wall of the car by the driver's seat. To blow the horn you hit the button with your knee.

Our car was unique for the area in that it had a sedan body with glass windows. Up to then the only cars we had seen in our area had fabric tops which could be put down and side curtains with isinglass windows for wet weather. The magazines had pictures of a few more expensive makes of cars with sedan bodies with glass windows, but there were none in our area. Ours was said to be the first Dodge sedan in Northern California. That distinction didn't last long; the Dodge sedan became very popular and was soon seen almost everywhere.

A few years later Father bought a large seven-passenger sedan. It was a Cole Aero Eight painted a dark navy blue and it had cream-colored wire wheels. Cole claimed its cars would get superior mileage on tires and it had an advertising slogan, "15,000 miles on tires"--if you got ten, you were lucky.

Like all cars of the period, the Cole had running boards on both sides and these were often used for carrying extra supplies. My mother and Grandmother McLean were fond of making weekend visits to Saratoga where they stayed at a boarding house run by some people

Olney: named Lunblad, and I usually drove them on such trips. The distance was only about sixty miles, but in preparation for the trip I would strap onto the running board on the driver's side three cans, one containing water for the radiator, the second containing engine oil for the crank case, and a third containing extra gasoline. It might well be necessary to use one or all of these cans on such a trip; the most frequent need was for extra oil.

Of course, I had to provide for punctures too. It was remarkable to go to Saratoga and back without one or more flat tires. We did not have demountable wheels and so I could not carry an inflated tire. I carried an extra casing and extra inner tubes, a set of patches and vulcanizing equipment. If the puncture was just a nail hole, which was the commonest cause, I would jack up the wheel, take the tire off, pull out the inner tube, and vulcanize the patch on the tube right then and there, and then put the tube back in the casing and put it on the wheel.

Then the tire had to be inflated. The only way of doing this with the Dodge was with a hand pump and it would take twenty minutes to a half an hour to inflate a tire to the necessary sixty-five pounds. The Cole, however, had an air pump under the front seat which was driven by the motor, so it could blow up its own tires without someone having to do it by hand. Today it is fun to see these old cars in a museum. They look pretty snazzy when they're all polished and shiny and are only driven for a few blocks in a parade. But in their hey day they were utterly unreliable and a trip of any length in one was more of an ordeal than an adventure.

Household shopping was very different in my childhood. There were no supermarkets and housewives did not go to the grocers to pick up their supplies for the family. In Berkeley there was a large grocery store named Sills located on Shattuck Avenue. Every weekday morning men from Sills would cover the town taking orders. These men rode in light buggies pulled by a single horse. A long leather tether was attached to the bridle of the horse with a heavy iron weight at the other end. The weight was carried in the buggy with the tether still attached to the bridle. When the order man arrived at a customer's house, he would throw out the weight, which would anchor the horse, and then go to the house to inquire if there was any grocery order for the day. The housewife would tell him her needs, which he would write on his pad, giving a copy to her and taking the original back to the store. Each order man would cover a whole neighborhood. When the orders reached the store they would be packed in delivery wagons pulled by two horses and delivery would be made in the afternoon.

Olney: The grocery business was conducted in this way before automobiles and for a long time afterwards. Indeed, this kind of business was done even after the telephone appeared. One reason for this was that there were two competing telephone companies, the Home Telephone Company and the Pacific Telephone Company. Each had its own customers and was independent of the other and one could not make a call from one telephone system to the other. A few people had both systems install telephones in their houses, but most telephone customers had one or the other, while the majority of homes had no telephones at all. Many people regarded the telephone as a nuisance and more trouble than it was worth and with this kind of service one can see why.

When I was a boy we had long distance telephone service only up and down the Pacific coast. One could not telephone to Chicago, New York, or Washington, D.C. This made those cities seem very far away indeed. The first transcontinental telephone line was not completed until 1915, the year of the Panama Pacific International Expositon in San Francisco to celebrate the opening of the Panama Canal. At that Exposition, the telephone company had a very popular display of their recently completed transcontinental line. A whole room full of people was provided with telephone receivers and then one was selected to make a telephone call to some Atlantic seaboard city. When the call was put through, everyone in the room was allowed to listen in on this miraculous exchange of voices from one side of the continent to the other. Of course, the parties to the conversation were informed of the people listening in. This exhibition drew very large crowds all year long of people who wanted to hear a voice from the other side of the continent.

Another thing that was very different when I was a child was our money. In California and, indeed, all over the West, paper money was unknown and coins were used exclusively. The penny was copper and the five-cent piece was nickel. The dime, half dollar, and dollar were real silver. Five dollars, ten dollars, and twenty dollars were in gold pieces. I suppose there were coins of larger denomination, but I don't remember ever seeing one. I did not see any paper money until I was taken to Boston, New York, and Washington when I was twelve years old in 1916. Our gold coins were as strange in the East as their paper money was in the West. I remember Father offering a gold coin to pay for some theater tickets in New York City, only to have the man look at the coin with the greatest skepticism. He bounced it on the counter to hear it ring, he looked at it under a very strong light, and finally he even bit it. In the end he finally accepted it, though it was evident he had never seen a gold coin before. I mention these bits about our communications and our money because they tend to illustrate how really isolated we were out on the Pacific coast from the rest of the country at that time.

Fry: I wanted you to say a little bit more about your mother. We talked at great length about your father, and maybe you could tell us what sorts of things she was interested in, and so forth. We do have that short interview from her.*

Olney: Yes, I'm sure you do, and I'm not going to try to cover everything that was in there. She was an only child. Her father and mother moved to Berkeley when he became president of the Pacific Theological Seminary, as it was called at that time. It's now the Pacific School of Religion. My grandfather McLean built a house on Channing Way, just below Piedmont Avenue. We were living in a house on Channing Way and Warring Street, just about a block away, so that as small boys my brother and I used to go down there very often. But my grandfather McLean became senile about 1913 and had to go to a hospital. He died in 1914. My mother's mother was not in very good health, and never had been. In spite of the fact that she was a semi-invalid most of her life, and had only one eye, she lived to be ninety-eight.

My mother had to make some choices that I know were difficult for her. And the choice that she made was to take care of her mother. There were many, many occasions when she would very much have preferred to take trips with my father and take part in his activities, and things of that kind, which she felt she couldn't do without neglecting her mother. And that went on, my grandmother McLean not dying until 1930 or '31.

But my mother was, I thought, a very intelligent mother with good judgment. She treated my brother and sister and me very well indeed. We had the greatest affection for her, but she didn't leave us at loose ends. She was never a strict disciplinarian, but she saw that we were fully occupied, and gave good direction to our interests.

For example, when I was twelve and my brother was fourteen--and this was at her instigation--she and my father took the two of us on the railroad trip, first to Boston, and then to New York, and then to Washington, D.C. They took us out of school for the purpose, and we must have been gone about three months, sight-seeing, and visiting such friends as they had. They thought that we ought to see something more of the country than we had. We had never been outside California before. She left my sister home because she was too small.

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*Mary McLean Olney, Oakland and U.C., 1880-95.

Olney: She also was active in many civic things. She was on the national board of the YWCA for years. I guess that's in the interview with her. She was active in helping purchase Asilomar for the YWCA. She was always interested in Pomona College because of the connection of her father with it, and later, for years, was a trustee of the college.

Fry: Her father was?

Olney: No, my mother was. This was in the '20s, '30s, '40s, and '50s, and, I think, into the '60s.

Fry: Was this your mother who was the dean of women there?

Olney: Yes, years ago, when she was a young woman.

Fry: What are some of the other activities that she kept you boys involved in here in Berkeley, as she channeled your energies?

Olney: This is a little difficult to say. It was a day-to-day matter. There was one thing about my bringing up that was a little peculiar, I thought. [laughter] When summers would come around, I would want to get a job, and my father wouldn't approve of it. He said, "There are too many boys who need those jobs, and you can get along without it, and it isn't right for you to go taking a job from somebody who needs it." So I never had a job until I got out of law school. I never earned a nickel! [laughter] Except sweeping the sidewalk or something out in front of the house. This was peculiar because my older brother did have a job nearly every summer. I have never understood this.

But this meant they had to keep us occupied in the summer. One summer, when I was ten, my mother took my brother and me for seven weeks to Yosemite. We stayed at what was called Camp Ahwahnee, long since defunct. It was a tent-platform affair. It was perfectly marvelous. There were no automobiles. They hadn't got in there yet; you had to go up by train. And there wasn't anybody to speak of in the valley, anyway. You could wander all around the floor of the valley and not see anybody.

Fry: That seems incredible! In the summer?

Olney: Oh, yes. Sure. I mean, if you went down to the village, of course, or to the Sentinel Hotel or in Camp Curry, there were plenty of people. But we used to go down and swim in the Merced River and we never took any suits. Didn't have to. And we would go over to Yosemite Falls--walk over there and back--or we would go up to the top of the falls, and not see anybody the entire time.

Fry: This was when you were how old?

Olney: I was ten.

Fry: So that would have been 1914?

Olney: Yes. We were in Tuolumne Meadows in August, 1914, when World War I broke out in Europe. I have described our experience in the foreword I wrote for my grandfather's biography that we mentioned earlier.

They sent us back again in 1916 to Yosemite. My brother, I, and a friend named John Baldwin. This time they sent a young man along to take care of us, Victor Doyle. Victor had just graduated from college. He'd been president of the student body at Berkeley. We then went to Camp Ahwahnee, and Vic rode herd on us for a good many weeks, and then took us on a pack trip. We went up to Merced Lake and to Babcock Lake.

Then in 1918 I again had a lengthy summer in Yosemite. This time we stayed at Yosemite Falls camp that had just been built, and I didn't need anybody to nurse me. I spent most of the time, when I wasn't walking around, working in the swimming pool. I didn't get paid for it! [laughter]

Fry: That was all right; as long as it was slave labor, your father would approve! [laughter]

Were you all by yourself this trip?

Olney: Oh, no. My mother was along, and my sister was there, and my grandfather came up for a lengthy stay with us, too. So there was a group. This was a little different from what my friends were doing. They all had jobs! [laughter] But if you're going to do that with a child--a boy in particular--you do have to give thought and make plans as to what to do to keep him busy.

Fry: Then how do you teach them to handle finances, if you don't let them take a job? Were you given an allowance that you had to manage or anything?

Olney: No.

Fry: You were really underprivileged! [laughter]

Schooling

Fry: I guess we should find out something about your schooling. You went to the Berkeley public schools?

Olney: I started in the first grade; I think I was seven. I went to a private school known as Miss Randolph's, which was located at Derby and Belrose Avenue. I went there in the first grade and I'm the only person that I know of who ever flunked the first grade! [laughter] I did! They wouldn't promote me.

Fry: Why wouldn't they promote you?

Olney: I only know they wouldn't. And this made my mother very, very indignant. So she took me out of this school and put me in the public school. I went to Emerson School. Having flunked the first, I was started there in the third.

Fry: On the basis of your sterling record? [laughter]

Olney: I went to Emerson School with a great many boys and girls who've been friends all my life. One was Henry Colby; that's Will Colby's son. He and I lived across the street from each other on Channing Way. We lived on Channing and Warring, and they lived on the other corner. We went to Emerson together, we went to University High together, and we went to the University of California together--joined the same fraternity--roomed together for a time. So I've known him a long, long while.

And then Scott Elder is another one that I knew at Emerson. He lived down on Etna Street. This is Paul Elder's son. Paul Elder had a famous bookstore in San Francisco.

Fry: I always thought they were in San Francisco.

Olney: No, they lived in Berkeley. Scott was a year or so ahead of me, but we also remained very good friends in high school and college. He joined the same fraternity. Later on we became law partners for a brief time. He now lives right across the street from me.

Fry: Oh, is that right?

Olney: Yes. His grandchildren and ours were both here for dinner last night.

Fry: What a continuity. It's very unusual these days.

Olney: Yes, it is.

Fry: At Emerson did you have any more problems?

Olney: I did, yes. I think I must have been a little difficult as a boy. There were one or two teachers there that I liked very much, and there were one or two for whom I developed a terrible antipathy.

Fry: That sounds about par for the course.

Olney: I guess so. I had a hard time with them. I just moved along gradually at Emerson, but by the time I got through with the sixth grade there--that was as far as it went--I was a year and a half, at least, behind my own age group. So then I went to A to Zed School, another private one. Cora Williams ran it at that time. It was down on the corner of Dana and Channing Way. I did three years' work in two down there.

Fry: What kind of a school was that?

Olney: It was a preparatory school for college work. I had some teachers down there who got me interested in things.

Fry: You must have been around thirteen or fourteen then?

Olney: Something like that. I remember the teacher, a Miss Kingsley, I had who taught me ancient history and aroused an interest that's lasted me all the rest of my life. I've always been fascinated with the subject. I do a great deal of reading in it still.

But by that time I was ready to go into the tenth grade, and I went to what was known as University High School, down in Oakland. It was on Webster and 48th Street. It was the dream child of somebody at the University of California in the Education department. It was set up for teacher training, and education students from the University were sent down there to get training, practical experience, teaching at the high school level. They also had a staff, of course, of more experienced teachers.

I must say I thought the group of high school teachers they assembled there were one of the finest at the time. They were really excellent, deeply interested in their work and in their students, intelligent people who were trying new things, new methods, new subjects, all sorts of things. It was an experience that I remember with great pleasure.

Fry: Can you give us an idea of what sort of new methods were tried out on you? Something that you remember especially?

Olney: I remember a Miss Brown that we had who taught history. She thought that there were enough interested students, at high school level, to actually try a seminar, a history seminar, and she organized one. I was fortunate enough to be included in it. It was excellent. We each developed a project, a subject that we pursued ourselves. I took Chinese history, and spent hours and hours and hours in the public library in Berkeley running down stuff on Chinese history, and then I wrote about ninety pages, outlining the history of China; I drew maps for it.

Fry: You picked a long history!

Olney: Yes. All that sort of thing. I don't know any other high school where they did that sort of thing at that time. We had an English teacher, a Miss Merrilees [spelling a guess], who taught us poetry, composition, things of that kind, who was equally ingenious. She later went to Stanford, and rose very, very high indeed in the English department there.

Fry: Well, it sounds like from about this time on you were pretty fired up yourself.

Olney: I was in certain subjects. There were some things that left me colder than a fish. I never could do geometry and had a rough time with algebra, but there were other things that--

Fry: History and English?

Olney: I liked history and English. That was about it.

Fry: How did you feel about sciences, or did you have many of those?

Olney: Oh, we had biology. I never could seem to grasp them very well. Just didn't have the mentality for it, I guess.

At the beginning of my senior year, Mr Boran, the principal, called me into his office and told me my scholastic record was so poor that I could not graduate with the rest of my class in June. The blessed teachers whom I have named above heard about this and they took hold of me and I finished the year with, I believe, an A- average and did graduate.

Boy Scouting

Fry: I kind of got the impression that you must have learned a great deal about what we would call biology or ecological biology on your trips and things, especially if you went with someone who was so well acquainted with the area. Colby's son--he probably knew a lot that rubbed off on you. Am I guessing wrong?

Olney: Well, I think you are. I didn't get very much from Henry. I became a Boy Scout, and we had an unusual troop here in Berkeley. We had a scout master; H.C. Keran was his name. He was a manual training teacher. It was a small troop. I have a picture of us upstairs. There were only about twenty of us, I guess, that were in it. But instead of sitting around town and doing tests and things of this kind, we used to take trips all over the place. One summer Mr. Keran loaded us into an old Pope Hartford that belonged to the Berkeley school system, and we were going to make our own camp up on the Gualala River.

This old car got us as far as Guerneville, on the Russian River. Going up a hill, it broke an axle. So there we were. We had to back the thing down and get it towed in and, as I say, it was a Pope Hartford, which was pretty antique even then, and naturally there weren't any parts for it. So it had to stay there for weeks.

We had to abandon going to Gualala, but what Mr. Keran did do was to put us in the baggage car of the train that used to go down the Russian River to Duncan Mills. We got off the train at Duncan Mills and went over to the butcher shop and asked the butcher if he had any idea where we could camp around there. He said, "Sure. You go back across the trestle, and down the river about two hundred yards, and there's a creek that comes in there. And the creek is good drinking water. It's a good spot."

So that's exactly what we did. We stayed there for two or three weeks. We got a little rowboat, built a mast for it, and sailed it down to Jenner, sailed it back. We caught fish, and shot rabbits, and that was our main meat supply. But we learned an awful lot about trees, plants, fish, and animals from Mr. Keran, not only on that one, but on other trips. We were pretty self-sufficient.

Fry: Yes. Actually it sounds like you were living off the land.

Olney: We were--well, not completely.

Fry: But for your meat and so forth.

Olney: Sure. We did our own cooking, of course. I remember it as a great pleasure.

Fry: It was an unusual scout troop!

Olney: Yes, it was.

Fry: You didn't spend all your time raking leaves or tying knots.

Olney: Oh, no.

To become a first-class scout at that time, the tests included taking a fourteen-mile hike by yourself, and then writing an account of what you saw. Another part of it, another test, was to make an intelligent map of some area. I took the first test by going up Mt. Tamalpais with my friend and fellow scout, Henry Beaumont. I went over to Mill Valley and then up to the West Peak of Tamalpais, and down Potrero Meadows and over to Rock Springs and back again, and wrote an account of it, which I still have.

Fry: Oh, you do?

Olney: Yes. [laughter]

Then, to make a map, the Berkeley scouts had a camp over near Lafayette, and I went up on top of the hill and drew a map of Lafayette, which I also still have, and it's one of the funniest affairs. I didn't know how to make conventional signs for the map, so I drew in houses and put letters to indicate what they were. I did put a cross on top of the church, but I wrote in the labels on these things. Well, strange as it may seem, there were so few buildings in Lafayette that they are all there, all the buildings that one could see, and they're all labeled: blacksmith shop, saloon, auditorium, things like that. I even put in the orchards with trees, and where the fences were. You can see the Oakland, Antioch, and Eastern Railway coming around, and you can even see the creek that comes down through Lafayette. There were foot-bridges on that creek, crossing it.

Fry: You got those in?

Olney: Oh, yes. That's all in there, but it certainly doesn't look much like it does today.

Fry: That sounds like an interesting historical document. [laughter] Do you still have that, too?

Olney: Yes, I still have that.

Fry: I think that that ought to be kept somewhere. It would really be an interesting thing for someone who wants to do something on the history of Lafayette.

Olney: I showed it to Jim Holliday, director of the California Historical Society, not long ago when he was here.

Fry: He lives over there.

Olney: Yes. In fact, it includes the area where his house is.

Fry: It does? You mapped way up in the hills, too?

Olney: Oh, yes. Way up on the top, so I could look down on this thing. He's on the other side from where we were, but it shows the ridge that he's on.

Fry: That would be an interesting map, especially one that's drawn by a third-generation Olney member.

Olney: That reminds me. You see, this was during World War I, and one of the things the Boy Scouts did was to undertake to sell Liberty Bonds. There were several Liberty Bond campaigns. But the one I remember most is the first one.

We actually did sell some Liberty Bonds. We were given forms to fill out. I mean, we didn't collect money or anything like that; these were subscriptions. We had subscription forms to fill out, which I still have. Also, we had a pamphlet which was entitled, "Every Scout to Save a Soldier." This was one of George Creel's effusions, another one of those propaganda bits that he put out. [laughter] I don't know whether you've got that in The Bancroft Library, but you ought to, because it's a gem!

Fry: I'll bet we don't. That would be fun, along with the form, which is a fairly straight document, I guess.

Olney: I won a medal from the Treasury Department for selling bonds, and I still have that.

Fry: I'll bet that was pretty heady stuff for a Boy Scout; you were practically an inch behind the front lines.

Olney: Oh, gosh, I should say so!

Outdoor Adventures with a Friend

Olney: My closest friend at this time, and the one who induced me to join the Boy Scouts, was Leonarde Keeler. His father was Charles Keeler, a well-known poet, and his mother was a Bunnell, an old Berkeley family. Leonarde's mother had died long before I knew him, and he, his father, and his sister Eloise were living with his grandmother, Mrs. Bunnell, on Dwight Way almost across the street from us.

Leonarde was one of the most brilliant, adventuresome, and original boys I have ever known. The Boy Scouts and particularly Troop 9 were just made to order for him. He was our patrol leader and in addition to the troop expeditions he stimulated three or four of us in the patrol to take many overnight camping trips with him. He surpassed us all in qualifying for merit badges and became what I believe was the first Eagle Scout in Berkeley. For a long time he was the only Eagle Scout in town.

I learned more about living out of doors from Leonarde than from any other person. One winter during Christmas vacation, Leonarde and I went on a trapping expedition for a couple of weeks. The territory we trapped was on Diamond Mountain, west of Calistoga in Napa County.

Leonarde had gotten hold of a brochure put out by one of the fur companies in St. Louis, listing the going prices on pelts including raccoons, wild cats, coyotes, and other animals which we knew were in abundance on Diamond Mountain. So we went out and bought ourselves an assortment of suitable traps. We selected Diamond Mountain because we knew the country, having been there together the summer before, and knew the animals were there.

To get there from Berkeley we had to take the ferry to San Francisco, then take the Montecello Steamship Ferry to Vallejo, where we took an electric train which ran up the Napa Valley to Calistoga. We paid a man with an automobile to drive us as far as he could up Diamond Mountain and then when the mud got too much for his car we carried all our food, bedding, traps, and rifles on our backs up to the log cabin we had borrowed for a headquarters. It took several trips in the rain to get all our gear up the mountain.

On subsequent days we laid out three lines of traps located and baited for appropriate animals according to instructions in a book we had with us. The traps were so far apart that it took us a full day to cover each line. This meant that we were visiting each trap about once in three days.

Olney: One night we had a terrific storm with strong wind and much flashing of lightning and banging of thunder. This happened to fall on the very date prophesied for the end of the world by a publicity-seeking religious nut whose forecast had been a feature in the newspapers for weeks. As Leonarde and I huddled in our sleeping bags with all the uproar going on around us, we kept asking each other whether that prophet was really as nutty as he was supposed to be.

In checking our trap lines, we found a number of traps sprung but empty. Most were untouched. The coyote trap was never approached and we realized the coyote was beyond our skill. A skunk was our first victim. We shot him to get him out of the trap and then skinned him. This was not a success, as in the process we managed to get the fur so saturated with scent that the pelt was useless and we had to throw it away. Most of our raccoon traps were set in streams. To avoid leaving our scent on the ground we would enter the stream and then walk upstream in the water, being careful not to touch any stone above the surface. The trap was set in a pool or riffle two or three inches below the surface. It was anchored to a long spike driven into the bottom of the stream bed. The bait was a small fragment of mirror shiny side up.

Several times we found these traps sprung but empty. After perhaps a week we found one of these traps sprung with something in it. It was the forepaw of a 'coon. He had been caught and then, being unable to get loose, he had gnawed off his own paw in order to get free. Leonarde and I looked at each other. A realization of the suffering we had inflicted and would continue to inflict by continued trapping came over us for the first time. Why we didn't realize this from the beginning and before we had spent our money on the traps, I do not know. But we didn't.

Leonarde and I did not say very much to each other about this. We just pulled up all our traps and buried them in a large hole under a log where no one could find or use them again. That is how Leonarde and I learned about trapping.

Retribution: Two Episodes with the Berkeley Police

[Subsequent to the interview, Mr. Olney wrote out the following account to be added to the manuscript.]

Olney: Leonarde went through high school with us at University High and entered the University of California at Berkeley. About this time, he became acquainted with August Vollmer, Berkeley's Chief of Police, and with Dr. John Larson, who was experimenting with a rudimentary

Olney: so-called "lie detector." Leonarde became very much interested in this and developed a machine of his own which was called the Keeler Polygraph.

When Vollmer took a temporary leave of absence from Berkeley to become acting Chief of Police of the City of Los Angeles for two or three years, Leonarde went with him. Sometime later Leonarde went to Chicago where he carried on his polygraph work professionally in the crime detection laboratories of Northwestern University. He must have been an unusually useful citizen, as the City of Chicago honored him one year with an award for his public service. I, unfortunately, lost touch with Leonarde when he went to Chicago and never saw him again. He died a good many years ago.

It is a rather curious fact that Leonarde Keeler, who devoted most of his life to crime detection, and I, who spent so many years in law enforcement work, were both arrested and "grilled" by the Berkeley police once, while we were still in high school, because they suspected us of having robbed a Chinaman at the point of a gun. I was literally snatched off the street by Officer H.P. Lee and taken to the Berkeley Police Department for questioning about this matter. Bright lights were shined in my face and I was questioned by Inspector Frank Waterbury--a very model of a Keystone cop. Leonarde was rounded up and given a similar working over because I admitted that he was with me on what the police regarded as the day in question.

I remember that the police began their questioning of me by asking me where I was on a specific date two or three weeks earlier. I had not the foggiest recollection and this seemed to deepen Waterbury's suspicion against me. Finally, after many questions and blank answers, he asked if around that time I had driven my father's Cole Aero Eight into Oakland's Chinatown. That was a question to which I could answer "yes." Then I was asked if I had a revolver with me and I answered "yes" to that too. Then he wanted to know who was with me and I told him Leonarde Keeler and Jimmie Green--another high school classmate. This seemed to cinch the case, as orders were issued to round up Leonarde and Jimmie. They could not find Jimmie, but Leonarde was brought in shortly and they grilled him as they had me. His story was the same as mine.

We told the police the truth, of course. On the fatal day Leonarde, Jimmie Green, and I, among many others, were preparing for a circus we were putting on at our high school. Leonarde was putting on a number of magical disappearances which he performed with a huge sheet of plate glass and he wanted to shoot off a blank with each transformation and disappearance in order to distract the audience at the moment of change. Leonarde's sister

Olney: Eloise, who kept two or three boa constrictors as pets, was putting on some kind of a snake dance and needed some incense for atmosphere. For the pistol we borrowed my father's 38 revolver and we went to Maxwell's Hardware on Fourteenth Street near Broadway in Oakland to get some blanks. I took the pistol with me to show to the salesman to make sure that the blanks he sold me were suitable in that particular gun. Then to get Eloise her incense we drove down Webster Street, stopping in front of a Chinese store which Leonarde ran in to to make the purchase. When he came out we drove to the school without incident.

For a time Inspector Waterbury seemed to regard our statements as good as a confession, but after a lot of telephoning to the Oakland Police Department, Leonarde and I were told to go home and the police would call us when we were wanted.

Eventually we learned from Chief Vollmer, after our parents had raised cain about our arrest, what had caused it. The Oakland police had received a report from some citizen that he had seen a big black sedan with two boys with a pistol in front of a Chinese store when a third boy ran out of the store and jumped into the car, which drove away. The citizen witness supposed the store had been robbed and had taken the license number of the car. In due course H.P. Lee spotted the license number of Father's car, which I happened to be driving, and ran me into the police station for questioning. This may have been good police work, but the weakness in the case against us was that there never was a Chinaman or anybody else who had been robbed.

Years later, when I was a deputy district attorney in Contra Costa County, we were investigating an extortion case that slopped over into Berkeley and I encountered Inspector Frank Waterbury once more. I reminded him of the grilling he had given us and asked, "Frank, do you still believe Leonarde Keeler and I robbed that Chinaman?" His reply, which nearly stunned me, was, "Oh, just a boyish prank." I learned that there are some people who just never can be convinced of innocence once a suspicion has entered their minds.

At this time I had an opportunity to even the score with Inspector Waterbury. It was 1929 and I was a deputy district attorney of Contra Costa County with an office in Richmond. Early one morning the Richmond police came into my office with a very strange letter, which had been recieved the day before by a Richmond real estate man named Persico. The letter had been mailed in Florence, Arizona, and contained a most curious piece of paper with the letter. The letter was signed, "The Black Feather Gang."

Olney: The police told me that some four or five years before Persico had received a letter signed in the name of the Black Feather Gang demanding payment of ten thousand dollars in hard cash under threat of being killed. The money was to be put in a sack and placed at night in a certain railroad culvert in Richmond. A sack full of metal washers was prepared and placed in the culvert according to directions and the police watched for days for a pick-up. None was ever made and there was no further communication from the Black Feather Gang until this letter mailed to Persico from Arizona.

The author of the Arizona letter asserted that he had been the leader of the Black Feather Gang, which had had ten or twelve members, now all dispersed; that the gang had attempted on two occasions to shoot Persico because of his failure to get the demanded money to them, but they had been foiled both times by a woman who knew their plans and who had saved Persico's life by deliberately standing in the line of fire as a shield; that the author was awaiting execution in the state prison at Florence and had long since repented of his gang activities; that he wanted Persico to know that there was no longer any Black Feather Gang and that he was no longer in any danger.

The Arizona letter added that the woman who had twice saved Persico's life was named Mary Lopez and lived at an address in west Berkeley. In case Persico had any feeling of gratitude toward her, the Arizona author had enclosed a piece of paper which would be meaningless and valueless to any other person, but which would be understood by Mary Lopez and would be of very great value to her.

The piece of paper, which had been enclosed with the letter, appeared to have been originally a sheet from an eight-by-ten pad. It had been torn in two diagonally and only one piece was contained with the letter. One side of the paper had a portion of what appeared to be a map. There appeared to be a shore line, what looked like a ferry slip, and one or two spots with special markings. It was obvious that the map had been drawn before the paper had been torn and that more of the map must be on the missing piece. The other side of the paper had lines of what looked like code writing and here again the indications were that more of the writing must be on the missing piece.

The police had ascertained from Persico that he had once known a woman named Mary Lopez who many years before had been a tenant in one of his Richmond apartments. He did not know what had become of her but thought she had moved to Berkeley. Under the circumstances we agreed that the police ought to try to find Mary Lopez and interview her about the gang and about the mysterious piece of paper.

Olney: The police departed from my office, but before long they were back with Mary Lopez in tow and they were also accompanied by my old friend Inspector Frank Waterbury of the Berkeley Police Department. Since this part of their investigation was in Berkeley, protocol had required that the Richmond officers call first at the Berkeley Police Department to tell them what they were doing and Inspector Waterbury had been assigned to assist on the case.

Upon his assignment Waterbury had immediately told the Richmond officers that the Black Feather Gang had been well known to the Berkeley police. He said they were Chicago mobsters who were more or less hiding out and who had been engaging in extortion and carrying on other rackets while they were away from their Chicago base. He said that while here they had used a large sedan with a slot cut in the side through which they could fire a machine gun. This astonishing information put the Richmond officers in a state of considerable excitement. They thought they must be on to something big.

They and Inspector Waterbury had no trouble in finding Mary Lopez at the address given in the Arizona letter. She was obviously willing to talk freely about the Black Feather Gang, so the officers brought her to my office for questioning because there was a reporter available to take her statement.

Mary Lopez was a short, stolid Mexican woman of about forty years of age with only one eye. She said she had first met the Black Feather Gangsters at a dance and then had gotten to know them well enough to have attended many of their gatherings, social and otherwise. She said she had heard them plan the Persico extortion and then plan to shoot Persico on two occasions when they did not get the demanded money. She said she had indeed frustrated these plans by getting in the way, once on the street and once in a market, so that Persico could not be hit. She was pretty vague as to the reason for this daring action, saying only that she did not want to have her friends commit so serious a crime. She said she had attended a number of secret meetings of this gang, at one of which they had buried a large cache of arms and at another when a large amount of loot in the form of money had been buried.

When the mysterious paper that had been enclosed in the Arizona letter was shown to Mary, she opened her handbag and produced the matching half. When the torn pieces were put together, the diagram turned out to be a crude map of Point San Pablo and the shore as far south as the Santa Fe Ferry. Mary seemed able to read the code writing on the other side of the paper without trouble and told us it was directions for finding the arms cache and the buried loot, the locations of which also appeared on the map.

Olney: This put the officers in a great state of excitement. Inspector Waterbury was most emphatic that since this was loot of the Black Feather Gang, the amount must be very large indeed and our first duty, now that we could locate it, was to find it and make it secure. It was agreed that the search should be made at once.

The police got hold of some picks and shovels. They also brought along a couple of pointed steel rods about twenty feet long which they kept on hand for probing in the ground for buried bootleg liquor. Who can resist a search for buried treasure? I could not and so I went along too. It took several cars to take us with the digging equipment. I rode in the first car with Mary Lopez and the map. We came first to the place where the cache of arms was supposed to be buried, but nobody wanted to stop to look, although Mary said she could point out the exact spot. When we got to the tip of Point San Pablo, we had to get out of the car and climb with our digging equipment to the top of a steep hill. Here, according to Mary Lopez and the map, was the spot, between a buckeye tree and a boulder on the very summit of the ridge.

It seemed a most unlikely spot. The ground was very hard and looked as though it had not been disturbed since the beginning of time, but Mary insisted this was the exact spot where she had seen the loot buried, so the digging began.

It was now about eleven thirty in the morning and it was a hot summer day. No one had thought to bring any lunch or even any water. As I sat on top of the big boulder watching the digging and watching Mary Lopez from time to time, the whole situation began to seem more and more preposterous to me. Finally, I announced I was taking Mary Lopez back to my office where I could have more of her story taken down by the reporter. Most of the Richmond officers decided to leave too. Frank Waterbury, however, elected to stay and dig. He was determined not to let that treasure escape. So it was agreed that the officers who took Mary Lopez and me back to town would return to help Frank Waterbury with his digging just as soon as Mary had finished giving her statement.

When we got to my office and the reporter had been called in, I asked Mary Lopez to sit down on the other side of my desk. I said, "Mary, I don't believe this story you have been telling us. I don't believe there ever was any Black Feather Gang. I believe you yourself wrote this letter that I hold in my hand even though it was mailed in Arizona. I believe you yourself made the map and that there never was any arms cache or any buried loot. I think it must have been you who wrote the letter to Mr. Persico some years ago demanding the ten thousand dollars under threat of being killed. Now, why are you doing all these things?"

Olney: "It is all because of Mr. Persico," she said, and without any urging she launched into a long story about how Persico, years before when she was living in one of his apartments, had cheated her out of the money she had managed to save up over a period of years for violin lessons for her young son. It was a pitiful story and one that seemed easy to check out even though it had happened some years back.

She said that she had felt that Persico ought to be made to pay her the money he had taken from her in this swindle and when he had refused to do so she had written the extortion note to scare him into putting up the money. She had seen the police watching the railroad culvert and had realized her scheme to get the money would not work.

More recently when she had needed the money even more she thought she might be able to get Persico to give her something if she could make him believe she had saved his life from the Black Feather Gang. So she had written the latest letter to Persico with the piece of map inside which she herself had drawn and sent it to her sister in Florence to be mailed from there. She insisted her sister did not know what was in it.

When this story was fully tested and developed for the reporter's record, I asked the two Richmond officers to make without any delay certain inquiries that would either corroborate or refute Mary's story about what Persico had done to her.

"But what about Inspector Waterbury?" they asked. "Shouldn't we bring him in first? He's probably still digging away on Point San Pablo."

"No," I said, "The case comes first. Inspector Waterbury will have to wait while these essential details are run out."

They did not demur to this but went about their business. I think they were inwardly much annoyed with Waterbury, as his talk about the Black Feather Gang being Chicago mobsters who were well known to the Berkeley Police had made fools out of us all. Indeed, I do not think that any of the Richmond officers would have fallen for this story of Mary Lopez if they had not been set up for it by Waterbury's boasts of his knowledge of the Black Feather Gang.

The Richmond officers were not gone long and they came back with evidence that established quite clearly that Mary Lopez had indeed been badly cheated by Persico in the dealings they had had years before.

Olney: Now it was time for the officers to go for Inspector Waterbury. They brought him into my office about five thirty or six in the evening. He was obviously exhausted. He had been digging all afternoon. His hands were blistered and he was terribly stiff. He had had no lunch and nothing to drink until the officers had picked him up. They had told him about Mary's confession on the way in and he was boiling with rage.

"Why didn't you come and get me as soon as you found out this story was a fake?" he demanded. "Why did you leave me swinging that pick all afternoon like a convict on a rock pile?"

I smiled my sweetest smile at him.

"Why, Inspector, in criminal investigation the case always has to come first. There were a few details of Mary's confession that just had to be checked out without delay. We knew you would understand."

As he glared at me and I smiled at him, I knew he understood, for it was only that very morning that we had been talking about my arrest on suspicion of holding up a Chinaman. I only wished that Leonarde Keeler could have been present.

Pomona College

[Mr. Olney's written account ends and the transcript of the interview resumes at this point.]

Fry: We have you, then, just about up to college. Am I leaving out anything? Were you a maestro on the viola, or anything like this?

Olney: Oh, no. I used to play the accordion once in a while, the jerker type accordion. I learned to play it only by ear. I had a friend who had one and he loaned it to me. But I'm left-handed, and I suppose this is why this happened. I learned to play the stupid accordion upside down. [laughter] I'd play the melody with the left hand and the bass with the right, and I've never been able to reverse it. Later I did try to play the piano accordion, but you can't do that upside down! [laughter] I was never a success on the piano accordion.

Fry: When you went to the University of California, then, you were able to continue the same friendships. Was it much of a change for you?

Olney: I went from high school to Pomona College. The reason for that was my brother's experience. He was two years older, and he had gone through the same high school I had, and he'd gone to the University of California in 1919 and '20. That was the first year the University got hit with the immense expansion that followed World War I. Prior to that time it had been a pretty small kind of operation. But they got flooded with students and were not adequately equipped either with faculty or with buildings or anything else needed. My brother had a dismal experience. He didn't like it at all. And so the second year he went to Pomona, and found he liked that very much. So I thought, and so did my family, that probably I would like Pomona too.

So I went down there with a high school friend, Rudolph ver Mehr, whom I had also known in grammar and high school. We went down together, leaving San Francisco on the steamship Yale. At that time the best way to go to Los Angeles was by ship.

We sailed at six in the evening and we landed at San Pedro at nine in the morning. We had dinner on board. It was an elegant trip. We went out the Golden Gate and we could see Santa Cruz and the lights of Carmel as we went down. And then my recollection is that we went inside the Channel Islands. I'm not too sure about that, because we had stayed up so late I slept through that! [laughter]

Then we got to San Pedro and had to take the big red cars to get to Pomona. They had that Pacific Electric system, for which they are now shedding tears. It was undoubtedly the finest inter-urban system that any metropolitan area ever had. They had their own rights-of-way. The tracks weren't running down the middle of public streets in most of the area. It extended from San Pedro and Santa Monica into downtown Los Angeles, and then clear out to Pomona and San Bernardino and over to Riverside.

Fry: If they just had that now!

Olney: That's the way we got to Pomona, taking the red cars into the station in Los Angeles, where we had to change cars. It was forty-five minutes, something like that, from Los Angeles to Claremont, where Pomona College is. We got out there, and found we had to live in a rooming house, very nice place. But the day we got there it was something like 106°, so we got off to a red-hot start.

Fry: That's a shock for someone who's lived in the Bay Area all his life! [laughter] And spent summers in the Sierras.

Olney: One thing I can say for it is it didn't have smog, at that time. There were these beautiful orange orchards all around. I enjoyed my year at Pomona very much. I made a lot of friends there. But they were all new, and I did encounter some things about them which made me decide I'd much rather go to Berkeley.

One of the curious things about it was the student body as a whole was almost completely local. They were people who'd all been to the same high schools together, right near by, and they knew each other. Rudy and I were very much outsiders. I thought they were extraordinarily provincial in their interests. I remember two of the boys who lived in our house with us came from Riverside, and neither of them had ever been on the north or east side of the mountains that ring that Los Angeles area. As far as they were concerned, nothing existed beyond the mountains.

Fry: The world was the Los Angeles basin, I guess.

Olney: I hadn't been quite used to that, so I came up to Berkeley the next year.

University of California

Fry: Did Berkeley have students from all over like it does now?

Olney: Oh, yes. I should say so. From everywhere. It always has, as long as I've known it. I used to be on the campus a great deal when I was still in high school and later. There had always been a Chinese club and a Japanese club down on Etna Street where I used to do most of my playing as a small boy. Filipinos had their club. There were students from every sort of country. We used to have them at our house. Some of them came through the YWCA that my mother was much interested in, some through our church, and some through the YMCA. Do you know Harry Kingman on the campus?

Fry: He was head of the Y, wasn't he?

Olney: Yes, of Stiles Hall. He had been a professional ball player, played for the New York Yankees, I think. He came to Berkeley when I was still a young boy and used to come to our house for Sunday dinners. He was active in our church. Harry was interested in foreign students all his life. Later on he was very well known for that; he was even then. Harry and his wife, Ruth, are now living on the next block to us, and I asked him about his coming to our house when he first came to Berkeley. He has no recollection of it at all. But I know he did, several times.

Olney: By the time I got to the Berkeley campus they'd made a great deal of progress in meeting this unexpected emergency of the sudden expansion and things were under reasonable control. But it was already a very big place. I think we had fourteen thousand students in it at that time. That's a big institution. The result was that there were very few people in my own class that I really knew at all well. Now, at Pomona, my class was only about thirty-five and I knew every one of them by name. This was never true at Berkeley. The only real way of getting acquainted was through a fraternity, or through some extra-curricular activities, like the Daily Cal or the Blue and Gold, or something like that, possibly a team or a debating society, and occasionally somebody that you would meet in class and find congenial.

Fry: So how did you get acquainted with other students? What groups did you join?

Olney: I had an awful lot of friends, of course mostly local. I'm a local boy myself. [laughter] I joined a fraternity.

Fry: Was it you or your father who was Beta Theta Pi?

Olney: That was my father. I was an Alpha Delta Phi.

Fry: You didn't join your father's fraternity?

Olney: No, the reason being that so many of my friends who preceded me were in Alpha Delta Phi, like Henry Colby and Scott Elder, in particular, and I thought I'd like to be in the same one.

One of the more notable occurrences when I was on the campus was the Berkeley fire which took place in September of 1923. We had had several days of very low humidity accompanied by a high wind from the north. Finally the wind broke a power line in Wildcat Canyon, starting a grass fire which quickly swept up the ridge into the eucalyptus trees and then over the ridge into the houses of Berkeley on the west side of the ridge. The fire swept through north Berkeley with amazing rapidity and eventually reached Hearst Avenue on the north side of the University campus and in places reached Spruce Street on the west. There are plenty of accounts of the fire elsewhere, so I'm not going to try to cover it.

I first learned of the fire while having lunch at the Alpha Delt House, which was located then on the corner of Channing Way and Dana Street. We had a very distinguished alumnus in our fraternity named Ralph Merritt who had done a great deal for the fraternity and the University. He owned a very nice house on the west side of Arch Street opposite what are now the grounds of the Pacific School of Religion. That property was just an empty hillside at the time.

Olney: We Alpha Delts knew that the Merritts were in China and when we realized that the fire was heading for their house, we went over there to see if we could save it. It was a stucco house with a slate roof. We climbed on the roof and put out the falling embers with wet sacks. We probably could have saved the house if the water supply hadn't given out. We used all the water in the house, including that in the toilet bowls, but it was not enough.

When the Merritts' house finally caught fire and we realized we could not stop it, we thought we should save as much of the furniture as we could. Accordingly, we moved everything we could lay our hands on to the empty hillside across the street. This included a grand piano. In our struggles to get the piano across the street and up the hill out of the reach of the flames, we managed to break off its rear leg so that the piano finally came to rest with its front legs intact but its rear end at a crazy angle resting on the ground. Since we had saved the piano bench too, I put the bench in front of the keyboard and played the piano for a while since there was nothing else to do. Someone took my picture playing the piano with the burned out city in the background. Later it was published in the newspapers and elsewhere, with the result that I got a great but wholly undeserved reputation as a piano player. Our efforts on behalf of Brother Merritt turned out to be quite misguided. We should have left all the furnishings in the house, for they were covered by fire insurance.

I had a very undistinguished career on the Berkeley campus. For years, I'd been under the impression that I was a fair-to-middling student. But when I joined the marine corps in '42, they insisted on a transcript of my college records, and I got it and was absolutely horrified by what appeared on that record! [laughter] If I'd been my father, I think I would have raised cain about it. It was really pretty bad. I had completely forgotten it. I flunked a number of courses, and it had gone absolutely out of my head. If you'd asked me in '42 I'd have said, "I never flunked any courses," but I did. I had to make them up, you know. I was on probation two or three times because of my bad grades.

My grandfather McLean was a member of Phi Beta Kappa at Union College, my father was a member of Phi Beta Kappa at California, my son Warren was a member at Amherst, my granddaughter Kim Anderson was a Phi Beta Kappa at Scripps, but I never came close. Elizabeth and I got married while I was in law school and after that I got really good grades.

Fry: When did you know that you wanted to study law?

Warren Olney, Jr., Mary McLean Olney, and their sons John McLean Olney and Warren Olney III (at left), ca. 1909.

Warren Olney III, 19 years old.

Warren Olney III, rescuer of furniture, Berkeley Fire 1923.

Olney: I was always interested in history and majored in that from the start, and I had history professors whom I enjoyed very much. Professor John James Van Nostrand was one, and then there were Professor George M. Calhoun and Professor Ivan Linforth in the Greek and Latin department, who gave courses in English on all sorts of matters that related to Greece, such as the Greek plays, the origins of Greek business and commerce, and courses in Greek law, things of this kind.

I got so interested in Professor Calhoun that I took a lot of his courses. They were very small. There were very few people interested in stuff like that; there'd be only ten or fifteen, and I liked that. But I had intended to go into history, with the hope that I might be an archeologist. Not only the historical interest in it, but that kind of deductive thinking, trying to trace and reconstruct from traces, appeals to my mind. I find I enjoy doing that sort of thinking where there has to be a lot of imagination involved in it. That's what an archeologist does, and besides that it can be very active. You go to very extraordinary places.

Fry: Extremely physically demanding.

Olney: Sure, and that appealed to me. That's what I intended to do.

But when I was a junior, at the end of my junior year, my father and mother went to Europe and they took me along during the summer. The year before, I had renewed my childhood acquaintance with Elizabeth Bazata, who was going to Mills College, and we made up our minds we wanted to get married, and became engaged. But we knew it was going to be a long engagement. I think that the fact that we were engaged was one reason why the family decided they would take me to Europe! [laughter] We went to England and to France and Italy.

When the time for school came around, my mother and father and sister stayed on, and I came home by myself to go to school. On the way home I got to thinking that it would be my last year in college, and the notion of being engaged and wanting to get married, and being in archeology and history, just didn't seem to go together. I knew that to get into that kind of work I would first have to qualify myself as a teacher of history. I'd have to do considerable teaching. And I had to get a grounding and establish myself, and it would take a long time. It would be years and years and years before anybody would ever want to pay me to go out and dig up anything. So I did wonder if there wasn't some alternative that I could follow that had a prospect of getting married a little earlier than that.

Olney: In canvassing in my own mind what was available, I thought of the law, and knowing that my grandfather and father had both been lawyers in the very area where I liked to live, and I had the same name, I thought, very frankly, that that would probably be an asset.

I didn't know anything about the law. I knew nothing about it. Father never talked about it. He never urged me to be a lawyer, or anything. He didn't discourage me, but he never assumed I was going to be a lawyer or anything of the sort. But when the time came to register, I thought, "I'm an idiot. I ought to at least find out more about it. It might be something I'd like to do." I consulted my friend Professor Calhoun about this and he urged me to take the law courses, saying that he himself had secured a law degree and that his legal background had been of much value to him in his historical studies.

At that time there wasn't a separate law school. They had a department of jurisprudence, and one could be a major in jurisprudence as an undergraduate. To do that you could take your last year of undergraduate work in the department of jurisprudence and graduate with an AB degree. Then, if you took two more years of jurisprudence, you could receive a JD degree and be eligible to take the bar examinations.

Well, it was made to order for me, and I felt that if I tried that, at least before I graduated I'd find out whether it was or wasn't for me. If I didn't do it, I wouldn't know whether law was something I wanted to do or not. So I registered as a jurisprudence major, and when my parents came home and discovered what I'd done, they were absolutely astonished. They couldn't figure out what in the world I had in mind. [laughter] I didn't give them much of an explanation excepting to say, "Well, I thought before I got out of college I'd better find out a little more about the law."

So I did begin the study of law, and was so ignorant that I didn't know what the words "defendant" and "complainant" and "appellee" and "appellant" meant. I had to look them up in the dictionary in that first year. [laughter]

Fry: I see that you mean it, that your father never talked about law at home.

Olney: Well, "plaintiff"--I knew what that meant because it has a plaintive sound to it, but the rest of it--[laughter]

Fry: So you liked it, I gather. Was your father pleased that you were going into law?

Olney: He never said. I think he was. He was very helpful to me, of course, when I was in law school.

Fry: Was this when he was on the California Supreme Court?

Olney: Oh, no. This would have been in '25.

Fry: '25--this was after he left. Yes, '24 and '25.

Olney: Yes. I remember when I was in law school we had a big noise in Alameda County over the appointment of a new district attorney. Earl Warren was appointed district attorney then, and shortly after that he had to run. He ran for office while I was still in law school, against some fellow named Preston Higgins. We looked them over and we thought Higgins was a jerk! We didn't know anything about Warren.

Fry: You mean the law students.

Olney: Yes.

I wasn't too keen about law school. I found I could do it. There were some parts of it that interested me. I liked Max Radin's course in Roman law and legal history very much. Everybody else detested it! [laughter] But it appealed to me. I thought it was excellent. I would like to take it all over again. It would mean even more to me now.

Fry: Right down your alley in ancient history.

Olney: Yes. I enjoyed that. I liked my fellow students in law school very much better than any other group that I'd ever studied with. All of them seemed to like each other pretty well.

Fry: It interests me that you liked Max Radin's course. How did you feel later on when Earl Warren was attorney general, when the question was raised of Max Radin's appointment to the California Supreme Court in 1940?

Olney: Well, I liked Max very much; he was a very likeable, charming man, and all that. But he had a couple of real strikes against him when he was nominated. The one that I think was most serious was not his liberal views; it was his writing to the judge, interceding in a case that the judge had under consideration. It was a very unwise thing to have done.

Fry: It wasn't that he didn't know that he shouldn't do that. He was a law professor!

Olney: Well, it's a curious kind of blind spot that he exhibited. I don't mean to suggest at all that there was anything discreditable about his motives, or anything of the sort, but he should have had a better appreciation of the absolute necessity for never communicating secretly with a judge on a matter he has to consider. There's no doubt about what he did. [laughter] Oh, my gosh!

It's sort of like the thing that [Judge Clement] Hainesworth showed up with [after President Nixon nominated him for the Supreme Court]. [laughter] You can't understand how he could have failed to realize the possible consequences of making a stupid investment in that bowling outfit when he'd had this bowling case before him and under consideration. I don't think there was a crooked thought that entered his mind on that, but, boy, if he hasn't got any better sense than that, he can't very well deal with some of these ticklish problems facing the Supreme Court.

Fry: Was this the main strike against Radin, or did you say there were two?

Olney: Well, this is the reason that I always understood that Earl Warren turned thumbs down on him. Warren was on that commission. It surely wasn't Radin's so-called liberal views, or espousal of liberal causes. Warren wouldn't have turned him down for that.

Fry: Yes, that sounds inconsistent with the rest of Warren's life.

IV CONTRA COSTA COUNTY DISTRICT ATTORNEY'S OFFICE

[Interview 3: August 5, 1970]

Joining the Office

Stein: How did the Contra Costa County District Attorney's Office and the Alameda County office compare, in terms of law enforcement?

Olney: I think the best way to illustrate some of the differences in law enforcement methods and conditions in Contra Costa County and Alameda County in the 1920s is to relate how I happened to go into the two offices in the first place.

I graduated from law school in 1927 and took my bar examination in August of that year. I went into the Contra Costa County District Attorney's Office. I started on October 15, 1927.

When I finished law school and passed the bar, I felt that my education had really only begun. While I had met the technical requirements, I was very, very short on practical experience. Although mine was not a narrow upbringing, it was sheltered, and I had never had a job in my life until after I got out of law school. I realized that this meant that I was very short of practical experience and in dealing with people. I really knew nothing about business, I knew nothing about government in any practical way, and on top of that I was a very shy boy. I believed when I got out of law school that if I was ever going to be a lawyer, I would have to get over that shyness, and I would have to learn to try cases. The idea of trying cases and appearing in court before a jury was a frightening one to me. I felt that if I didn't meet that at the outset, I would be under a very great handicap all through my career.

Olney: I discussed this with my father, because it seemed to me very unlikely that I would get much in the way of trial experience in the kind of law office that he had. While they had many cases that went on trial, they were large cases, quite important; they were not the things that they could turn over to a greenhorn to get experience with. And my father confirmed that, that that would be the case.

I told him that I had thought the course I ought to follow was to try to go into a district attorney's office, because I knew that I'd have to try cases there. They'd be given to me, and I'd just have to do it. I thought that after some experience there I would try to go into a city attorney's office, because there you work on municipal problems of all sorts and kinds, non-criminal, and I thought I would get a good view of what local government was like. Then perhaps later on I would give consideration to going into private practice somewhere. I had always hoped I might practice someday with my father, because I was very fond of him.

My father told me he thought that was a wise course for me to follow. I asked him if he had any idea what district attorneys' offices I might consider going into. I knew that there were a lot of them that I wouldn't be caught dead in.

Stein: Which were those?

Olney: Well, San Francisco was one.

He said that there were two very good offices that he knew about, and he knew the district attorneys in both those offices. He doubted that they had openings, but at least I could go and see them. The two offices were in Alameda County and in Contra Costa County. I went over to see both the district attorneys.

I think I went in to see Earl Warren, in Alameda County, first. I'll never forget it. The office at that time was in the old courthouse on Broadway, between Fourth and Fifth Streets, and the district attorney's office was up on the second floor in an annex to the old courthouse. It was a ramshackle old wooden structure, with high ceilings and carpets on the floor, but it was a noisy sort of place.

I went in to see Earl Warren after lunch one day. He greeted me--I'd never met him before--and sat me on the opposite side of the desk while we had a talk. I was absolutely overwhelmed with the odor of liquor in this place, which I thought came from his breath. [laughter] Although he was sober enough, I was convinced that he must have had a pretty alcoholic kind of lunch to smell the way he did. Although in every other respect our conversation was most satisfactory, I really left there with the impression that he was a lush.

Olney: This was during Prohibition, and I knew, of course, that one of the district attorney's principal headaches was the enforcement of the Prohibition law, and I did not want to serve in the office with a district attorney who had so little regard for his own responsibilities that he wasn't even observing the law that he was supposed to enforce. In other words, I got a very unfavorable impression.

Stein: That's quite a contrast to what everyone says about him during Prohibition, isn't it?

Olney: Yes.

In due course I went to Martinez and saw Archibald B. Tinning, who was the district attorney there, a man, of course, who's not as well known as Earl Warren, but a very, very charming, delightful man, and one of the best district attorneys that I have ever encountered. He was excellent. He was very friendly and cordial too.

Stein: How long had he been DA?

Olney: I think he was in his second term. He had been district attorney long enough so that he was that year the president of the California District Attorneys' Association. My recollection is that Earl Warren wasn't president of that association until quite a few years later, although he was always very active in it.

Mr. Tinning had been in private practice, and he had a private practice all the time he was district attorney. It was a partnership known as Tinning and DeLap. This was expected. The salaries paid to district attorneys and deputies in their offices were always very small, and it was expected both that the men in the office and the district attorney himself would engage in private practice, and that the county would be just another client, in a sense.

One of the things I observed about Mr. Tinning, and have never forgotten, was how scrupulous he was to avoid not only any conflict of interest, but anything that could possibly suggest a possible conflict between any of his private clients and the county or between himself and the county. He was scrupulous on this.

He also had excellent concepts of a district attorney's responsibilities for law enforcement. There was at that time a majority of district attorneys, I think, who took the attitude that they had no responsibility for the police or the sheriff's office or for law enforcement at all, that their responsibility was nothing more than to present to the court cases as they might be brought to them by the investigating officers. If they didn't bring any cases, there was nothing that they needed to do.

Olney: That was not Mr. Tinning's concept at all. He thought that the district attorney was under an obligation to provide some leadership in the county for law enforcement. And he did provide that as best he could with the sheriff and the various police chiefs we had.

Stein: He worked closely with them?

Olney: Yes, he did. He was energetic and efficient in trying to enforce the Prohibition laws, which a great many district attorneys were not, and which our sheriff was not. He had almost as much trouble with our sheriff as Earl Warren was having with his sheriff in Alameda County.

It was in that connection that I next came in contact with Earl Warren. There was a still that was discovered unexpectedly on Bethel Island in Contra Costa County, a very large one.

Stein: How was it discovered?

Olney: Some deputy sheriff, as I recall, was out there and saw somebody run into a barn, which aroused his suspicion. He went over to the barn and looked in, and here was this big still in operation. The two or three men who were there scattered. Two of them were arrested, as I recall.

Then there was an intensive investigation to try to find out who the people were who were responsible for the still. It was discovered that the barn had been leased--that was the usual thing--and the land-owner claimed he knew nothing about what was going on. But there had been heavy shipments of blackstrap molasses brought in there that they used to make the liquor from, and there were shipments of yeast. We picked up papers all over the place--little labels that gave us some idea of where the cooperage had come from, where the copper columns and things of that sort had been made, and we conducted an investigation to try to put all those pieces together.

The big wooden vats, we discovered, had apparently been made by a cooper who lived in Hayward, and this brought me down to Oakland along with the investigators from the Contra Costa District Attorney's Office, to get their assistance in trying to locate the cooper and get a statement from him. I went in to see Earl Warren about this, and quickly got a very different impression, I might say, than I had before. But I might say that during this intervening time when I was in Contra Costa County I couldn't help, of course, but hear a great deal about Alameda County and about Earl Warren, and I learned in no time that the impression that I had gained was absolutely mistaken; it was the complete reverse of the situation. [laughter]

Stein: Could you ever figure out why you smelled liquor in the first place?

Olney: I certainly did. When I went to work there, I discovered that the district attorney's office was doing most of the raiding of the bootleggers and stills in the county, and when they would get a still they'd bring it in to the courthouse, and they were storing them in the basement. [laughter] The particular place where they stored them was in a great big room that's right under where the district attorney had his office. [laughter]

Stein: So you were sitting right over a still.

Olney: And all these fumes were coming up there from the still. I smelled it later, but then I knew exactly what it was. [laughter]

Stein: Did you ever tell Earl Warren about that?

Olney: I didn't then. I've mentioned it to him in later years, and he was absolutely horrified, because he was completely unconscious of it. Apparently his secretaries were, too, because he said that no one had ever spoken to him about it before. But that's what happened to me, and I think I probably would have gone to work for him in the first place if it hadn't been for those terrible odors. [laughter]

But when I went there on this still case, we received such very strong, unstinted help in developing our case that I knew they were playing the same kind of a ball game that we were trying to play ourselves.

Then later on I saw him in Eureka at a meeting of the district attorneys' association. As I said, Archibald Tinning was the president of it that year, and I was asked by him to go up. There were many things that the association discussed, and Earl Warren and his office were quite active in it.

One of the things that came up for discussion was a proposed amendment to the penal code relating to bad checks. Up to that time the forgeries were, of course, punishable, but writing a check knowing there were insufficient funds was not in itself a penal offense. This proposed legislation would have made it a penal offense to write a check knowing that there were insufficient funds in the bank to meet it. It was a proposal strongly supported by innkeepers and hotel-keepers and merchants and people of that kind.

I had been asked by Mr. Tinning to do the research as to whether a statute of that kind was constitutional. And Harry Miller, in Earl Warren's office, had been asked to draw a memorandum on the

Olney: same thing. We both reported. We both concluded that the statute would be constitutional, but we differed as to whether it was desirable. Harry Miller and Earl Warren's office thought it was desirable. I did not. I thought it was undesirable. Whether Mr. Tinning agreed with me or not, I don't really recall, and he was presiding, so he didn't take a position.

I thought it was undesirable, because I thought it was merely using state machinery and law enforcement to substitute for a reasonable amount of diligence that innkeepers and merchants ought to assume themselves. However, the statute was passed, and it is the law now, and has been ever since.

Stein: About what year was this?

Olney: This was 1928. At any rate, that report, I think, brought me to Earl Warren's notice, in a way in which I hadn't been before. He'd only seen me when I came to ask him for a job.

When I went to work in Contra Costa County, although they allowed me to go there, they had no opening in the office, and I didn't have any salary. I was there for nearly a year without any salary.

Stein: Was that a common practice at the time?

Olney: It was, yes. You couldn't get into offices, and private offices were paying something like sixty-five dollars a month. [laughter] I wasn't losing very much!

In Charge of the Richmond Office

Olney: Just as I was going to leave Martinez after the first year, their deputy in Richmond, which was the largest city in the county, died, and there was a vacancy. Mr. Tinning offered it to me. I grabbed at it, and had the magnificent salary of $225 a month, which was really just rolling! I was plush compared with what had gone before. [laughter]

Now, when they assigned me there, I was all by myself. Up to that time, being in Martinez, I had company. Mr. Tinning was there, and his chief deputy, James Hoey. Rex Boyer was the other deputy in Martinez. They were older men, experienced men, who were very, very helpful to me on any practical problem that arose. But there were very, very few cases being tried. I tried one jury case in the justice court in Walnut Creek and then I tried a manslaughter

Olney: case--no, it was a driving while intoxicated case; that was it--in the superior court, a jury case, while I was there. But those were the only two jury trials that I had in the whole year.

Stein: Were there just the four of you in the office? The DA and Mr. Hoey--

Olney: In that office. But there was also the office in Richmond where the man was who died. So when I went down to Richmond I was all alone. Mr. Tinning's partner, Tony DeLap, had his offices on the same floor in the same building and was very generous with his time when I would get stumped, but naturally I was reluctant to impose on him very often. Most of the time I had to take care of things by myself. Richmond was the largest city in the county so that I really had quite a little to do.

Now, you were asking me about procedures, and this is what occurred down there. I developed some procedures of my own which certainly worked very well, but later when I went to Alameda County and would have occasion to tell my new chief, Earl Warren, what I had done in Richmond, he was horrified. [laughter] He said that it showed what a very great difference there was in the counties and in conditions in the counties; that it would be impossible to do in Oakland or Alameda County what I had done in Richmond.

My office in Richmond was on the fourth floor of the American Trust Company building there, at McDonald and Tenth. The police department was down at Point Richmond. We had a justice court--Arthur Alstrom was the justice of the peace--which was in the next block to my office. Judge Alstrom, like everyone else in the legal set-up of the county, was also engaged in private practice. So he was there in his offices--he used his chambers for offices--and his little courtroom was there, too.

Now, I was blessed with an excellent secretary. Besides being an ordinary secretary, she was a court reporter, and a very good one. I had learned by experience that in handling criminal cases, nine times out of ten, when persons are arrested they want to talk. They're anxious to get these matters off their minds, and they want to tell you about it. They nearly always talk to the police about it, try to explain why they did it, what their justifications were.

The practice then had been for the police to write these statements down either in their reports, or sometimes they would have the statements signed. In due course a preliminary hearing would be held before the committing magistrate, who in this case would be Judge Alstrom. If the evidence was sufficient to show that there was probable cause for believing that a crime had been committed

Olney: and that the defendant had committed it, Judge Alstrom would make an order holding the defendant to answer in the superior court in Martinez. Then a complaint would be filed against the defendant in the superior court and he would be produced to be arraigned and to enter his plea. In those days there was no provision for providing counsel for a defendant who was unable to hire his own until he got to the superior court for arraignment. If he was unable to make bail, the defendant would have to remain in the miserable lock-up in the Richmond police station until after the preliminary hearing, when he could be transferred to the more comfortable county jail. The lapse of time before transfer was likely to be a week or ten days.

Stein: Would that mean that the defendant wouldn't have an attorney--

Olney: He wouldn't have an attorney and he'd be in jail, most of the time, until this was all done.

I suggested to the police that on matters of any moment, when they had somebody that they arrested who wanted to talk, that instead of taking them down to the police station they'd best bring them directly into my office, and I'd take the statement with my secretary. This was done. They did that as a matter of routine; they'd bring them in, and I'd take statements.

Well, then I realized that when this was done, more often than not after this would happen, they would ask me, "Can't I do something to get this over with? Can't I get this matter on its way?" I would explain that the law did not permit a defendant to waive a preliminary hearing and that we could not have a hearing without witnesses and getting the witnesses for the hearing was bound to cause delay. However, there would be no such delay if the defendant himself chose to take the witness stand and to tell his story under oath so the judge would have adequate evidence upon which to hold the defendant to answer in the superior court.

Since the defendant had just gotten through confessing to me, he usually was quite willing to repeat it all to Judge Alstrom. In such case I would telephone the judge to arrange for the hearing and then down we would go right then and there to his office with the court reporter. The judge always advised the defendant fully as to all his rights and explained his situation to him carefully and made sure the defendant understood what was going on and that he wished to take the witness stand himself and testify under oath as to what had happened and what he had done, knowing what the consequences of his testimony might be.

Then we would have a preliminary hearing, but it would consist of the defendant's taking the witness stand himself, and my examining him under oath about the case. The judge would make his holding

Olney: order based on that, and then the man would be sent directly to Martinez, to the county jail there, and wouldn't have to be kept at all in the city lock-up in Richmond. In due course the defendant would come up for arraignment in the superior court in Martinez, and counsel would be appointed to represent him. At the arraignment counsel was given a copy of the transcript of the preliminary hearing. The transcript, of course, was nothing but the confession of his client made under oath in open court.

Well, with our present kind of procedure, it sounds a little bit incredible that something like that could have been developed, and yet it isn't, really. The leading authority in the United States on the subject of evidence at that time was John Wigmore. In his great work on evidence is a lengthy discussion of this matter of taking statements from people when they're arrested. He discussed all the different alternatives that have been tried in various parts of the world, and he strongly advocated a procedure very much like what I described, of having an arrested man taken immediately before a magistrate or a judge and questioned about the crime. He would have gone much farther, not simply allowed someone to rest on the Fifth Amendment, but would have permitted a holding order if anybody wanted to take the Fifth Amendment, on that alone. So it wasn't so outrageous as it might seem in view of more recent developments.

I followed that procedure in I don't know how many cases, but I was only in Contra Costa County, I think, two years, so I must have been in Richmond a year. I don't know how many times I did that, but there was no instance where there was anything more than an outraged complaint by the lawyer who was eventually assigned to the case. He felt he had no alternative except to plead the man guilty when he got the case. What was the matter with making a lawyer plead a guilty man guilty? We weren't playing games. The procedure was never reversed; it was never even questioned on appeal in any instance that I know. The superior court judges did not feel that it was unfair, did not object to it. They could have, of course.

I didn't have any feeling at the time, and the truth is that I don't now, that I had overreached those people, or done anything that was unfair to them or unjust, and there was no instance that I know of where there was anything like a failure of justice, or something of that sort on it. However I must say that after a good many years more of experience, I can see how dangerous it would be to institute a system of that sort in one of our very busy courts. These cases that I speak of wouldn't come up as often as once a week, if that often.

When I went to Alameda County, as I did eventually, I mentioned this procedure to Earl Warren, and, as I say, he was horrified at it. Not because he thought that I'd done anything unfair, or that

Olney: there had been miscarriages in any of these cases, he didn't think that, but he was very apprehensive about what he regarded as dangers that could crop up in administering justice in a large court with a large calendar with a procedure as informal as that.

Nothing like that was ever followed procedurally in Alameda County. There they always had either a grand jury indictment or a preliminary hearing, usually the latter, and the preliminary hearings were always conducted in a far more formal way. The prosecution was required to produce its witnesses and make a showing of probable cause with its own witnesses. They never called the defendant as a witness. He was never put on the stand unless his own lawyer wanted to put him on the stand. Nothing like that Contra Costa procedure was ever followed.

Stein: Wasn't there an amendment to the California constitution that was considered and, I think, passed, in about 1934, that allowed a defendant to plead guilty right at the beginning?

Olney: Yes, there was. There were a whole series of amendments. There were major amendments in criminal procedure in 1927. Then there were more in 1934, including amendments to the [state] constitution. I'm a little uncertain about when it was that the defendant was first allowed to enter a plea of guilty at the preliminary hearing.

Stein: I think it was in '34.

Olney: It may be. I'm not clear about that. I'd have to look it up.

Well, the reason for that was plain enough. There are a great many people who do not wish to and cannot contest the matter of their guilt. That means they want to have the machinery move rapidly so that their cases can be disposed of and if they're to start serving sentences, they can begin and get it over with or whatever other penalty there may be. Without that provision permitting a plea at the preliminary hearing, it meant that you simply had to wait, and often had to wait in jail, simply for the court to get around to hearing your case, when you didn't want to contest it anyway; you weren't going to go to trial. That's the reason this was introduced. I don't remember the safeguards that are in there offhand. I know there are safeguards. I do recall that you have to have counsel in order to enter the plea of guilty at the preliminary examination.

Stein: Yes, you do. There were safeguards that protected that. Before you entered your plea, the magistrate had to send a messenger to get an attorney if you had an attorney that you wanted.

Olney: Yes. Well, I don't remember the details of it, but I know there were safeguards in there to prevent defendants without counsel being overreached. Whether they were adequate or not is another matter.

I left the Contra Costa District Attorney's Office because I thought I had had as much experience as I could expect to get there. I frankly was disappointed in not having more trial experience. I tried some cases. I had some trial experience, but not as much as I hoped to get.

Stein: How were you trained when you first came into the Contra Costa County office?

Olney: I was simply trained by being assigned first to writing legal memoranda on various points for the other lawyers. I was allowed to sit in court and carry the papers and whatnot while trials were going on. Because I was around there all the time I was asked to help them investigate and develop cases and prepare them for trial, to interview witnesses.

There was a great deal of citation work. Complaints would be made. It was not necessary to make an arrest, so a citation would be issued, which was in the form of a letter, saying that a complaint had been made and asking the person accused to come in at such-and-such a time to show cause why a warrant shouldn't be issued. I was asked to write many of those citations, and then to interview the people when they came in, this kind of thing. And then I was given more responsibility as they seemed to think I was capable of handling it.

V IN PRIVATE PRACTICE

Olney: I went from the Contra Costa office to my father's office, and went into private practice in that office, and there did much the same thing. They assigned me to writing legal memoranda of various kinds until they could see what I was capable of doing. They asked me to help prepare cases for trial, which I did.

The one really interesting case that I worked on over there involved the last of the Spanish grants in California. This was the grant of Mare Island, where the navy yard now is. The government had brought suit against the landowners of the swamp lands that are north of the highlands of Mare Island. The navy yard itself is built on the highlands of the island. To the north there's about ten miles of what was originally swamp. It's been reclaimed with levees around it, and the Sears Point toll road ran across it around the north end of the Bay at that time. Although those lands had been occupied and used by people who thought they had title to them for many years, the government finally brought suit against them to remove them and take the lands on the theory that that part of the area was included in the original Mare Island grant which Governor Alvarado had made during Mexican times.

My father's office represented the Sears Point road and one of the title insurance companies that insured the title on that property. The Mexican grant was a grant of the island by name alone, no description. It simply was a grant by the Mexican government of "Mare Island." Well, the question was, what was "Mare Island" at the time the grant was made? Now, the Mexican law--Spanish law, rather--became important because it was different from common law with respect to where the ownership was with high tide. Under Spanish law, there remains to the sovereign not only the ocean and the beach, but the sovereign's ownership of the beach goes to the highest high tide. In the common law it goes only to the median high tide.

Olney: Well, this meant that it became of very great importance to find out whether at maximum high tide water came over the neck of land that separated the highlands from these swamp lands. If it did, it meant the government's title was restricted to the highlands. On the other hand, if it did not, then the government was correct, and the swamp lands even under Spanish law would have been part of Mare Island.

This meant interviewing all the oldest inhabitants we could find who might have some recollection as to what the natural condition was there before the levees went up and before the road was built and all these changes were made. I was assigned to help out on that, and had a wonderful time traveling around talking to old people, old hunters, and people like that, who might have some recollection of it.

Stein: So you did your bit of oral history.

Olney: Yes. But it also involved my trying to find a desueño that might throw some light on it. Under the system of grants, besides the document like a deed that describes what's granted, it was required that it be accompanied with a desueño, which is in the nature of a map or a diagram to show what the subject of the grant is.

These original grants, or copies, and desueños are all on file in the state archives. At that time they had never been sorted, or indexed, or anything. I had the delightful assignment of going up there and looking at all these desueños, not merely for the one on Mare Island, which probably didn't exist, but it was thought that perhaps desueños of neighboring grants might well show something about Mare Island, and since they weren't indexed, I had to look at them all. I found this quite an interesting thing. I believe that this has all been examined systematically now--and hasn't a book been written on it?

Stein: I don't know.

Olney: Someone at Bancroft--I think Becker has done this work.

Stein: I'll look that up.

Olney: Anyway, the case was carried on, but the trial of it was long after I left the office.

VI ALAMEDA COUNTY DISTRICT ATTORNEY'S OFFICE

Joining the Staff

Olney: Earl Warren always picked the lawyers to serve in his district attorney's office himself and my appointment was according to form. Whenever word got abroad that there was a vacancy in the office, the district attorney was besieged by applicants, some of whom had political backing. Under such circumstances the applicants not chosen, as well as their backers, were sure to be disappointed and sometimes hurt and offended no matter who might have been selected. Earl tried to avoid this kind of situation as far as possible. When anyone on the staff expressed an intention to leave, Earl always asked him to withhold any announcement until he had had time to select a successor. Then he would announce the resignation and the appointment of a successor at the same time, thus avoiding the importunities of job-seekers as well as avoiding giving offense to them and their backers by passing them over in favor of someone else.

In my case, Earl Warren telephoned me at my father's office sometime around the end of August or first of September, 1930 to tell me that he anticipated a vacancy in the district attorney's office and to ask if I would be interested in filling it. After discussing it with him and with my father, I told him I was indeed interested and would accept the appointment if the vacancy developed. Shortly thereafter, Frank Ogden, who had been chief assistant district attorney, resigned to run for judge of the superior court and on September 10, 1930, Earl Warren announced that I had been appointed to fill the resulting vacancy in the office.

I do not mean to suggest that I was appointed chief assistant in place of Frank Ogden. Ralph Hoyt received that appointment and there were resulting promotions all the way down the line. I was brought in to fill the vacancy at the bottom--or nearly at the bottom.

Stein: You came into the office on a salary?

Olney: Oh, yes. Oh, something very handsome like $170 a month. I know it was less than I'd gotten in Contra Costa County. But that salary, while the amount sounds low, really wasn't bad at all. We could live within it, and did.

Organization and Administration

Stein: What was Warren's office like at that point?

Olney: It was large enough so that it had to be departmentalized. There was a civil as distinct from a criminal section of the office, and the lawyers who did civil work did not do criminal work, and vice versa, excepting as from time to time one would shift from one to the other, for the purpose of experience. But it meant that at one time a man wouldn't have both criminal and civil cases to handle; it would be one or the other.

Then, of course, it had to be organized with a small staff at the city hall in Oakland. We also had one deputy in Berkeley to handle misdemeanors and preliminary hearings, things of this kind. They were separate offices.

Then in the criminal work, which is what interested me, that was organized too. There were certain lawyers who would be assigned to try homicide cases, and there were others who handled large fraud cases, conspiracy cases, bank robbery cases, and cases like that. Of course, the more experienced lawyers tried more difficult cases. If we had more than one big fraud case, and more than one major homicide, and the regular men were occupied on that, the others--somebody from somewhere else would take over. So there was nothing hard or fast about it.

The one thing that was very noticeable about it, as compared with conditions today, was the rapidity with which we could get to trial and get the case disposed of. Just last night, knowing that you were coming, I looked in a carton I have that's got some old transcripts of cases that I was involved in. There's one in there that was a conspiracy of highjackers to highjack bootleggers. They were major highjackings. There must have been half a dozen defendants in that case, and two major highjackings were involved in the evidence. It was a three-day trial. It required a great deal of preparation. But that case was brought to trial and was disposed of in about ninety days from the time of arrest. I don't think you can do that today.

Stein: That's most unusual now.

Olney: Yes.

We had a policy--and this was Earl Warren's doing entirely; and he imbued the whole office with it, and insisted on it--a policy of moving the cases as rapidly as it was possible to move them. That meant not asking for continuances, and objecting as far as possible to continuances requested by the defendant, unless there was some really legitimate reason for it, that would interfere with the fairness of the trial. But the pressure was always kept on us--he kept it on us--until it was second nature to us to see that there was a minimum of delay, and to keep going.

Now, this required an awful lot of work. One reason I don't think they can do it down there today is because I don't think they work that way. We had to be down at nine in the office, and we were expected to stay at least until five-thirty, and to work at night if we needed to. We worked every Saturday--expected to do that too. If we didn't have inspectors enough to run around and interview our witnesses to get the case ready, we were supposed to do that ourselves, and we did.

The result was that we could get cases to trial rapidly. Occasionally something might happen--we might get a four- or five-week trial that would tie up a whole department--and cases would begin to back up. The moment that started to appear, our Chief would do whatever was necessary to meet that. Sometimes he would ask the chief justice [of the California Supreme Court] to assign a visiting judge, and that was often done. Judge Murray from Madera County used to come up, and so did Judge Trabuco from Mariposa County, because they didn't have much work down there and they were available. They would come and try cases when our calendar started to get at all congested. But I know that one of the reasons Earl Warren's office was so successful was that policy, of keeping that business moving.

The statistics which substantiate the point appear in a letter which Ronald Beattie, the chief of the Bureau of Statistics, California Department of Justice, wrote to me under date of November 9, 1970.* In 1931-1932, the time from filing of the criminal charge

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*See Appendix B.

Olney: to final disposition in Alameda County superior courts was thirty-four days--about half as long as it took in San Francisco and Los Angeles Counties during those same years. Today it takes twice as long in Alameda County and the delay can be attributed, principally at least, to postponement practices and inflexible calendars.

Stein: How were decisions within the office reached?

Olney: Well, I don't know just what you mean by that. I had a very good time in that office. I enjoyed it immensely, and one of the reasons was because when one of us was assigned to one of these cases you were on your own. You were independent. You could do it the way you wanted to do it, the way you thought it ought to be done. You didn't have somebody kibbitzing on you all the time, telling you, "Well, you ought to do this, or that, or the other thing." You could always go to the Chief or anybody else in the office and ask for some advice or suggestions, or something of that sort, but it was your case, it was your responsibility, and you handled it.

However, you had to be prepared to be accountable for the results, and also for how you conducted it. There must not be any unfairness, any overreaching; you must not make agreements with defense counsel that you were not prepared to keep. You must not make agreements with them that you would not be prepared to read about in the newspapers, and you must be prepared to explain or account for how you conducted yourself, the investigation, and the trial of the case.

Decisions with respect to the cases were made by the lawyers who tried them, but decisions on the policies of the office, such as the need for promptness in trial, the need for thoroughness in preparation, the need for restraint and dignity in making arguments, those were set by Earl Warren personally. I don't mean to say that the decisions would have been different under any of the others, but that was simply the atmosphere in which we moved, and it all emanated from him.

Stein: What was the role of staff meetings?

Olney: Well, we had these staff meetings regularly on Saturday mornings, and the first thing that happened at one of those meetings was a report on the recent decisions of the district courts of appeal and the state supreme court. Very rarely did we have a United States Supreme Court decision to discuss. They were mostly state decisions, but somebody had been assigned in advance. We took it in rotation. Somebody's responsibility was to read all the decisions and report on them, explaining what they were, and then having a discussion of them. In this way we could keep reasonably current, without having everybody, separately, read all those decisions. We became aware of them. If next week something came up, we would realize there was this decision, and we would look it up, that sort of thing.

Olney: Now, in discussing those cases, especially reversals, and why the reversals had taken place, we got a great deal from one another, and also from our Chief and his comments on them. And where there were reversals we tried to see, well, what is it that you shouldn't do? Is this something we've been doing, or is this something we ought to be on the lookout for, and whatnot.

Some of the lawyers used to think this was sort of an exercise in futility, because it isn't every week that you get a decision that's worth discussing very much, and when that was the case there would be just enough of a recitation of what the appellate courts had decided to make you familiar with it, and nothing much to talk about. But I thought they were very, very valuable sessions. I think it can be said that these discussions of recent decisions paid off because not a single criminal conviction in Alameda County was reversed during the years Earl Warren was district attorney.

These weekly meetings also kept everybody in touch with everybody else. It was an occasion when many times we would raise problems of our current trials, and discuss them, things that had gone on. Sometimes our cases would have been in the newspapers, on some incident, and the participants would explain what really happened, which was usually vastly different from what was in the paper. [laughter] But I'm sure it was the machinery that made it possible for Earl Warren to keep everything that went on in that office right in hand where he knew what was going on, and he was current, without having to police the place.

Stein: I'm very impressed with how he was able to do as much as he did, keep track of everything that was going on in the office, and do active work himself.

Olney: Yes, he did. Occasionally he tried cases himself. Shortly before I went into his office, he had tried a highly sensational murder case. A man (Antoine) had killed his wife, cut up her body in little pieces, burned it in a stove while he was cooking meals for her babies, and buried parts of it in a sack out in the San Joaquin River. It was really a gruesome case.

The main difficulty in it was they couldn't find enough of the body to make a very strong showing of the corpus delicti. All they were able to get was a piece of bone about as big as your thumbnail from underneath the bed, which the doctors identified as a piece of human skull. The rest of it was circumstantial. It was a difficult case to try indeed. They searched everywhere for the remains that hadn't been consumed in the stove without being able to find them. They didn't find them until after the trial was over.

Stein: What was the name of that case? Do you remember?

Olney: Antoine, I think it was. But the most shaking event of that trial was the day after the selection of the jury, when the trial had actually gotten started and it was apparent who the foreman was going to be. They discovered for the first time that that foreman had himself stood trial for murder in Oregon, only about a year or a year and a half before. Well, you can imagine how they felt about that. They had to go through the trial--there was nothing to do but go ahead with it--as though they knew nothing about it.

Stein: Was that ever questioned later on appeal?

Olney: When the trial was over, they discovered that it was the foreman who was the strongest not only for first degree, but for the death penalty.

I understand that Earl did talk with the foreman sometime after the trial about this. The foreman said, "Well, yes. I'd have told you if you'd asked me, but you didn't ask me if I'd ever stood trial. I was charged up there in Oregon and went through the process, and it was that experience that gave me very great confidence in our general system of law enforcement. I was on a boat--it was a yacht--a man fell over and drowned, and I was accused of pushing him off. We had a trial, and it was a fair trial, and I was acquitted, as I should have been. I don't think it's possible under our system to convict somebody for something he didn't do."

Anyway, I only mention that as being the kind of a case that Earl Warren would be involved in himself. When I was there, he already had a tremendous reputation as a trial lawyer and as a district attorney. By that time, he had many, many more things to do than take care of routine trials.

Eliminating Delays in Criminal Prosecutions

[Interview 4: March 2, 1971]

Stein: Could you tell me more about what Warren's policies were in bringing cases to trial?

Olney: Yes, I can, and I think it was one of the most important aspects of his administration as district attorney. The policy which he followed right from the beginning, from the time he became district attorney, was against delays in prosecuting criminal cases. The

Olney: policy was to prosecute at the earliest feasible date. That policy was formulated into a rule which applied to all of us who were deputies in the office and particularly to the two deputies who handled the criminal trial calendar. They were the ones who set the date for trial.

Stein: Who were they?

Olney: When I first went into the office, it was Richard Chamberlain, later a superior court judge. He handled the calendar. Then it was Theodore Westphal, who was later chief assistant attorney general. Then it was, after that, Leonard Meltzer. I remember those three in particular. I think Bob Hunter handled it for a time, too.

The practice at that time was for the district attorney, not the court, to handle the calendar. The office determined the case dates, when the cases would be ready for trial. The judges were prepared to try them whenever they were ready. Of course, as against civil litigation, the criminal cases had statutory preferences. If the criminal case was ready to go, the court felt that it must go; it had no alternative--not that they wanted one--but to go ahead with the trial. No deputy in the office had authority to request or consent to a continuance of a criminal trial. We were required to object to any and all postponements unless we first got the consent of the district attorney himself. Consent was never given excepting when there was a real, legitimate need for it.

The rule was so well established by the time I got there that it never occurred to me to question it. I just accepted it and operated under it. I didn't think much about it. In later years, I realized that I'd never heard of any other prosecutor's office that had any such rule. It had a profound effect on the office because you cannot be representing the prosecution and always saying, "Your honor, we will be ready at the first available date," without being ready. You have to be ready! Necessarily, the case must be prepared, and it must be prepared in a very short time. This meant that when cases were assigned to us, we had to go to work on them immediately. This is why night work and weekend work were just regular routine in the place. It is the only way in which any such policy can be carried out.

Now, while this was very strenuous and hard on us, it had certain great advantages as worksavers. It meant you only had to do things once. You only had to interview the witnesses once. You only had to go over the exhibits once. Then you went to trial. When trials are postponed, a busy prosecutor has to lay the matter to one side. When he picks it up again, nearly all the work of preparation has to be done over. This is very wasteful of the prosecutor's time and

Olney: effort. We never had to do that. As a general rule, we could prepare the case, to to trial, and put the matter behind us. We did not have to juggle a dozen or so half-prepared cases all at the same time.

Those policies had an effect on the personnel of the office, too; I mean the kind of personnel. A regular old-time prosecutor in his forties or fifties just isn't going to hold still for that kind of routine. That is altogether too demanding and too strenuous. They would retire or resign and leave. Some of the younger men also found it too demanding. We had a very rapid turnover of people in the office because of this.

Stein: Was this turnover going on all the time?

Olney: This turnover went on all the time. Young men would come in order to get the experience, just as I did. This was during the Depression and jobs were very hard to come by, especially in legal work. There were many of us who began by working for nothing and then would work for a time until we felt we had had enough experience. Then we'd leave and do something else. The result was the personnel in the office was, on the average, of a very young age. We had very few of the older lawyers. There was a constant looking for experience and to get it those younger lawyers were willing to submit to this kind of routine.

It has an effect, too, on the feeling of the lawyers in the office about each other and about the office. As a group they worked as a team. There was very little personal rivalry or ill feeling and far more cooperation between people in the office than you ordinarily find in legal work. I think this was a result of these policies with respect to trials and preparation.

I used to wonder why Earl Warren adopted these policies, which were really quite unusual. I have heard him explain his reasons several times, the last time being within the past few months. He said he became district attorney by what was more or less a political fluke. He had no real political roots in Alameda County. He was neither born here nor brought up here. He came from Kern County. He simply came to Alameda County more or less by accident after the war and became a deputy in the district attorney's office. He was not allied with any political group in Alameda County. As a deputy, he had been assigned to work with the board of supervisors of the county and, since they had the appointment of Ezra Decoto's successor as district attorney when he resigned, they thought well enough of Earl Warren to make him district attorney.

Stein: But it was still a very close fight, wasn't it?

Olney: Well, there were some of the supervisors who wanted someone else. They wanted Frank Shay. But having become district attorney, Warren still had no political foundation. The only chance he had of survival as a district attorney was through excellence of performance in the office. It was the only chance he had, and he knew that.

He also became aware very early when he was district attorney that there was widespread corruption in the county. As the months went by, he realized that sooner or later he was going to be faced with a general graft prosecution. There was corruption in city government, in county government. There were many indications that there was corruption somewhere, but no proofs.

Now, he had known before any of these graft cases broke that something like that would happen eventually. One time he was in Sacramento and was talking with a man named Franklin Hichborn [leafing through a book] about the possibility of his being faced with a serious graft prosecution in Alameda County. Mr. Hichborn asked Earl if he had ever read Hichborn's book about the San Francisco graft prosecution. Earl said no, he had not. "Well," Hichborn said, "I'll send you a copy. I think you'll find it of interest." And he did.

This is the book. [showing it to interviewer]

Stein: What is the name of it?

Olney: It's called The System, As Uncovered by the San Francisco Graft Prosecution. It was published in 1915 and the name of the title makes the subject self-evident.

Well, Earl Warren read that book and it is a very, very interesting account of the extensive graft prosecutions in San Francisco conducted by a special prosecutor named Francis J. Heney and what happened to them. The prosecution got off to a great start and it had tremendous backing in the community. All the newspapers supported it. All the business leaders, the churches, and so forth were in favor of it.

The prosecution got a whole series of indictments. At one time, they had every member of the board of supervisors under indictment for accepting bribes. But they did not move those cases to trial. When they would try to bring them to trial, the defense would apply to the supreme court or the district court of appeals for a writ on this or that or the other thing and it would take them weeks or months to brief the matter and then the argument, and these cases were delayed. There were also many other cases that delayed.

Olney: The point of it is that during this long period of delay the support for the graft prosecution began to dwindle. People got tired of reading about it in the paper. First one newspaper and then another would break away from supporting the prosecution. The people who had paid these bribes were very powerful, well-to-do businessmen in the community. They knew that if the bribe-takers were convicted, the bribe-payers would, in all probability, be faced with indictment and trial. They were hard at work trying to discredit the prosecution in every way. The result was that there was only one conviction that grew out of that San Francisco graft prosecution in spite of the tremendous effort and the vast amount of evidence and the number of indictments.

That conviction was of Abe Ruef. Abe Ruef was the political fixer and middleman in most of these bribes. The only reason he got convicted was that during the course of his trial--they finally brought him to trial--in open court, in the presence of the jury, one of the spectators stood up and shot Heney, the prosecutor, through the head!

It didn't kill him, but it knocked him out of the case, of course, and his assistant, Hiram Johnson, had to take over and complete the case. That's where Hiram Johnson made his name. But, of course, with a dramatic thing like that occurring in the middle of the trial, it may have upset the jury. Ruef was convicted. But he was the only one.

Earl Warren says that he learned a lot from that San Francisco experience. He came to realize that if he was confronted with these graft cases, he must at all costs do everything to keep them moving and bring them to trial promptly and not get caught with the effects of long, drawn-out delays, because he could see from the nature of the kind of case that the very same factors would be at work to defeat a prosecution in his county.

He told me that before any of these cases had surfaced, he saw Chief Justice Waste; he was chief justice of the state supreme court and he'd been a judge in Alameda County and that was why they knew one another well. Warren said he doubted that he would have had the nerve to bring the matter up with any other chief justice.

He told Chief Justice Waste that he was apprehensive that there were going to be a number of serious graft cases in Alameda County, that if there were such cases he anticipated that the defense would make every effort to delay the trials and would apply to the court for stays and writs and things of this kind. He said to Chief Justice Waste, "Of course they are entitled to make applications of that kind. But there is one thing I would like you to know,

Olney: and that is that if this occurs, and there are such applications, I and my office will be ready for a hearing at the earliest possible moment on any of them. I do hope that without even bothering to communicate with us you'll just set them for immediate hearing. We'll be there and we'll be prepared. We'll meet the issues."

Well, it was a year or more later, I guess, before these cases broke at all. The first big one that came along was Harry Lesser. He was a big paving contractor and a real grafter. He had been paying off to city and county officers all down the line on paving matters. So they thought they would try him first because he was probably the biggest. He was defended by Theodore Roach, who was a very capable criminal lawyer from San Francisco. Lesser was indicted in due course. His case was set for trial very promptly.

A few days before the trial was to begin, Roach applied to Chief Justice Waste for an order to prevent the case from being tried pending the determination by the supreme court of some claimed illegality in the proceedings. The story, as it was related to me, is that Chief Justice Waste looked over the papers and said to Mr. Roach, "If these allegations can be substantiated, Mr. Roach, perhaps you are entitled to relief. So I'll issue the restraining order and we will set it for a hearing."

Roach said, "Thank you, your Honor, when will the hearing be?"

Chief Justice Waste looked his calendar over and he said, "Tomorrow afternoon at 2:30." Roach was absolutely taken aback.

He said, "Mr. Chief Justice, we can't possibly go that rapidly. The district attorney hasn't even been served with these papers."

The Chief Justice said, "You can serve them this afternoon, can't you?"

He said, "Yes."

"Well, you serve them this afternoon. At 2:30 tomorrow we'll have a hearing."

"Oh," he said, "I can hardly be ready myself!"

"Well," the Chief Justice said, "aren't you the proponent in this matter?"

"Oh, yes."

"Well, the hearing will be at 2:30 tomorrow afternoon!"

Olney: So they served the papers and at 2:30 the next afternoon, Earl Warren was over there and they had the hearing. Of course, the district attorney had had to work all night to get ready, but they were ready and they were there and they had the hearing. The Chief Justice made his ruling right from the bench. The application was denied. Roach hadn't been able to substantiate his allegations. The case went to trial without delay and resulted in Lesser's conviction on all counts. After that experience, defense counsel in the graft cases did not seek any more restraining orders to delay the trials.

Practical experiences like this seem to have convinced Earl Warren that a policy in favor of prompt trials and against postponement and delay was the only sound way to run his office. He, personally, made all the necessary sacrifices of time and convenience to live up to these policies and he expected his deputies to do the same.

Earl Warren's office had acquired a good reputation before I got there and I don't mean to say that my presence had anything to do with it. When I left, it was still better known. I believe in the largest part this was due to these very policies I am speaking about. The office got a good name because it was so efficient and so effective.

Another thing that greatly contributed to the growing reputation of the office was Earl Warren's personal leadership of the law enforcement agencies in the county and through the state, too, in the state legislature. Those two things had a great effect. But the measure of what these trial policies produced is really in the records and statistics of the criminal cases.

There is an editorial that was published in the Berkeley Daily Gazette for Tuesday, September 3, 1929, called "Getting Action on Crime."* In that editorial are listed a half a dozen major cases that we had in the office during that year, mostly murder cases and bank robbery cases, which show that the cases were prosecuted successfully, with vigorous defense from the best counsel in the community, within less than thirty days from the time of indictment until the completion of the case. Now, those cases were not exceptional. The average in the cases was about that.

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*See Appendix C.

Investigative Staff

Olney: Now, there are some other things about the effect of trying to prepare and present cases as promptly as that that had an effect on the office, that are worth mentioning.

A lawyer who has to prepare a criminal case can't do it all by himself. He has to have some assistance. He has to have some investigators. The Alameda County District Attorney's Office had a staff of investigators--inspectors, we used to call them--and their assignment was to assist the lawyers in getting these cases ready for trial. Since we had to work under such pressure all the time, our relationships--I say "our"; I mean the lawyers' relationships with the inspectors--became very close, very personal, and frequently we accompanied the inspectors on their investigations, actually talking with the witnesses at the same time.

In the cases that I tried--I don't know about the other lawyers; I think they probably did the same thing--I always went to the scene, wherever it might be, in advance of the trial, and looked it over.

Now, that staff of investigators was quite an unusual group in that they were very hardworking and very conscientious and could do their work well. But they were not trained in the sense that we now talk about training in criminology and police work and things of that kind. Such background as they had they got just by practical experience.

The inspectors were organized into a bureau. The captain was George J. Helms. Captain Helms had become an inspector for the district attorney one or two or maybe three district attorneys before Earl Warren. He had been a port captain for the city of San Francisco, but was asked by the Alameda County District Attorney's Office to investigate a county assessor who was taking bribes from a local water company. Captain Helms developed the case and the assessor was arrested, prosecuted, and convicted. The district attorney here appreciated the service and asked him to stay on and continue to work for him, and he did. Now, how many men there were in the inspectors at the time Earl Warren took office, I don't know. There were several, I think.

Stein: I think there were three.

Olney: Well, I don't remember.

Stein: There was a man named Laughrey and another man, both of whom left fairly soon after Warren took over.

Olney: Well, among those that I knew, that were there in my time, they had a lieutenant, Oscar J. Jahnsen. Oscar had a background of investigative experience with the Coast Guard before he came. He was a very energetic and ingenious investigator.

Then there was Charles R. Blagborne. I don't recall his background. He was older than most of the investigators we had. I believe that he had had Oakland Police Department experience. He worked on many fraud cases that I had.

Then there was Chester B. Flint, who is still living. He came from the Oakland Police Department. A very conscientious, able man, he was in most active charge of the raids on Chinese gamblers and lotteries and houses of prostitution and bootleggers in the Emeryville area during those early days. Later on, in '34 and '35, he was assigned to intelligence work in the office.

Then there was George G. Hard, who had a background of federal Prohibition enforcement experience. George came from Montana originally. He taught me how to pack a mule.

Then there was George Henningsen. He lived in Hayward. He had been a contractor and built houses and things of that kind before he got into the district attorney's office. Another fellow with a similar background was Howard E. Tupper, who had been a carpenter. Now, both those men were quite adequate for the type of investigative work that we needed to have done. Later on we got a younger man, Louis J. Neeland. He had been an officer of a labor union, but he became an inspector. He was a very good one.

The bureau was not overly organized. As cases were assigned to us lawyers, and we needed help in getting them ready, we would go and see Captain Helms and tell him what the case was, and he would assign one or another of these men to work on the case with us, and we worked on them together sometimes. If the case was a large one, there would be more than one person assigned to work on it. The coordination between the lawyers and the investigators on this sort of arrangement was very smooth. We never had any problem with those men. They did everything we ever asked them to do and more.

They took a great interest in their work. Because their cases were being tried promptly, they were usually in court where they could see the results of their efforts. This, I am sure, contributed to their understanding of a trial lawyer's problems and to the respect that they came to have for the deputies who had presented the cases they had investigated or prepared. They took pride in making intelligent, painstaking investigations and preparing coherent, unambiguous reports. They scorned trickiness or any unfairness to a

Olney: defendant because they were trained that way by Captain Helms and because they were able to see in their attendance in court that such methods nearly always backfire in the trial of a case.

Stein: Did certain inspectors tend to work with certain deputies? Did they specialize at all?

Olney: Oh, yes. That reminds me, there's one man who was there when I first went in whom I failed to mention and should by all means. This was Harry Piper. He was an investigator and he was assigned to the homicide cases primarily and was working with Charlie Wehr. He worked with Charlie and me for quite a time. He was a tiny little fellow and he had a screwed-up face that had almost an oriental cast. He could pass himself off as Japanese, and did on occasion. [laughter]

He was a most remarkable man in locating witnesses. He had a flair that exceeded the ability of anybody else we had. If we wanted to find somebody, Harry could always find him.

His background was that of a jockey. He told us that he had ridden a horse in the derby in England, which we didn't believe. But somebody realized that the World Almanac carried all the derby riders for that race and we looked it up. Sure enough! There he was. [laughter] So he had ridden in that race.

He lasted only about a year and a half, I think, after I came to the office. He was driving a county car one night and he managed to get drunk, which was clear out of bounds. He drove the county car off the road and had to get pulled out. When this was learned, he got fired. Then he took a job running the Berkeley City Pound. I don't know what's happened to him after that.

There wasn't any real specialization among those investigators excepting on homicides. After Harry left, George Hard was usually assigned to homicide cases. But George might be working on one and we'd have another homicide. So they'd have to assign someone else and, furthermore, we didn't have homicide cases all the time, so George would frequently be working on other cases as they came along.

Deputies on Call

Stein: You mentioned yesterday that the deputies were organized in such a way that there was always someone who could be called on to take statements.

Olney: Yes, that is true. This was particularly the case in connection with the murders, the homicides. There were always two of us who were assigned to those cases. One of us always had to be in town and be available on telephone call, night and day. It was usually the junior member of the team that stayed, whose phone was the one that was given.

Stein: You were in that position?

Olney: Yes, I was. It was a regular fireman's life. The phone would ring any time. But that was what went with the job, and gosh knows it was interesting. For somebody who was looking for experience as I was, I certainly got that, in large doses!

But it had its drawbacks. It was very rough on family life and even on vacations. When the 1934 strike came along, I had been planning a pack trip for many months with my wife and four friends--two friends and their wives. We were going to do our own packing. I made all the arrangements and worked the trip out. We were going up to Garnet Lake. But the strike came and they all left and I had to stay home. [laughter] I lost out on over a week. Only after a week I could get permission to go; I could go up and join them.

Stein: Well, at least you got some of the trip in.

Olney: Yes, I got some in.

A Complex Fraud Case

Stein: One of the questions I wanted to ask was, when you were talking about cases being brought to trial very quickly, there were always, of course, cases which were going to drag on just because they were large and complicated, like the Sheriff Becker graft case and Point Lobos murder case.

Olney: Well, I don't mean to imply that we could dispose of every case within thirty days of the time the offense was committed. There were many cases where at the outset we didn't know who was guilty, didn't have the evidence, and it would take many, many months to develop it.

There were fraud cases, for example, where we were confident that fraud was being committed but where we had no real complainant. A good example of it is the Cox Chemical case. There was a man named Cox who had a chemical laboratory in a canyon back of Hayward. He

Olney: claimed that he had invented a formula which could be put into crude oil, or crude oil mixed with water, and it would separate out the gasoline without any cracking process, and produce a better grade and more gasoline than the oil companies could do with their process. He claimed that this was so efficient and so revolutionary that the oil companies were trying to put him out of business. He went around selling stock in this company.

Well, we were convinced it was a fraud. We couldn't prove it. But that went on for years and we couldn't make a case because we couldn't get anybody to complain. The people who bought the stock were sold on the idea and they wouldn't be witnesses against him or testify as to the representations he made or whatnot. With cases like that, a prosecutor can do nothing but sit back and wait until it has run itself out and somebody realizes he's been cheated and is willing to testify. In that case it took years. There were many others like that, that took a long time.

In the ship case, the Point Lobos case, it took many, many months, I think. It was a year or more before there was any information as to who the guilty parties were. There was suspicion, but that was all.

The thing I am emphasizing timewise is not the matter of the time it takes to investigate a case, but after the case gets into court, after the indictment is returned.

Standards of Evidence

Stein: Did you want to talk about what standards of evidence you set yourself or Warren set? What was acceptable as evidence and what wasn't?

Olney: Well, with respect to evidence, we used all the evidence that we could get. We did not hesitate to offer into evidence anything that the rules of evidence permitted.

The rules were somewhat different then than they are now. At that time, under California law, if the evidence was material and tended to prove the matter at issue, it was admissible without regard to the methods that were used for obtaining it. An objection that a statement made by a defendant shouldn't be admitted because he hadn't been informed of his right to counsel or that a document shouldn't be admitted because it was obtained in a search without warrant--issues of that kind--seldom arose. The rules as to admissibility were considerably different. Also, we didn't have any legal ban against wiretapping.

Stein: I was just going to ask about that.

Olney: There was a state statute which prohibited the disclosure of telephone or telegraph messages. That had been passed way back in the '90s and was intended to forbid telephone and telegraph operators from giving people information about messages that they got. It had nothing to do with intercepting a message on the wires.

The federal law didn't apply either. The federal law relating to telegraph and telephone messages was just like the state one. It was intended to prohibit people in those companies from disclosing messages.

There was a federal Radio Act that did prohibit the disclosure of radio messages. It applied only to radio. That amendment to the Radio Act was passed when they first started using the radio-telephone. One of the very first places the radio-telephone was used was between Catalina Island and the mainland. However, anybody could listen in on the wave lengths the telephone company was using. People would telephone back and forth from Santa Monica to Catalina, believing they were talking in private. Finally, certain third persons picked up conversations between certain husbands and certain young ladies who were not their wives and then disclosed the conversations with very unpleasant results. Congress then amended the Radio Act to make the disclosure by a third person of an intercepted radio message a crime. Congress could and did make the disclosure of the message a crime, but it could not and did not make the interception of the message a crime since it was being broadcast on an open wave length for anyone to hear.

But those were the only restraints we had excepting the very practical one; and that is that there wasn't any equipment for intercepting telephone messages that was any good. As far as I was concerned, I had no moral scruples about it. I thought it would be a very good idea to intercept telephone messages in the course of criminal investigation if we could do it.

Now, along about 1934, I think it was, the Attorney General of the United States called a national conference on crime to consider the important and voluminous reports of the Wickersham Commission on Crime, which had made a very extensive investigation into crime and produced studies on crime in all its aspects.

Earl Warren was invited to go back to the national conference on crime and made a major contribution to it. At that time we first learned that there was equipment coming on the market which could be used for intercepting telephone conversations. Following the national conference on crime, Oscar Jahnsen was sent east to take the FBI training course in law enforcement methods and techniques. He graduated from the FBI academy.

Stein: That answers a question. I was talking with Professor Arthur Sherry several days ago and he was wondering where Jahnsen learned any of the microphone and wiretapping techniques that he knew.

Olney: He got that from the FBI school. In the FBI training he was trained in wiretapping, among other things. There was no law against it. We thought that was great! When Oscar got back, the office purchased some Edison equipment for recording intercepted telephone messages. It was like the old Edison phonograph. It had wax cylinders that went around. There was nothing electronic about it. It was mechanical.

Those cylinders had to be replaced, I think, about every hour, so that to listen to somebody's line and make a record of it took an awful lot of manpower. This equipment was expensive. Our experiences with it were very unsatisfactory. I do not remember any case of wiretapping while I was in the Alameda County District Attorney's Office. We did tap at least two telephone lines that I remember while I was in the attorney general's office. In only one instance that I can recall did we get anything of any value. As an investigative technique, I never thought it had much value. I see that this week the federal government claims that they made a very large narcotic knockover here in Alameda County on telephone taps. I don't know whether they did or not.

There were many times when we had informants whose safety was very precarious, so the newspapers were given the version that we had learned about various things on telephone taps. We had never tapped them at all, but we did not want it known that our information came from informants.

Stein: I guess that serves a good purpose, too, in making people be a little cautious.

Olney: Well, that's true. Such experience as I have had with wiretapping, though, made me very, very doubtful about its general usefulness. And it <u>is</u> very indiscriminate. If you hang on a line, you get everybody who's on the line, not just the people you're interested in. This isn't healthy. Since that time, the techniques of wiretapping and bugging have developed so far beyond anything that we pictured at the time, that we all have a very different attitude towards telephone tapping as a means of investigation. In view of present technical capabilities, if there were no prohibition of indiscriminate interception of telephone messages, life would be almost unbearable.

I must say, though, that my own feeling against telephone tapping is not based on moral scruples. I can see no valid objection to listening in on people plotting crime. I think that is entirely

Olney: legitimate. If there is any way in which it can be done, I'm all for doing it. But you can't permit that kind of thing if it is going to simply ruin social relations in general. Furthermore, it is a poor way to investigate. You just don't get enough. And it's wasteful! Expensive! The equipment and the manpower it takes to do it! I think there is very much less wiretapping than is thought, for that reason. It is not worthwhile.

Coordination of Law Enforcement

Stein: You mentioned earlier that Warren had made a very important contribution at the Attorney General's conference in Washington.

Olney: He did, I am sure. He supported J. Edgar Hoover's efforts to strengthen the FBI and make it an effective federal law enforcement agency. Then, I think that Earl Warren got a great deal out of that conference.

I don't know whether it was a result of that conference or not, but I know that after that conference he was always very sensitive to the importance of trying to support decent law enforcement and decent government in every county in the state, especially neighboring counties. He pursued this. He worked with, got personally acquainted with, the key officials, police chiefs, district attorneys, and others, and tried to develop organizations that would raise the standards, that would develop cooperation between law enforcement agencies all over the state.

In his own county, when he took over, we had all these little municipalities, each with a separate police department. Most of them didn't speak to each other. The sheriff took the position that anything that happened in the incorporated areas was none of his business; he was only concerned with the unincorporated areas.

Well, Earl had to start at that level in order to organize and develop a spirit of cooperation and law enforcement in his own county first, then through the Peace Officers' Association and the District Attorneys' Association. I think the real reason he was so interested in the legislation was that he recognized that that was the common interest that all of them had and that they could be brought together and gotten to cooperate and get acquainted.

Reflections on Earl Warren's Career

Olney: There is one thing that I want to say about being in the office at the time. I had no consciousness at all that I was working for anyone anybody would call an unusual man. I never, never pictured Earl Warren as a Chief Justice of the United States or even as a governor!

When I was in the district attorney's office, I thought it was improbable that he would ever be attorney general. The reason was his narrow political base. He had no organization, only his own office in Alameda County. I knew that these concerns about the state as a whole had made him very interested in the attorney general's office, so interested that he developed a series of amendments to the state constitution relating to the attorney general, to make him the chief law enforcement officer of the state, to make the district attorneys and sheriffs somewhat accountable to the attorney general.

He did that when he was still district attorney. He knew that U.S. Webb was not the kind of personality who would ever want to make much use of those provisions, but he went ahead and made them anyway. I know he thought it was unlikely that he would ever have occasion to use them or be attorney general and use them. When he finally decided that he would run for attorney general, he waited until U.S. Webb was ready to quit and then announced. I thought he would have a very difficult time getting elected. But he did not.

Stein: By that time he had become active within the Republican party, hadn't he?

Olney: Yes, yes, to some extent anyway. I don't know much about these activities, as I had left the district attorney's office and was with my father in San Francisco.

After he became attorney general, he was very content with that position. It was made to order for him because he had fashioned it that way. He enjoyed the work; it interested him. It was broad enough in scope and he liked it. He would have remained there, I think, almost indefinitely if Governor Olson hadn't constantly baited him.

We had no thought as to what Earl Warren's future would be when we were in the district attorney's office.

Stein: A question that people ask us all the time is whether we think that Warren really changed from the time he was DA to the time he was chief justice, or if it was a continual development, so I'll throw that question out to you.

Olney: Well, he certainly developed and development means change. I do not think he reversed his principles, if that's the kind of change you have in mind. He was always very scrupulous and very conscious, when it came to criminal law, of the weakness in position of most of the people who get charged with crime. It you take a look at what goes into the hopper, they really are the unfortunate ones of our society. Once they get caught in that machinery, they have very great difficulty. He was always sensitive to that. He developed the first decent sort of parole system for county jail prisoners that we ever had in the county.

Stein: How did that work?

Olney: Well, I don't know. He served on the parole board there to parole these fellows who were getting county jail sentences. I don't know the details of it. I had nothing to do with it personally, but I remember it well enough. He would never countenance anything on the part of his assistants that smacked of overreaching or unfairness or anything of that kind. But on the other hand, he believed that when he was district attorney his job was that of a prosecutor and that meant to present the case as fully and effectively as the facts and the law permitted.

There were lines of conduct and of evidence, lines of conduct in court, and he felt that--I've heard him say that he thought he ought to go right up to the line. Not over it, but right up to the line.

As governor he had great concern with the correctional system. When he became governor, he was faced with huge scandals in the Prison Board. They were selling pardons and paroles right out of the governor's office! He had to reorganize the whole system of corrections, which was done, and he brought in Dick McGee to head the department. It developed into one of the fine correctional systems of the time. This all had his very strong support, very great interest.

When he became chief justice, his function was different. His position was different. There he was not an administrator. He had no way of setting policies or putting restraints on the conduct of the enforcement agencies or on the treatment of those convicted.

The Gosden Case

Stein: I do think it would be a good idea, if you would like to, if you would tell me a little bit about some of the cases you were telling me about yesterday, like how you got interested in the Gosden case. You could leave the story of the case itself to the newspaper clippings.

[Some time after Mr. Olney tape recorded the high points of the Gosden case, he wrote out a full account of his participation in the case. This account, which begins on the following page, has been substituted here for the tape-recorded narrative.]

A STUDY IN COINCIDENCE
THE CASE OF LOUIS GOSDEN

This story is more about the workings of coincidence than it is about a criminal trial. If the cast of characters seem unrelated and the sequence of events which I recite seems disconnected, it is because that is the way they really appeared to me at the time. A great deal happened and it was a long time before anyone at all suspected that there might be some relationship between all these people and occurrences. A pattern finally did emerge and it was a sinister picture indeed. The revelation came more by coincidence than by anything else and that is what this story is about. There was not just simple coincidence in this matter. Coincidence became piled on coincidence and more coincidence on top of that, to a height or depth that is truly astonishing in real life.

My connection with the people and events which culminated in the trial of Louis Gosden began in early December, 1934. At that time, I was Deputy District Attorney in Alameda County. Our District Attorney was Earl Warren. I had joined his staff in 1930. My purpose in so doing was to get practical experience in the trial of jury cases and to learn something about the art of advocacy. I asked for and was assigned to the trial of criminal cases.

After trying the regular run of felony cases for two or three years, I was assigned to homicide cases. There were two of us on this assignment. The number one man on the team was Charles Wehr. He was considerably my senior in age as well as in experience. As the number two man, a large part of my work was in preparing the homicide cases for trial. That is, in overseeing the completion of the investigation and the preparation of exhibits, processing the subpoenaes and the like, interviewing witnesses and being useful generally.

Charlie was very generous about letting me take part in the trials. We usually alternated in the examination of prosecution witnesses and often I was permitted to cross-examine some of the defense witnesses. The key witnesses, of course, Charlie handled himself. As a rule, Charlie made the Opening Statements to the jury before the commencement of the taking of testimony, as well as the closing argument, leaving the opening argument to the jury to me.

I suppose that Charlie thought that by this arrangement he was reserving the more vital parts of the presentation for himself, leaving the opening argument to me because he thought it not so important. If this was his reasoning, I came to consider it faulty. I found by experience that a good opening argument can oftentimes determine the result of the case. If rhetoric and forensics are ignored and the opening argument is based on

a closely reasoned factual view of the evidence, the defendant can oftentimes be dug into an evidentiary hole so deep that he can never get out.

Since it was my assignment to try homicide cases in Earl Warren's office, this very naturally kept alive my long continued interest in murder trials and in the whole subject of why people kill one another and what to do about it. My interest in murder trials goes back a long way.

While in law school I formed the desire of learning to try jury cases and becoming an effective advocate. I read such books as Francis Wellman's The Art of Cross Examination and John C. Read's little volume entitled The Conduct of a Lawsuit. I noticed in books such as this that most of the examples of effective advocacy were taken from criminal as against civil trials. This led me to delve into that remarkable series of books called Notable British Trials. There were already possibly a hundred of these red-backed volumes, each devoted to the trial of some notable case. Some were old and some were new. Each volume includes a large part of the transcrip of testimony or at least a detailed summary of the evidence. Very often the jury arguments of counsel on both sides are included in full. It was here that I found what seemed to me jury arguments that ware brilliant and effective. From their study, I came to believe that there are techniques in presenting evidence to a court which can be acquired and skill in making arguments which can be learned. I read a great many of these British trials from this point of view. Most of the cases were for treason or murder and of the murder cases I found that the poison cases as a group were the more interesting to me. They seemed to bring forth the most remarkable demonstrations of skillful advocacy.

I think there is a reason for this. Because the evidence in poison cases is usually circumstantial, proof requires putting together of one fact after another until the picture emerges, at first dimly, and then with greater and greater clarity as more and more facts are fitted into place. Finally, the true horror of deliberate poisoning of one by another becomes sharp, clear and irrefutable. This process in the courtroom affords the broadest scope to the personal skill of the advocate for the Crown, or the State, as he has full discretion to determine the order and time in the trial when each piece of evidence is presented. The clarity of the final picture of the crime and the degree of certainty about responsibility for its commissio will often depend in poison cases upon the forensic skill of the prosecutor presenting his evidence, piece by piece, in such order and such manner that the relationship of each circumstance to all the others becomes firmly and permanently established.

It is natural that a case where the proof must be pieced together in this way will produce interesting jury arguments for here the advocate must go over every piece of the mosaic and apply the light of reason to it as a total picture so that belief in its truthfulness is established beyond a reasonable doubt in the minds of the Court and the twelve jurors in the box.

In poison cases, the professional opportunities for counsel for the defense are no less great than for Crown counsel or State prosecutors. The evidence for the prosecution must of necessity be complex and if the defendant's advocate can subject even one link of the chain of circumstantial proof to a reasonable doubt, the prosecution will collapse. No doubt there have been many poison cases where the rebuttal of evidence and the marshalling of facts and evidence by the defense have been outstanding, but the most admirable of these performances are lost to history since under our system acquittals and mistrials are not appealed and the records of such trials are therefore not preserved.

My assignment to homicide in the District Attorney's office also led me to take some interest in the statistics on murder. Even then there were some statistics, at least on rates of murder, per hundred thousand of the population, between different states in the United States and the United States and countries in Europe. Of course, one fact that stood out conspicuously was the much higher rate of murder in the United States as compared with the rate in European countries. I cannot now recall the figures, but I do remember that the United States' murder rate was many times higher than the rate in Great Britain, France and Germany. I believe that was true with respect to every European country where we have any figures.

These same statistics had tables comparing the means used for commiting murders from country to country. It was no surprise to read that in the United States firearms were overwhelmingly the favorite means of murder. European nations seemed to vary considerably between one another in the use of knives, firearms, clubs and so forth in killing one another. This sort of thing could lead one to speculate as to differences in national character.

In these tables, there was one figure with respect to the means of murder in the United States that at the time seemed to me very, very curious. The rate for murder by poison is not very high in any country but in the United States the rate for murder by poison was far lower than in Great Britain, France, Germany or any other European country. In a country as addicted to homicide as we are, why should poison as a means be so very low on the list of means in comparison to other civilized countries?

It seemed to me there were some sinister implications from these statistics. A body with a gunshot wound or stab in the back is going to get into the homicide statistics regardless of whether the perpetrator is apprehended or even identified. The poisoner, on the other hand, will not get into homicide statistics if he is successful. He relies upon secrecy and upon lack of suspicion. The possibility suggested itself to me that the reason the figures for death by poison in the United States were so low might be because our poisoners were not being suspected and their crimes therefore were not being registered in the statistics. The foregoing is background, all of which had a bearing

on what happened in December of 1934 when I was told that a representative of the Pioneer Mutual Life Insurance Association was demanding to see me about holding an inquest on one of their insured risks.

One of my duties, as the number two man on the homicide cases, was regular attendance at the coroner's inquests. That is why this matter was referred to me. Having introduced himself as a representative of the Pioneer Mutual Life Insurance Association my visitor stated that his company had written a policy of life insurance on a young woman who had died shortly thereafter. They thought it might be suicide and they wanted an inquest to find out. The policy had been written on September 14, 1934, in the amount of $1,000, on a 23-year old housewife who had died the following November 21. The company insisted upon knowing the cause of death before paying the claim.

I asked if there had been a medical examination of the insured before the policy was written and the answer was no. The insurance man said the application had been received in the mail and no medical examination had been required. On learning this I questioned the insurance man closely and made notes with paper and pencil as to the name and address of the Company, the name and address of the insured, the beneficiary, the amount of the premium, and so forth.

The reason for this action on my part was that at that time our office was engaged in a campaign against fraudulent insurance companies that were operating in Alameda County. There had been a considerable number of fly-by-night insurance companies selling life, accident, and health insurance policies and collecting premiums from people in Alameda County. They would continue to collect money as long as they could. When the first claim would come in they would close the office and decamp and set up their offices somewhere else. Most of these companies were issuing policies without requiring a medical examination. I secured as much information as I could about the Company in this case with a view to passing it on to the lawyers in the office investigating the insurance racket.

After I had gotten all the information that I could I asked the insurance man what the autopsy had shown as the cause of death. He said that as far as he knew there hadn't been any autopsy and that's why the Company wanted an inquest. I pointed out to him that an inquest is a formal legal proceeding that is only held when there is some question about the cause of death, when evidence needs to be taken to determine its cause, and that in all cases where the cause of death was not readily apparent an autopsy was held to determine its medical cause and to enter the same in the death certificate. I told the insurance man that since their insured had died as long ago as November 21, 1934, there was certain to be a death certificate on file in the County Clerk's office across the street and that if there had been any uncertainty as to the cause of death an autopsy would have been held and it would have been entered in the death certificate. I suggested to him that he examine the death certificate and then come back and talk to me further on whether an inquest

was needed. He did this and returned in due course. He said there was indeed a death certificate on file and that it showed that an autopsy had been made by Dr. Tiffany, the Alameda County autopsy surgeon, and that the cause of death was reported as double lobar pneumonia. The insurance man told me that he did not desire to renew the Company's request for an inquest, that neither he nor the Company had realized that the cause of death had been established by an autopsy. He said the Company was satisfied and would require no further action by the public authorities. The matter seemed to be at an end.

On inquiry within our office, I was told that the Pioneer Mutual Life Insurance Association was not involved in the investigation of the insurance racket that was presently going on, but instead of throwing my notes away, I sent the folder and the card I had made to the general file. Why, I do not know.

Among my duties as the junior lawyer assigned to the trial of homicide cases was keeping in touch with the local hospitals. Experience had shown oftentimes that on reaching the hospital, victims of homicide are capable of making statements before they die. These statements can sometimes be important pieces of evidence. Taking these statements from a dying person is not only a very sensitive and difficult thing to do, but they must be taken under very strictly observed circumstances in order to be admissible in evidence. A knowledge of the highly technical requirements that make a dying statement admissible in court is more than can be expected of the ordinary police officer. Accordingly, there developed an understanding that the doctors at the local hospitals would notify the District Attorney's office directly whenever they received someone whom they thought might be capable of making a statement before dying from criminally inflicted injuries. Most of these calls came in at night and it was my duty as the junior member of the team to respond.

One night, probably in early January of 1935, I received a telephone call from Highland Hospital telling me that they had an 18 year old girl who had been badly butchered in a criminal abortion and whom they thought would probably die. They told me that she was still conscious and rational and that if I wanted to get a statement from her before she died, I had better get out there in a hurry. I got to the hospital, and found the patient was named Lydia Sanborn. She was fully conscious and stronger than I had expected.

Victims of abortionists are usually reluctant to talk but Lydia Sanborn, to my surprise, had no hesitation in giving the full details on just what had occurred. She said that her pregnancy was due to a young boyfriend of her own age who lived somewhere in Kings County in the San Joaquin Valley. She had no address for him and did not know exactly where he lived. She had recently been employed in East Oakland by a widower to take care of his small daughter while he was away at work and he had been quite kind to her. When she confided to him the trouble she was in he offered to help her obtain an abortion.

Her employer made arrangements with an abortionist in Alameda. He took her for the operation to an address in Alameda which she was able to remember and to premises she could describe inside and out in great detail. The abortionist was paid by her employer and the operation was performed and she was taken home. Things went wrong and when she became desperately ill, someone took her to Highland Hospital.

The doctors at the hospital told me that the operation was very crude and that Lydia had little chance of survival. Nevertheless, she did survive. In fact, she made a speedy recovery.

If Lydia had died the resultant homicide would have been a case for Charlie Wehr and me to try. Accordingly, after talking to Lydia at Highland Hospital, I continued with the investigation. As early as possible the next morning I sent officers to bring Lydia's employer to my office for questioning. I took a lengthy statement from him in the presence of a stenographer. Lydia's employer corroborated her in all particulars and gave us the name and address of the abortionist. He turned out to be an automobile mechanic by profession. Lydia's employer went home. A warrant was issued for the arrest of the abortionist and he was put in the county jail that afternoon.

I realized that in order to make the case complete and secure, I should confront the abortionist with Lydia's employer and have her employer identify the man in front of him as being the man that he had paid and who had performed the operation. Otherwise, Lydia's employer might change his cooperative attitude by the time of trial and might take the witness stand and repeat his story and say to us, in effect, "Yes, everything I told you is true, only the defendant isn't the man I was talking about. It was somebody else."

I decided to eliminate this possibility by having a confrontation and accordingly the next day I again sent for Lydia's employer and again had a stenographer present to take down what was said. Out of the presence of Lydia's employer I issued instructions for the abortionist to be brought over from the jail. This took some 10 or 15 minutes. Because I wanted to keep Lydia's employer in a talkative mood, I started questioning him about everything I could think of to use up time until the abortionist was brought into the room. I went over all the details of the case again and then had to branch out into other matters. I asked this man many questions about his daughter, about his former wife, about how long he had been a widower, and what had happened to his wife.

He told me that his wife had died in November, that she had eaten some fish that had stood in an open tin can too long and that it had killed her, leaving him with a little daughter and no one to care for her while he was away at work. He had employed Lydia Sanborn, who was living across the street, to come in and baby-sit for the little girl when he was off on the job. After a lot more talk, all of which was, of course, included in the stenographic statement, the abortionist was brought into

the room. Lydia's employer had no hesitancy about identifying the man before him as the person to whom he had paid the money and who had performed the operation on Lydia. The abortionist was returned to jail and Lydia's employer went home. I felt the abortion case was complete. Since no homicide had developed, it could be turned over to someone else in the office for trial.

There was one more thing it seemed necessary to do. Since Lydia's employer was such a key witness, it was very important that he be available to testify at the time of trial. To guarantee his presence when needed, I placed a charge against him for contributing to the delinquency of a minor by taking Lydia to have the abortion performed, thereby putting him under bail. For me, the matter was closed - or so I thought.

About the middle of January, 1935, I had a day to myself. A defendant whom I was assigned to try entered a plea of guilty on the very morning the proceedings were to commence, with the result that I had the entire day free. It seemed a good opportunity for me to make a social call on Mr. Archibald B. Tinning, the District Attorney of Contra Costa County in Martinez. Mr. Tinning had appointed me a Deputy District Attorney of Contra Costa County in October, 1927 and I had worked in that capacity for him for something over two years. During this period, I became very fond of Mr. Tinning. I had not seen him for quite a long time. So with a free day, I decided to drive out to Martinez and pay my respects, which I did.

On the return trip, while driving alone through Franklin Canyon, I was thinking of the contrast in the kind of work I was doing in Alameda County and the work, or lack of work, I had had in Contra Costa County. During the years I was in Contra Costa County, I tried only two jury cases and the rest of my work was very quiet and orderly indeed. This was quite in contrast with the strenuous activity in the Alameda County District Attorney's office where in a few years I had tried well over 100 jury cases. In Contra Costa County there was nothing like the call out of bed at night on homicide cases, as was happening to me so frequently as to be almost routine.

This brought to mind the call from Highland Hospital in the middle of the night when I had gone out to interview Lydia Sanborn. I thought of the abortionist and how strong the case against him would be with the victim actually available to testify against him. It seemed to me that Lydia Sanborn would probably be an excellent witness. The only part of her story I didn't like was her account of the boyfriend who was supposed to have made her pregnant. It seemed to me that this probably wasn't too important, as the identity of the man responsible for pregnancy is not an issue in prosecuting an abortioner. Nevertheless, in this particular, Lydia's account was hazy and unsatisfactory and never had been really cleared up. I wondered if it was possible that the boyfriend might be a myth and whether her friendly employer who had arranged for the operation and had paid for the abortion might not have

been responsible for the pregnancy. I recalled him as he appeared while being interviewed in my office as a pretty unsavory character, not at all the Good Samaritan type, an odd man with an odd name. I wondered what his origins were, Polish, Ukranian, Latvian, probably not a Western European, and his name, Gosden, what kind of a name is that? I couldn't assoociate that name with any language or nationality - in fact, I had never heard it before, and then it flashed into my mind that maybe I had heard that name before and that it wasn't completely unfamiliar.

While driving along with nothing much to think about, I began racking my memory as to where I might have heard the name Gosden before. Finally I remembered, or thought I remembered, rather uncertainly, that Gosden had been the name given to me by the man from the life insurance company, a good many weeks before, as the insured upon which his Company was requesting an inquest. The more I thought about it, the more it seemed to me that the insurance man had used the name Gosden. But if so, it seemed a little strange that I had not recognized the name when Lydia Sanborn had first told me about her employer. But it was the middle of the night and I hadn't been thinking about odd names.

At any rate, driving back from Martinez, I decided that when I got to the office, I would look at the insurance man's file, if I could find it, and see what the name of his insured had actually been. I had quite a time locating the file, because I had indexed it under the name of the insurance company, not the insured, and I couldn't remember the name of the company. I finally did find it under Pioneer Mutual Life Association and there in my notes was the name of the insured, Laura Gosden. Her husband was named as Louis Gosden. Naturally, I went across the street to the Clerk's office to look at the death certificate that the insurance man had said was on file. There it was - the deceased was Laura Gosden, 1275 - 96th Avenue, Oakland; husband, Louis Gosden, died November 21, 1934; cause of death, double lobar pneumonia; signed by the County autopsy surgeon.

I took a copy of the death certificate back to my office with me, looking at that entry about pneumonia. My questioning of Louis about his wife and her death had been of no consequence and was only to use up time, but it didn't seem to me that death from pneumonia squared with what he had told me about the cause of her death.

I got the file on the abortion case and looked at the transcript of the statement I had taken from Louis on the occasion when he had been confronted with the abortionist in my office. There was the question, "What happened to your wife, Louis, that she died?" There was the answer, "She ate some fish that had gone bad standing in an open can, and it killed her." How could a man believe that his wife had died from eating spoiled fish when the autopsy showed that pneumonia was the cause of death? It was also troublesome to realize that this housewife, however she may have died, had been insured only

a few weeks before she passed away. According to my notes and what I had been told, the application for insurance on Laura Gosden's life had been received through the mail and there had been no medical examination.

From here on, the investigation moved with very great speed indeed. We did a great many things, many of them simultaneously. We found that Laura Gosden had a father and mother and a sister, living in Oakland. We interviewed them, and also Laura's neighbors.

Laura Gosden died about 1:00 in the morning of November 21, 1934. We found from her relatives and friends that Laura had not been sick and indeed, on the day before, she had been unusually active. She had done the entire family washing and was seen hanging it on the clotheslines on the garage roof to dry. She had talked with her sister on the telephone, gone shopping and as late as 5:00 in the evening was seen by the neighbors sitting on her front porch with her small daughter. By 1:00 the next morning she was dead and the autopsy surgeon said it was double lobar pneumonia.

From the neighbors we learned that about midnight on the night that Laura died, Louis had crossed the street and knocked on the door of Mrs. Della Cereghino and asked her to call a doctor, as his wife was very sick. Mrs. Cereghino telephoned her own physician, Dr. Milton P. Ream, and when the doctor arrived, Mrs. Cereghino and two other neighbor ladies went to the Gosden house. They found Laura, in her pajamas, on the floor of the kitchen, undergoing terrible convulsions. The doctor described this later on from the witness stand in the following language:

Question: What did you do then, Doctor?

Answer: She began to shake from tremors, began to show evidence of having another attack, so we picked her up and carried her in and put her on the bed.

Question: What happened as you carried her in?

Answer: We picked her up, she became very stiff and rigid around the legs and arms, and ceased breathing. After she ceased breathing, she became very cyanotic, or black in the face, and we laid her down on the bed. By that time we had her on the bed. I went out and prepared a hypodermic injection of morphine. While I was preparing this hypodermic, probably a minute or a minute and a half of time, Mr. Gosden came out and said it was all over and I rushed into the bedroom. She was still extremely cyanotic, dark in the face, and apparently she was not breathing at all, so I gave her artificial respiration. She started breathing, so I went back and finished preparing the hypodermic and gave that to her. Following the injection of the hypodermic, she quieted down and I requested the ladies present there to get me a glass of warm water and a teaspoonful of soda.

Question: When you picked her up from the floor and took her into the bedroom, is that when this first convulsion that you've just described began? Was she going into this convulsion

when you picked her up and carried her into the bedroom?

Answer: She was just starting into it and picking her up made her go into it more rapidly. She went right stiff.

Question: About what time in minutes would you say that she was in the convulsion in which she was rigid?

Answer: About three minutes.

Question: Now, will you describe in detail her appearance during the time she was in that convulsion?

Answer: At the beginning of the convulsion she was very gray and pallid. Tried to make sounds, sounds like groans, and as the convulsion became very severe, on handling her, she became dark in the face. Her face was contorted to a hideous grin, her teeth gritted, and her arms and legs became extremely rigid. Breathing stopped and her face became cyanotic.

Question: Cyanotic is dark in the face?

Answer: Yes.

Question: How were her eyes? Could she move her eyes or were her eyes set?

Answer: I didn't notice at first the convulsion except the tremor of the lids, but they became very set as the convulsion progressed.

Question: Did you notice what the position of her neck or back was?

Answer: Very stiff, rigid, chin was thrown up.

Question: You mean, as you indicate, her head was thrown back?

Answer: Her head was not thrown back, but the chin was held up.

Question: In the position you have indicated did you notice her feet or legs?

Answer: Very straight, stiff, rigid. The feet turned down.

Question: You mean the toes?

Answer: Yes.

Question: And were her toes pulled down?

Answer: Yes. As I remember, it was about like that, for instance.

Question: How rigid was she when she was in this first convulsion, Doctor?

Answer: Rigid enough that you could put your hand under her head and lift her without her bending in the slightest.

Question: So she was if her feet and her head were suspended, her body would still remain suspended in the air?

Answer: Yes.

Shortly after this, Laura had another even more violent convulsion in the course of which she ceased breathing, her heart stopped, and she died. Dr. Ream gave us this same description of Laura Gosden's death when we first interviewed him. Naturally, we asked Dr. Ream for his opinion as to the cause of death. He told us that he thought it was some kind of poisoning. Her husband had told him that Laura had eaten some spoiled fish but that the symptoms that he observed looked like the symptoms

of strychnine poisoning. The Doctor told us he knew of no disease that could produce such symptoms. When we asked if it was possible for the death to have been produced by double lobar pneumonia, he laughed and thought we were joking. It was his opinion that the symptoms that he saw could not possibly have been produced by pneumonia.

Early on in our inquiries, we talked to Dr. Tiffany, the Alameda County autopsy surgeon, showing him the death certificate which he had signed. Dr. Tiffany told us that he could not remember Laura Gosden from the large number of autopsy operations which he had performed and could only give us what his notes showed. He had entered in his notes that both lungs were badly inflamed. This is quite usual in death from pneumonia and he had concluded from these appearances that pneumonia was the cause. We asked Dr. Tiffany if he had been given any history of the woman's illness, and his records indicated that he had been given no information at all, only that the attending physician had been called in so short a time before death that under the statutes he was not allowed to sign the death certificate but was required to refer the case to the coroner for an autopsy.

We repeated to Dr. Tiffany Dr. Ream's description of Laura's last illness and of the description we had obtained from neighbors and relatives of her apparently healthy condition the day before she died. Dr. Tiffany told us very emphatically that if these were the true facts about Laura Gosden, it was impossible that her death could have been due to pneumonia. He said Dr. Ream's description of the convulsions was unmistakable and could be caused only by strychnine, but he added that he could not account for what he himself had observed. Strychnine, according to Dr. Tiffany, does not act on the lungs, does not get into the lungs, and does not affect the lungs in any way and could not have produced the irritated condition which he was absolutely certain he had observed. While the evidence of strychnine as the cause of death was getting pretty strong, we realized that we would have difficulty in getting a conviction of murder unless we could explain the condition of the lungs that had led Dr. Tiffany to conclude that the cause of death was pneumonia.

Of course we inquired into the insurance on Laura Gosden and found that in addition to the $1,000 policy written by the Pioneer Mutual Life Insurance Association September 5, 1934, which was the policy mentioned to me by the insurance man, that a second policy in the amount of $10,000 had been written on the same day by the North American Accident Insurance Company, and that a third accident policy in the amount of $10,000 had been written on September 8, 1934, by Provident Life and Accident Company. We discovered that Louis Gosden had tried to collect on all three of these policies, making statements that showed very clearly that he believed all three of them were collectible under the circumstances of Laura Gosden's death.

We secured photographic copies of the applications for all three of these policies for insurance on Laura Gosden. We also secured a photographic copy of the claim for payment of the Pioneer policy which was made out in Louis Gosden's handwriting and was signed by him. We also had other exemplars of Gosden's handwriting. Our handwriting expert confirmed what seemed to be apparent at first glance, that the signature, Laura Gosden, on all three insurance applications, had in fact been written by Louis Gosden.

If Laura Gosden died of strychnine poisoning, where had the strychnine come from? Strychnine can only be purchased from a drugstore and every purchaser is required to sign an official register with a date, his name and address, and the reason for the purchase. We decided to examine all the poison registers in all the drugstores to which Louis Gosden might have convenient access. Gosden had a peculiar easily-recognized type of handwriting and knowing that an alias might well have been used in the purchase, the examination of the poison registers was made by officers with samples of Gosden's handwriting in their possession. After a long search with much pounding of pavement a poison register was found with an entry in Louis Gosden's handwriting. The drugstore was at the corner of 96th Avenue and East 14th Street, only a few blocks from Gosden's home. The register showed that on September 27, 1934, sixty grains of strychnine sulphate in a one-eighth of an ounce bottle had been sold to an individual using the name of L. N. Larson. The handwriting was the handwriting of Louis Gosden. The reason given for the purchase was "kill kitty". The Gosdens had no cat.

We reasoned that if strychnine had been put into Laura Gosden's dinner, the poisoner had to get rid of that incriminating bottle, and that it might well be hidden somewhere around the house. A very thorough search of the premises was made without any discovery. However, we received some devastating information from one of the Gosden neighbors, a Mrs. Clara Gonsalves. Mrs. Gonsalves, who lived next door to the Gosden's, had been awakened during the night by Laura's cries of anguish. Looking through her own unlighted window, she saw Louis Gosden emerge from his house, then proceed to stand in the shadow on the walkway between the two buildings. He remained there in the shadows for something like 45 minutes while his wife was agonizing alone in the house. Then he walked across the street to Mrs. Cereghino's house and asked that a doctor be called. When the walkway where Mrs. Gonsalves had seen Gosden standing was examined, it was discovered that it went past a small door underneath the house which could be opened to read the gas meter. Inspector Lloyd Jester, of the District Attorney's office, wriggled through this little door with his flashlight. At the back of the space, near a sewer pipe, his flashlight picked up the sparkle of broken glass. With great difficulty he was able to extract pieces, including the paper label, which was sticking to some of them. On getting outside he quickly

determined that the glass pieces were from a small broken bottle. The label had the address of the drugstore at 96th and East 14th Street, as well as the words strychnine sulphate. There were tiny fragments of glass on the sewer pipe under the house indicating that the bottle had probably been thrown through the door and had hit the pipe and shattered. A case of murder by poison against Louis Gosden was now getting very strong indeed, but there still remainded that perplexing question about the inflamed condition of the lungs that had led Dr. Tiffany to attribute the death to double lobar pneumonia.

At this point in the investigation, being quite convinced that Laura Gosden had in fact died of strychnine poisoning; the question arose as to whether her body should be exhumed and tests made for the presence of strychnine. Dr. Gertrude Moore, the Director of the Western Laboratories and the outstanding pathologist in the East Bay at the time and the best expert that we could find on the subject of strychnine poisoning, advised us that if the body had been properly embalmed, the presence of strychnine could, in all probability, be detected provided the strychnine was in the body at the time it was buried. Dr. Moore emphasized that if strychnine was found in the body, it would not be the strychnine that was the cause of death. She informed us that when strychnine is absorbed from the stomach and intestines into the body, its chemical composition is changed into quite different substances. These substances act upon the nerves, causing the nerves to induce intense muscular spasms. These spasms, she said, are of great violence and occur in all the muscles of the body. They usually come on in seizures, with three or four minutes between seizures, and with the seizures growing increasingly violent. Finally, the seizures become so strong and so prolonged that the chest muscles cannot fill the lungs with air and the victim suffocates and the heart stops. Substances that excite the nerves in this manner, according to Dr. Moore, are volatile and cannot be located or detected in a body after death. However, according to her, it is rare that all the strychnine taken by a victim is absorbed before death. Usually there are traces and sometimes sizeable quantities of strychnine left in the stomach or intestines. This material will persist indefinitely and can be identified without possibility of mistake long after death. It is, as the Doctor continued to emphasize to us, the surplus strychnine, the left-over part that can be found and identified. We soon concluded that it was essential to test the body for strychnine.

Accordingly, on February 26, 1935, with the prior permission of Laura Gosden's father and mother, her body was removed from the grave at the Holy Sepulchre Cemetery in Hayward in the presence of Dr. Gertrude Moore, the pathologist, Dr. Reams, her attending physician, Dr. Tiffany, the County autopsy surgeon, and others being present. The remains were taken to the Western Laboratories for the performance of the chemical tests.

There are three distinct chemical tests which can be used to detect the presence of strychnine. All of them are complicated and require time to conduct. Each of the three tests was performed twice by Dr. Moore, and it was ten days or two weeks before she informed us of the results. She reported a positive indication of the presence of strychnine in every test conducted.

We had been able to accomplish the exhumation of Laura Gosden's body on February 26 without attracting the notice of the press. We thought it likely, however, that Louis Gosden would learn, in one way or another, that his wife's body had been removed from the grave and was being tested in a laboratory. We thought this might well cause him to disappear. To prevent this, we decided to charge him with the murder of his wife, Laura Gosden. On February 28, Gosden was brought to District Attorney Earl Warren's office by officers, where he was questioned by the District Attorney himself in the presence of a stenographer. He made no important admissions but he did something which was even worse for him: He told the District Attorney a story which, in many particulars, we were able to prove was false. These statements and their falsity were later introduced into evidence against him at his trial.

During the days that we were waiting to learn the results of Dr. Moore's tests, Inspector George Hard of the District Attorney's office and I decided to run out another line of inquiry. Laura Gosden's parents had mentioned to us that their daughter was Louis Gosden's second wife. They had been told that his first wife had died some years before when they were living in Sunnyvale. They knew nothing of the circumstances. Inspector Hard and I decided it would be well if we found out what they were.

Having no name excepting Gosden and no address, we went first to the County Clerk's office to see whether there was any death certificate for a woman named Gosden in prior years. We found the name in the index and, looking at the appropriate record, we encountered a certificate of death for one Vivian Taylor Gosden, dated January 16, 1928. She was aged 17, had died in Sunnyvale, and her husband was named as Louis Gosden. The certificate showed there had been an autopsy performed by the Santa Clara County autopsy surgeon who at the time was the eminent Dr. Frederick Proescher. After examining this certificate, Inspector Hard and I looked at each other in utter astonishment. The certificate showed that Dr. Proescher had ascribed the death of this 17-year old housewife to double lobar pneumonia.

The record also contained the information that there had been an attending physician, a Dr. Tolbert Watson, of Sunnyvale. Inspector Hard and I went to the doctor's office in Sunnyvale to see him. We found the Doctor in his office and, after identifying ourselves, Inspector Hard and I asked the Doctor if he recalled the case of a young woman, 17 years of age, named Vivian Taylor Gosden, who had died in Sunnyvale on the 16th of January, 1928.

"I certainly do," said Dr. Watson, "I shall never forget it. It was one of the most terrible deaths I ever witnessed." He explained that he had been called late at night by a man who said his wife was desperately ill. He responded and was let into the apartment by the husband where he found the young girl, later identified as Vivian Gosden, undergoing the most agonizing convulsions. She was in one of these convulsions when he arrived. A little later she relaxed, her color came back and she was able to breath normally, but in three or four minutes she was again seized with even more violent convulsions. Every muscle in her body seemed to contract. Her toes were bent down, her back was arched, her face was contorted in a hideous grin, and there was an absolutely board-like rigidity about her. Dr. Watson said the girl had at least two and possibly three of these seizures of increasing violence. During the last one she died. Dr. Watson told us he had had many cases and practiced many years, but this case was one he could never forget.

We asked Dr. Watson what had happened after the death. He said he had referred the case to the coroner's office because he had been called in so shortly before death that he was not authorized under the statutes to sign the death certificate. He said he realized there would be an autopsy to determine the cause of death. We asked the doctor whether he had ever communicated the history of the case as he had seen it to the autopsy surgeon. He said, no, he had never been in touch with the autopsy surgeon at all. We asked if he knew what conclusion the autopsy surgeon had arrived at as to the cause of death and found that he did not know that either.

We told Dr. Watson that we had not discussed the case with the autopsy surgeon though we had examined the death certificate and that the certificate showed the autopsy had been performed by Dr. Proescher, and that Dr. Proescher had indicated the cause of death as being double lobar pneumonia.

Dr. Watson was absolutely astounded. He said, "If there is anything she didn't die of, it's pneumonia. That is absolutely impossible." "Well," we asked, "what is your opinion as to the cause of death". "Well, I am no expert on toxicology," he advised, "but I think the girl got hold of something that poisoned her. What I saw I have always understood to be the classical symptoms of strychnine poisoning. I have not looked it up but I am not aware, offhand, of any disease or any other substance that causes the symptoms that I saw."

Either from Dr. Watson or from the records of the death that were on file in the Clerk's office, Inspector Hard and I got the name from the undertaker who had handled the funeral and the embalming of the body of Vivian Gosden. We went to see him with the Oakland case in mind. He had records of the case and remembered it well enough. The undertaker told us that when he came to pay for the funeral, Louis Gosden had offered the proceeds of the $3,000 policy of life insurance which he

held on the life of his wife, Vivian. However, on making inquiry, the undertaker had discovered from the insurance company that while application had been made, the policy was not yet in effect at the time that Vivian died. It was apparent, however, that Louis Gosden had believed that it was in effect.

After getting the name of the insurance company, Inspector Hard and I were able to locate the agent who had taken the application -- a Miss Dempsey. Because the circumstances were so strange, she remembered the case even though it had occurred years before. Miss Dempsey said that Louis Gosden had made out the application for insurance on the life of Vivian in her office, Vivian not being present, and that thereafter he telephoned to her repeatedly to inquire whether the policy was actually in effect. She said he made this inquiry at least five times and that the last time he called he had said, "My wife is going to Santa Cruz. She is a very poor driver. If anything happens, I want to know if I am covered." Miss Dempsey said that her employer was annoyed by these telephone calls, that either because of this or by mistake she had told Louis Gosden on the fifth telephone call that it would be alright, that he was covered, that his insurance was in effect. The morning of the next day, Louis Gosden was down in her office to see about collecting on the insurance. Miss Dempsey asked him what had happened. His reply was, "My wife was sick. I gave her some green pills and she died". It seemed understandable that Miss Dempsey would not have forgotten an incident such as this even after the lapse of seven years.

If Vivian Gosden had died from strychnine poisoning, as appeared to be the case, the question arose, just as it had in Oakland, Where had the poison come from? Inspector Hard and I thought we should canvass the poison registers in the Sunnyvale area in drugstores just as we had in Oakland. Sunnyvale, in 1928, was a very small town indeed and the number of drugstores in the vicinity were comparatively few. The most likely drugstore -- most likely because it was convenient to the Gosden residence -- had changed hands several times during the seven years that had elapsed since Vivian Gosden's death. A poison register for 1928 could not be located. We never did succeed in finding any record of a sale of strychnine that might be relevant to our case.

Inspector Hard and I were still running out the details of the death of Vivian Gosden in Sunnyvale when Dr. Gertrude Moore in Oakland announced that the tests for strychnine on the body of Laura Gosden had been completed. As mentioned above, the results were positive. Dr. Moore, in addition to testing for strychnine, had made the most thorough possible examination of the exhumed body. She stated that nothing could be found that was in any way inconsistent with Dr. Tiffany's observation at the autopsy. Dr. Moore said she did not question the accuracy of Dr. Tiffany's visual observation. She was sure the lungs had been inflamed, though not from pneumonia, just as Dr. Tiffany had reported. Dr. Moore was unable to offer any explanation of the cause of the inflammation.

Since Vivian's death certificate, like Laura's, assigned double lobar pneumonia as the cause of death when all the other evidence in both cases pointed to strychnine, Inspector Hard and I realized that we must find the explanation for the reason that two autopsy surgeons in two different cases had apparently observed similar inflammation of the lungs on which they had both drawn the same conclusions, the conclusions in both cases being manifestly in error.

At this point, Inspector Hard and I realized we must tackle the redoubtable Dr. Frederick Proescher, the autopsy surgeon of Santa Clara County, who had performed the autopsy on Vivian Gosden. I had serious misgivings about this. Dr. Proescher had the reputation of being one of the ablest pathologists in the country. He had recently achieved great notoriety, if not fame, as the pathologist for the State in the prosecution of David Lamson of Stanford University, who had been tried with immense publicity on a charge of murdering his wife in the bathtub by beating her on the head with a piece of pipe. On the witness stand in that case, Dr. Proescher had shown himself to be a man of very strong ideas, very forceful in their presentation, and very tenacious in his opinions and conclusions. He was a Prussian scientist, true to type. I was concerned as to what his reaction would be if someone suggested he might have made a mistake in the autopsy of Vivian Gosden and had ascribed her death to pneumonia when, in fact, she had died from strychnine poisoning. Nevertheless, we had no alternative but to make an appointment to see Dr. Proescher.

Our reception by the doctor was cordial and friendly. I opened the conversation by telling Dr. Proescher we desired to consult with him about the recent death of Laura Gosden in Oakland under circumstances that indicated more than a possibility of murder. The doctor had read about the case in the newspapers. We gave Dr. Proescher to read a copy of the statement made by Dr. Ream describing Laura Gosden's convulsions and other symptoms at the time of her death and asked him if he had any opinion as to what the cause might be. The Doctor said that he thought there could be no doubt whatever that the symptoms that Dr. Ream had observed were those of strychnine poisoning and nothing else. He said that no other known disease and no other poison could produce symptoms such as Dr. Ream had observed. We then told him about Dr. Tiffany's autopsy and how his notes showed that he had observed an inflamed condition of the lungs, which led him to ascribe death to double lobar pneumonia, mentioning, of course, that Dr. Tiffany had been given no history of the case and knew nothing at all of the symptoms exhibited when Laura died. Dr. Proescher said he was not in the least surprised with Dr. Tiffany's observations or with his conclusions. In fact, it was what he would expect. He explained that the convulsions of strychnine poisoning are usually accompanied with a good deal of vomiting and that it was to be expected that some of the vomit would get into the lungs, causing immediate and

extensive inflammation. He pointed out that strychnine leaves no physical signs in the body, that it can only be detected by chemical analysis, and that there was nothing that Dr. Tiffany could have seen that would have suggested strychnine, while the conditions of the lungs would be practically identical in appearance with that caused by pneumonia, even though the cause was quite different.

I then brought out a copy of Vivian Gosden's death certificate signed by Dr. Proescher himself and showing that seven years before he had performed an autopsy on Vivian and had ascribed the cause of death to double lobar pneumonia. The doctor had no memory of the case but he did have his notes. His notes showed that he had observed severe inflammation of the lungs. He had concluded from the inflammation that the cause of death was pneumonia. His notes indicated that he had received no history of the case, had been given no information concerning the circumstances under which Vivian died.

We next handed to the doctor to read a copy of the statement made by Dr. Watson describing Vivian's convulsion and other symptoms at the time of his attendance and her death. Dr. Proescher response was immediate and emphatic, "There is not the slightest doubt". He said, "The woman did not died of pneumonia, she died of strychnine poisoning and nothing else".

Sometime during this conversation we asked Dr. Proescher if he thought he had made a mistake at the time of Vivian Gosden's autopsy. "Certainly not", he bristled; "I never make mistakes. I performed the operation. My observations were accurate and as complete as could be expected in the absence of any other information, suggestion, or suspicion. The conclusion I reached as to the cause of death was entirely reasonable and would have been reached by any other surgeon."

We were told by Dr. Proescher as we had been told by Dr. Tiffany that there is no requirement of law that an autopsy surgeon be provided with a history of the case, and that it is very unusual for him to receive such information. Furthermore, the autopsy surgeon is under no duty to communicate the results of the autopsy to the attending physician. The autopsy and the death certificate may be public records but the attending physician is not going to know what is in them unless he goes down to the county clerk's office and looks them up. If this is the general practice of autopsy surgeons and physicians in the United States, as I believe it is, I began to understand what had puzzled me for so many years -- the reason there are so few statistically reported murders by poison in the United States.

In due course I related our conversation with Dr. Proescher to Dr. Tiffany and Dr. Moore. Both of them agreed that if, during convulsions, vomit were inhaled into the lungs, it would cause a highly inflamed condition which, on visual inspection, would be indistinguishable from the inflammation caused by pneumonia. Both of them agreed that with strychnine convulsions, such inhalati was not only possible but probable. Both of them believed that

Dr. Proescher had indeed hit upon the true explanation for what he had observed at the autopsy on Vivian and what Dr. Tiffany had observed in the autopsy on Laura. Indeed, the two doctors pointed out, the fact that the identical inflammation of the lungs happened in two separate cases, both of which were undoubtedly cases of strychnine poisoning, proves that Dr. Proescher's explanation is right. Now we knew we had a murder case that was virtually airtight.

Notwithstanding the strength of our case, Charlie Wehr and I, at this point, gave serious consideration to digging up the body of Vivian Gosden in order to have tests made for the presence of strychnine. Dr. Moore told us that while she could find in the medical literature no case where the interval between death and burial and the discovery of strychnine in the body had been more than two or three years that she was sure that the strychnine would last and could be detected as long as the body lasted. However, if the body had decayed to the extent that the internal organs could not be identified, then it would not be possible to find the strychnine because there would be no way of knowing what to test or what was being tested. In view of this advice, we thought we should get such information as we could as to the probable state of the body if it were exhumed.

Accordingly, Inspector George Hard and I went to the cemetery in Santa Clara where Vivian had been interred. We introduced ourselves to the cemetery manager, who was a young man in his mid-thirties with quite an enthusiasm for his business. He readily identified the plot where Vivian was buried on the cemetery map. He told us that the kind of casket that was used would have a good deal to do with the condition of the body. I ventured the supposition that if the burial had been in a metal casket the chance of preservation might be quite good. "Oh, no", the cemetery manager said, "if they put you in one of those tin cans, you really boil." An ordinary wooden casket would be better, he explained, provided it was not airtight, provided the body had been properly embalmed, and provided it was buried in reasonably dry ground that did not become saturated with water in the winter season. The cemetery records showed Vivian had been buried in a wooden casket.

The cemetery manager took us out to the plot where Vivian had been laid to rest in order that we might look at the surface drainage. The ground in the area was irregular and certainly some parts were higher than others so that it seemed probable that in wet weather some plots would collect water whereas it would run off from others. While we were looking over the lay of the land, the cemetery manager said to us, "See that plot over there where there has been some recent work done (pointing to a location nearby)? Well, that's where my mother-in-law is buried. Two, three weeks ago we had to do some work on a waterpipe near there, so as long as we were at it, I thought we might as well bring up my mother-in-law and see how she looked. She's been dead about a year and a half. She came out right well. As a matter of fact, I called up the wife and her sister so they could come down and see her."

"You mean to say," I said, "that after a year and a

half she came out of the ground in as good condition as when you put her in?"

"Well, no, not quite," he said. "We had to wipe off the mold, of course, but then, aside from a couple of green spots, she looked nice, real nice. Now, you can see that the ground over there is a little bit higher and is sort of sandy and drains pretty well. Now, this spot where Vivian is buried is a lot lower, and I am afraid the water may accumulate here in wet weather

"Well, can you give us your opinion", we asked, "as to what we could expect to find if Vivian's grave was opened, considering the nature of its location and the length of time she has been buried."

"I don't think you would find much," he said. "After seven years in that location, you couldn't tell what's worms and what's you."

We decided against exhumation. I think that Dr. Gertrude Moore was a little bit disappointed in our decision. If she could have found strychnine in a body that had been buried for seven years, the case would get into the medical literature. I think she would have liked that.

The indictment charging Louis Gosden with the murder of his wife, Laura, had been returned by the grand jury on March 8, 1935. It took about a day and a half to select a jury of twelve and one alternate. The taking of testimony began on April 8, 1935, and concluded on April 27, 1935.

The testimony ended with a very dramatic incident. Testifying in his own defense, Louis Gosden, while admitting that the insurance policies on Laura, and Vivian also, had been signed by him, claimed that they were taken out with the full knowledge and indeed at the request of his wives. To support this claim defense counsel called several members of the Gosden family to testify about statements that they said they had heard the dead women make at various times indicating their knowledge of the insurance which Louis had procured. The last of these witnesses, and indeed the last witness for the defense, was Lucy Gosden, the defendant's mother. She testified that Laura, and Vivian as well, had made certain statements to her which indicated that they had known all about the insurance. She even testified that insurance had been taken out on her own life by Louis, who had signed her name to the application and the application was produced to support this testimony. The application, which was dated in 1928, bore the name Lucy Gosden, and the signature was indeed in Louis' handwriting. On cross examination, Mrs. Gosden testified that this policy, which had been produced by the defense, was the only insurance that had ever been taken out on her life at any time. She was emphatic about this. The defense rested its case at this point.

As soon as Mrs. Gosden had left the witness stand, having testified that no other insurance on her life had ever been taken out by anyone at any time, the prosecution offered in evidence two more policies in two different companies at a much later date, the applications for which were signed Lucy Gosden but

in the handwriting of Louis Gosden. This completed the taking of testimony. The atmosphere in the courtroom was electric. The case was set for argument again the next day.

When Louis Gosden was being taken back to jail after the conclusion of testimony, an incident occurred which ought to be included in this story. Since I did not see it myself, I will describe it in the words of Jane Eshleman, who covered the entire trial for the Oakland Post Inquirer, and who did see it. Under the headline "Gosden Shunned by Parents at Court Session -- Blow Stuns Death Trial Defendant", Miss Eshleman wrote as follows:

"Shaken by the bitterest blow he has suffered since his trial began, Louis N. Gosden today waited in his county jail cell for the concluding phase of his murder trial, final arguments to the jury, scheduled for Monday.

"The blow to the defendant, accused of the poison murder of his third wife, Laura, came in an out-of-court episode at the end of yesterday's session.

"As he was being led back to his cell from the courtroom, Gosden raised his manacled hands in an awkward salute to his parents, Nick and Lucy Gosden, who have been in constant attendance at the trial.

PARENTS SILENT

"But the gesture had no answer. Nick and Lucy turned away from their son, giving no sign of recognition.

"Louis stopped, then dropped his eyes and walked from the room.

"The episode came after Hart Schrader Jr., handwriting expert, had declared that applications for two insurance policies naming Louis as the beneficiary and his mother as the insured, had been signed by the defendant.

"Mrs. Gosden had testified yesterday morning that she knew of only one application for insurance on her life.

BARE DISCREPANCY

"The document, introduced by the defendant, was in a different company than the two named by Schrader.

"The state introduced Schrader's testimony in support of its theory that Gosden poisoned Laura and also his second wife, Vivian, in the same "insurance racket".

"Schrader's testimony yesterday was interrupted by an unusual episode. As he took the stand Melvin Belli, attorney for the defense, declared:

"I don't know what this testimony will mean, but we might stipulate to the signatures."

FAMILY PARLEY

"Deputy District Attorney Warren Olney, who was questioning Schrader, informed Belli of the expected significance of the criminologist's testimony. Then followed a conference of prosecution and defense attorneys with Judge Ogden.

"Belli then asked permission for a private conversation with members of Gosden's family.

"So Belli, his associates, Charles Carlstroem and William Cleacak; Nick and Lucy Gosden; Mrs. Emma Bellandi and Mrs. Mary Radelevich, the defendant's sister, adjourned to the judge's chambers.

"Five...10...15 minutes ticked by on the courtroom clock and spectators filled the intermission with buzzing comment.

OBJECTION DENIED

"Finally the conferees filed out. The stipulation was withdrawn and Schrader's testimony continued over Belli's objection that it was immaterial.

"It was indicated the family conference was called to discover whether Mrs. Gosden had known of the insurance applications.

"Prosecution and defense cases were rested at the conclusi of the session, with the agreement that defense attorneys may reopen their case Monday morning if they locate the agent who took the questioned applications.

"Otherwise Monday's session will open with the prosecutior first argument to the jury.

"It was indicated arguments would be finished some time Tuesday when the jury is expected to take the case."

A small item of interest to me came out at the trial. Mr. Melvin Belli, lead counsel for the defense, developed from Louis' father who was a witness that he had been born in Dalmatia and that the name Gosden was the approximate sound of the name in Slavonian. He sometimes spelled it Gozden, he said, because it sounds the same. When I was puzzling over this name on my way home from Martinez I never imagined that I would hear its origin explained from the witness stand in a murder case.

Even before the Gosden trial had begun Charlie Wehr had told me that he expected me to make the opening argument. Accordingly, I had been at great pains to prepare. I went back to the law school library and looked at some of the poison cases I had read about many years before in the Notable British Trials series. I found one tried, as I remember, in the 1860's or 1870's, in which the issues were remarkably like those in the Gosden case. Of course the evidence was utterly different. In preparing my argument, I adhered very closely to this British model. My framing of the issues and method for presenting the evidence with respect to them were practically lifted from this British case. I did not hesitate to put into my draft many sentences and even one or two paragraphs without change. In delivery, I did not need the draft I had prepared and used very few notes.

In arguing a case to a jury, I see no reason why an advocate should not borrow from any source and to any extent that will serve his purpose. But I admit that when Charlie Wehr and Judge Ogden, after the case was over, spoke in high terms of my argument, I felt embarrassed, thinking of the amount I had cribbed from the Notable British Trial series.

Anticipating the usual style of defense counsel, I kept my opening argument in low key. I did not raise my voice or use excited gestures, believing the hard facts of the case to be more eloquent than anything I could say. What followed, as reported in the paper, "in direct contrast to the State's attorney's soft spoken argument, Belli's address opened with fiery oratory punctuated by pleading gestures and shouted denials of his client's guilt. 'In my mind Louis Gosden is innocent and I pray to God that I be given wisdom and wit and words to prove that to you', he cried." Charlie Wehr delivered a final argument that was the coup de grace.

The jury deliberated only an hour and forty minutes, returning a verdict of guilty of murder of the first degree without any recommendation for leniency. Under the laws that existed at that time, this made the imposition of the death penalty mandatory.

After the jury had been discharged, the foreman came over to speak privately to Charlie Wehr and me.

"I want to say that you boys presented the evidence very well", he said, "but I must tell you that all the jurors feel that you missed the most incriminating point in the whole case."

"Is that so", said Charlie," what was it that we missed?"

"Why, the insurance on Lucy Gosden. That man was getting ready to murder his own mother!"

Charlie looked at the foreman for a moment but all he said was, "Now that just shows how important it is to have alert, intelligent people in the jury box."

Judgment of conviction was appealed to the Supreme Court where, in due course, it was affirmed. In accordance with the judgment, Louis Gosden was executed.

During the years 1933-4 there had been a great deal of agitation in California to change the means for carrying out the death penalty in criminal cases. Hanging had been the custom from the earliest days of the State. It was claimed that hanging was needlessly cruel and that death in a gas chamber was far more humane. The Legislature finally passed a statute abolishing hanging and substituting the gas chamber just about the time of the Gosden case. The new law did not apply to Louis Gosden, however, He was the last man in California to be hung by the neck until dead.

All of this happened a long time ago. At the time of this writing almost thirty-eight years have past since Laura Gosden's death. Yet, I am sorry to say, what to me was the most disturbing thing about the Gosden case is just as disturbing today.

Anyone who reads this account will perceive that Louis Gosden was not only cruel, vicious and evil, but that he was also thoroughly stupid. His effort at concealment, for example, by using an alias when he bought the strychnine, yet going to the neighborhood drugstore to make the purchase, instead of some distant city where he couldn't be traced, is almost moronic.

And yet, even though Gosden ended up on the gallows, it must be admitted that he was a successful murderer.

Success in murder is killing and getting away with it. Louis killed Vivian Gosden and lived seven years without his crime being known. He killed Laura without detection and would have gone on indefinitely without being suspected excepting for the wildest most unlikely kind of coincidence. If the Pioneer Mutual Life Insurance Association had had a claims adjuster with enough experience to know the difference between an autopsy and an inquest Louis Gosden would not have been detected as a murderer. Any ordinarily experienced insurance adjuster, wanting to know whether Laura Gosden's sudden death could have been a suicide, would have gone to the County Clerk's Office to look at the death certificate, and seeing that the autopsy surgeon attributed death to double lobar pneumonia, he would have known that it was not a case of suicide and never would have gone to the District Attorney's office to demand an inquest. Neither I nor anyone else connected with later events, such as the abortion case, would have known that there had been insuranc on Laura's life and an autopsy attributing death to pneumonia. Without this knowledge there was absolutely nothing that happened later that could have aroused our suspicion about Laura's death. Louis in reality had gotten away with murder once again.

The question that disturbed me at the time, and still does, is: How is it possible that a man as stupid as Louis Gosden could have killed twice without detection, each time literally before the eyes of a competent doctor? This I find very, very disturbing. The answer is, of course, that the regular routine for investigating a death from an unascertained cause is even stupider than Louis Gosden. The routine does not require communicating the history of the case to the autopsy surgeon. The routine does not require communicating the results of the autopsy to the attending physician. The gap in our defenses against murderers is so wide that even Louis Gosden could kill and kill and prepare for more killings without being discovered, until finally, by sheer chance, he fell under suspicion.

Had Dr. Tiffany known of Laura Gosden's symptoms or had Dr. Ream known the results of the autopsy investigation, detection would certainly have followed. It is equally certain that Vivian's murder seven years before would have come to light right then and there if Dr. Proescher had known the case history or if Dr. Watson had been told of the autopsy findings.

I continue to be disturbed because to the best of my knowledge, nothing has been done from that day to this either by statute or by medical practice to integrate the case history with the autopsy findings in the investigation of death from undetermined causes.

This brings me back to the point where I started - the curiously low statistics on murder by poison in the United States. It has been a long time indeed since I have had any

reason to study comparative statistics on homicide. It hardly seems necessary. Every day our newspapers are filled with accounts of homicides. In a year's time we have all read of hundreds. Yet how many have been killings by poison? How long ago was the last one? Can it be that here in the United States where we never seem to hesitate to use every other method of assassinations that we just do not kill each other by poison?

[Mr. Olney's written account of the Gosden case ends at this point, and the transcript of the interview resumes on the following page.]

The Del Masso Case

Olney: Did I say anything to you about the case of Mrs. Del Masso, who was charged with murder?

Stein: No. What was important about that case?

Olney: There was nothing important about the case. It was one of those routine killings that arise so often out of the rows people have who are living together. And yet the case has always stuck in my memory and it illustrates rather well, I think, how the trial deputies could work with the inspectors in the investigation and preparation of the case and also what kind of treatment we gave to evidence that tended to exculpate the defendant. Maybe I ought to tell you about it.

Stein: Please do.

Olney: Mrs. Del Masso was arrested for having shot and killed a man with whom she was living. I have forgotten his name. The arrest was made by the Oakland police. A preliminary examination had been held in the Oakland Police Court as a result of which Mrs. Del Masso was held to answer in the superior court on a charge of murder. She was represented by the public defender. At this point it fell to Charlie Wehr and me to present the case for the prosecution in the superior court and, as usual, I was assigned to get the case ready for trial.

The testimony taken at the preliminary hearing established that Mrs. Del Masso had been living in East Oakland for some time with a big handsome brute of a man who was an ex-convict with a long record of violence. The neighbors had heard sounds of frequent arguments and quarrels for some weeks. Late one night the neighbors heard a lot of unusually loud arguments. Suddenly there was the sound of a shot followed by loud screams and Mrs. Del Masso came running out of the front door. She was all bloody and screaming that this man with whom she was living had been shot and was dead.

The police were called and made the usual investigation. Mrs. Del Masso talked perfectly freely. Indeed, at the end, they had a hard time shutting her up. According to Mrs. Del Masso, she and her man had had an unusually nasty quarrel with a lot of shouting at one another. In the course of this she had yelled at him, "I would like to kill you!", whereupon he had gone to a cupboard from which he had taken a loaded 38 caliber revolver which he put into her hand. Then he stepped backwards in front of the fireplace and had jeered at her. "You haven't got the guts!", he told her. "I dare you to shoot me!" Mrs. Del Masso claimed she had burst out crying and had sunk onto

Olney: the sofa behind her with the pistol in her hand and then had slumped to the floor when the pistol went off. She insisted she had not aimed or even pointed the pistol nor intentionally pulled the trigger.

The police investigation made Mrs. Del Masso's story rather hard to believe. The shot could not have been better for someone who wanted to kill the man. The bullet had entered one of his eye sockets without touching the skull, had plowed through the brain and emerged from the top of his head. Death was instantaneous and the man, who had been standing in front of the fireplace, had toppled forward onto the floor where the police found the body and outlined its position on the floor with chalk.

The police also found the bullet. It was a lead slug lying behind the man on the bricks of the fireplace. The bullet was not splattered or completely out of shape, but it had deep scratches on its side with material in them, some of which, though not all, was reddish like the bricks making up the sides of the fireplace. On the bricks of one of the vertical fireplace sides and about three and a half or four feet above the spot where the bullet was found, the police discovered a mark where a small spot of the surface of the brick had been scraped away and there appeared to be lead markings in this scratching. Microscopic examination of the brick and the bullet by the police confirmed the fact that the materials matched and left little doubt that the bullet, after traversing and emerging from the man's skull, had hit the bricks of the fireplace and then dropped to the floor where the police had found it.

The pistol had also been found by the police. It was lying on the floor in front of the couch, but as the couch was in front of the fireplace, it was only three or four feet from the dead body. It was the pistol particularly that made Mrs. Del Masso's claim of an accidental shooting appear very improbable. The pistol was a 38 caliber Smith and Wesson revolver, almost new. It had been purchased by the dead man himself not long before. It was not hair-triggered but had a moderate trigger pull. It had a safety device to prevent accidental discharge which was in perfect working condition. This device was a panel in the butt of the pistol which had to be depressed before the trigger could be pulled or the weapon fired. There had to be pressure from one direction to pull the trigger and from the opposite direction to depress the panel on the butt before the pistol could be discharged. Furthermore, those opposite pressures had to be applied simultaneously or the weapon could not go off. It is impossible for such a weapon to fire by being dropped on any kind of a surface. It is designed to fire only when the butt and the trigger are squeezed by a human hand.

Olney: It seemed certain in this case that the pistol had not fired as a result of having been dropped on the floor, that the shot that killed must have been squeezed off by somebody, and it seemed probable that that somebody must be Mrs. Del Masso, since there was no question of suicide and Mrs. Del Masso admitted having the pistol in her possession at the time of the fatality. The foregoing facts had all been carefully developed by testimony and photographs at the preliminary hearing in the police court. Mrs. Del Masso's expressed desire to kill the man, followed by the perfect shot and the evidence that the shot must have been squeezed off by her, made a pretty strong case. When put to a jury, we thought the verdict might be anything from murder of the first degree to involuntary manslaughter.

George Hard, one of our regular investigators for homicide cases, was assigned to work with me in preparing this case for trial. We got to wondering whether it was possible for us to develop evidence that would show more positively whether Mrs. Del Masso had or had not aimed that pistol when it was fired. We wondered if there was anything more in the room or the house that would throw any additional light on this question. With that in mind, we took the police court testimony and photographs and visited the premises.

The house was still empty and had not been cleared up much. Most of the blood had been mopped up, but the chalk outline of the body was still marked on the floor. We discovered the photographs had given us a somewhat misleading impression of the place. Evidently, a wide-angle lens had been used for the pictures and we found the room was actually smaller than we had thought. The couch was closer to the fireplace than we had realized.

We tried to reconstruct what had taken place according to the circumstances as we understood them and quickly concluded that our evidence did not make much sense. There was no doubt that the deceased had been standing on the bricks of the fireplace when the bullet hit him and had toppled forward on the floor. There was no doubt that the bullet had entered the eye socket and had encountered nothing to deflect it or alter the direction of its course until it had come out of the top of the man's head. There was no doubt that the bullet had ended its flight by striking the bricks at the side of the fireplace only three or four feet above the floor and had then dropped to the hearth. However, we found it impossible to reconcile these facts with any imaginable trajectory for the bullet.

We experimented by ourselves standing in front of the fireplace and then twisting and turning our bodies and heads, trying to line up our eye sockets and the tops of our skulls with the mark on the bricks where the bullet had hit before dropping to the floor. The only position we could assume where there was anything near to a

Olney: line between our eye sockets, the tops of our heads, and that bullet mark on the bricks was to stand backward, bent over and with our heads between our legs--an absurdity. Something was wrong either with our facts, which seemed most unlikely, or with our deductions.

After this frustration, we tried a different approach. We tried to reconstruct events exactly as Mrs. Del Masso had said they happened. She said her man had been standing in front of the fireplace--presumably erect, as she made no mention of any unusual position. She said the pistol had gone off after she had sunk down onto the sofa and then slumped to the floor. She said the pistol went off when it hit the floor.

To test this, George Hard and I stood on the bricks erect. We found that in that position a straight line from the tops of our heads through our eye sockets would meet the floor not far from the front of the couch. In reverse, however, that line would hit the ceiling and would come nowhere near the bullet mark on the bricks. There was no hole in the ceiling nor even a crack in the plaster. We did see something, however, that no one had noticed before. This was a dark gray mark on the unbroken plaster as though someone had marked it with a very broad lead pencil. The mark on the ceiling seemed to be in vertical line with the other points of reference with which we had been experimenting--the spot on the floor where the pistol might have been, the eye socket and the top of the head of a man standing erect in front of the fireplace as determined by the chalk marks of the body--and it was also in vertical line with the bullet mark on the fireplace.

After these observations, George and I got an expert criminologist on the case without any delay. The mark on the ceiling was indeed a lead mark made by the impact and scraping of a broad piece of that metal. Further microscopic examination of the bullet disclosed that it had traces of the ceiling plaster in the cracks as well as the brick. It now seemed clear that the pistol must have been discharged on or near the floor, that the bullet had passed through the eye socket, brain, and skull of the man standing erect in front of the fireplace, and that the resistance of the brain and skull had been sufficient to slow the bullet just enough so that it did not crack the plaster but only ricocheted to the bricks of the fireplace, then dropping to the floor.

For the bullet to follow such a course, it was evident that the pistol must have been at virtually the level of the floor. Perhaps Mrs. Del Masso had had the pistol in her hand when she slumped or fell from the couch, thus giving the necessary squeeze to both the trigger and the safety on the butt, but in any case, and no matter how perfect the shot appeared to be, it could not have been deliberately aimed, for it had been fired from the floor. It was an accidental killing after all.

Olney: George and I went over our new facts with Charlie Wehr and he agreed that our deductions were almost certainly correct and that the pistol had neither been aimed nor intentionally fired. We could, of course, have presented these new facts to the court and moved to have the charges dismissed in advance of trial, but that is not what we did. Mrs. Del Masso had been arrested and charged with murder. All her neighbors and friends knew it. If the prosecution dismissed the charge, the matter would not receive much publicity and outsiders might well believe that the action was taken because of some procedural or other technical defect. We thought Mrs. Del Masso was entitled to a more complete public clearing than that.

Accordingly, a few days later we brought the case to trial. We did this without telling the public defender or the court of our new facts and theory of reconstruction. We told the jury simply that we proposed to offer all the evidence that we had that related to the shooting and that it would be left to them to decide what crime, if any, had been committed. We then presented all the evidence that had been taken in the police court, to which we added our discovery of the lead mark on the ceiling and the traces of plaster in the scratches on the bullet. We produced our expert who had made a large scale diagram of the probable course of the bullet--through the man's eye socket, out the top of his head, ricocheting on the ceiling to the brick side of the fireplace, and then dropping to the floor. The diagram clearly showed that to attain the high vertical angle through the eye socket, the top of the skull, and the mark on the ceiling, the pistol when fired must have been at floor level in front of the couch and quite close to where the man was standing. An aiming of the pistol from that position would have been impossible. All of this was fully consistent with Mrs. Del Masso's statement to the police, which we had already put in evidence.

Mrs. Del Masso was promptly acquitted by the jury. The outcome of the case got a lot of publicity because the prosecution had actually proved Mrs. Del Masso's defense for her. Mrs. Del Masso got a complete, well-publicized vindication.

I think this case demonstrates that as prosecutors our objective was to develop the evidence and the facts whatever they might be and not to secure a conviction at any cost. I think it shows we did not withhold evidence which tended to exculpate the defendant. I think it shows, too, that we were not concerned with having a not guilty verdict on our trial records when we could easily have avoided such a verdict by dismissing the charges in advance of trial.

I thought I should tell you about this.

Stein: Yes, it's an interesting case.

Olney: Mrs. Del Masso sent Charlie Wehr a Christmas card that year.

Deputy Charles Wehr and the Point Lobos Shipboard Murder Case

Stein: What were your impressions of Charlie Wehr as a deputy?

Olney: Well, I was one of the few who could get along with him. The other boys respected him as a trial lawyer, but they didn't like to try cases with him.

Stein: Why not?

Olney: I don't know. I think it was some of the mannerisms that he had. He always loaded a lot of work on the junior member who was working with him, but that was all right with me because I was there for the experience. He used to drive us crazy by not being prompt in coming down to the office to interview people we had brought in that he wanted to talk to before trial. He'd sometimes keep them sitting around there for a long, long time while he was doing something else. It wasn't good judgment and they didn't like it and it embarrassed us.

But I could get along with him very well. He was an able lawyer. I learned a good deal from him.

Stein: I've talked to several people who indicated that they weren't entirely pleased with the way he handled the ship murder case, though I don't know what that was based on.

Olney: Well, I don't know much about that either. I can't remember whether Charlie was involved in the trial of that case personally or not. I don't think he was.

Stein: He was. He was the chief deputy in charge.

Olney: Well, Earl Warren tried the case.

Stein: Yes, Warren was in court, but I think Charlie Wehr did a good deal of the work. There were several deputies involved, but I think Wehr was in charge.

Olney: After Charlie had died, I think it was, one of the women who served on that jury claimed that she'd had some kind of dealings with Charlie.

Stein: Yes. Mrs. Julia Vickerson.

Olney: Yes. Well, I have no information about it and no way of appraising it at all. I know that the story she told made Charlie look pretty bad. But I must say that during the years that I worked with him his conduct in every respect was excellent. I never saw anything out of the way. That story that she told came as a great surprise to me. At the time I wasn't willing to believe it. But I don't know.

Stein: I think she contradicted herself in that story. I don't think that the judge believed it either.

Olney: No.

Stein: She was quite an eccentric character.

Olney: Yes. Charlie Wehr wasn't around to explain what did happen. I've always had enough faith in him so that I believed that it was untrue but without any real way of judging it. I just believe it is untrue because it seems so out of character for Charlie.

Stein: Well, that's about all the questions that I had. Is there anything more that you wanted to add about the DA period that you thought was important?

Olney: No, I think that's about all.

VII THE CALIFORNIA ATTORNEY GENERAL'S OFFICE: GENERAL

[Interview 5: January 24, 1972]

The 1934 Reforms

Stein: Why don't we start by discussing steps that led up to the need for the 1934 state constitutional amendments reforming the attorney general's office. You've mentioned that first of all there were some bank robberies in 1930 that began a series of steps creating coordination in law enforcement. Could you describe them?

Olney: Yes, there were. First of all, there was a train robbery in Contra Costa County at a little station called Macavoy, where robbers on a Southern Pacific train crawled over the engine tender and held up the engineer. They compelled the train to stop at an intersection where others in the gang were waiting with an automobile, and they robbed the baggage car of a large amount of money--cash it was--that was to be the payroll for the Columbia Steel Works at Pittsburg. These robbers had no difficulty at all in making their getaway in the car. When the alarm came out to the sheriff's office and the Pittsburg police, they all went rushing to Macavoy, where the robbery had occurred, while the robbers were on their way elsewhere.

About eighteen months later, there was a repetition of the same kind of robbery at Nobel, which is just on the west side of El Cerrito hill. There were no houses around in those days, just a little siding. Once more, the robbers on the train climbed over the tender, put the engineer under a pistol, and compelled the stopping of the train. There was an automobile there and they had mounted a machine gun on a flatcar so that they could cover the entire train. They went over to the baggage car with a suitcase full of dynamite and threatened to dynamite the car unless the clerks inside opened.

Olney: Well, they opened it, and the car was ransacked, and once more the Columbia Steel Works payroll was taken away. And once more the law enforcement officers simply converged on Nobel when the word came in about the robbery. They found a few empty mail sacks around, but there was no organized coverage of the area to block off escape routes and search cars on the road, and these men escaped.

In between these two train robberies, there had been a bank robbery. This was out at the little town of Rodeo in Contra Costa County. A gang there had come into the bank early in the morning when it was first opened and held up the bank and everybody in it at the point of a pistol, and got a considerable amount of cash. While this was going on, the local constable, Jerry McDonald, walked into the bank not knowing what was going on, and when he saw there was a robbery underway he started to reach for his pistol, and was immediately shot. They shot him twice. McDonald fell to the ground, but got his pistol out and did some shooting himself.

He didn't die right away, and before he died, in the statement he made, he said he was sure he had hit the man who seemed to be the leader of this outfit. He said that he had aimed deliberately at him, and he could see the man stagger when the bullet hit him. It turned out later that Jerry McDonald was right. He had hit the bandit, but he was wearing a bulletproof vest and it only made a dent. The dented vest was found much later. But they got away there once more. Rodeo had only a few roads into the place, and yet it never occurred to anybody to cover those roads and to stop everybody who was coming out. The officers all went into Rodeo with sirens blowing--the one place where by that time the robbers would certainly not be found.

Now, this kind of thing going on over a period of years made a big impression on law enforcement officers in Alameda and Contra Costa County, as well. All of us came to realize that there was a very real need for planning for this kind of an emergency, and that with a proper plan, so that the key road intersections could be covered, on short notice, with certain people assigned to do certain things, this kind of crime couldn't be successful.

The first step that was taken along that line that I know of was by Earl Warren and Chief Greening of the Berkeley Police Department. They interested others in other law enforcement agencies, the sheriff's office and the Oakland police and whatnot, in working out an emergency plan for the kind of emergency that I've just described. They didn't at first, as I recall, try to bring in anyone outside the county. But they worked on these plans. They had studies made of the roads and of the directions, and they also compiled a chart of the residences of the law enforcement officers as well as the offices, and they actually assigned certain officers to go to

Olney: certain places whenever the proper signal came. Then these plans were actually tested in trial runs to see how they would work, and they seemed to work very well.

Experiences of this kind, and many others as well, had led Earl Warren to the belief that one of the great weaknesses in law enforcement all over the state was the lack of organization and coordination between law enforcement agencies at city and county and even the state level. He became convinced that it was necessary to change that.

He gave some thought, I know, at the outset to the possibility of a system of state police, and then discarded that thought. That system had been tried in states like Pennsylvania, for example. He thought that it was important to continue to have local control of the law enforcement agencies, and that the necessary degree of coordination and cooperation could be achieved, still keeping local control.

Then he came to the conclusion that the way this could best be done would be by authorizing the attorney general, who was the principal lawyer for the state, to participate in law enforcement, and become responsible for law enforcement, in about the same way the Attorney General of the United States is responsible for the enforcement of federal statutes. Under the federal system, the attorney general has this responsibility, but he does not himself head or operate the federal law enforcement agencies like the secret service and the treasury agents and customs and so forth. The FBI is the only federal agency that's in his department.

There were other changes in the law that Earl Warren thought were highly desirable. But these had to do with procedures in court, such as permitting the judge to comment on the evidence, and not just sit on the bench like an owl, as was the custom. In the federal courts, from the beginning, the judge was always authorized to express his own views to the jury as to what he thought the evidence amounted to.

Then there was the idea that if a defendant failed to take the stand to give his account of events which were in evidence against him, of which he must have had personal knowledge, it would be in order for the district attorney in argument, or for the court in its comments, to remark on the failure of the defendant to explain what had been offered in evidence against him.

Then there was a fourth amendment that was more Earl's idea, I think, than anyone else's, and was more important than would seem to be the case. This would permit a defendant who was brought before a police court for arraignment, if he had counsel, to enter a plea of guilty, and then be sent without further delay direct to the superior court, where his case could be disposed of.

Olney: Now, this saved a great deal of time in the process. As a matter of fact, about eighty percent, maybe more, of defendants arrested do not want to have trials. They want to enter their pleas and it's not fair to have them sitting around for months waiting to appear before a judge in order to have their cases disposed of when all they want to do is enter a plea of guilty.

To accomplish these things the state constitution had to be amended, and so proposals were drafted. They were drafted, I think, in Earl Warren's office. I know one of them was, because I took some part in it.

Stein: Which one was that?

Olney: It was on permitting the judge to comment on the evidence. Signatures were obtained, and they were put on the ballot. Now, it's of some interest that I find an article from the Tax Digest written by Earl Warren on all four of these proposals, explaining them and advocating their adoption. It's interesting to note that this article was published in the San Diego Transcript on November 6, 1934. It's of interest because of what happened directly after that.

Within a very few days, this sensational case broke in Santa Clara County where a young man named Brooke Hart was kidnaped and held for ransom. Ransom notes were received. (Let's see, what did I say the date of his kidnaping was?)

Stein: The 9th of November.

Olney: Yes, the 9th of November. Well, as you can see, it's only three days after Earl had been speaking about these amendments when this kidnaping took place. The investigation dragged for a few days. Finally the FBI cracked the case, and two men were arrested and made a confession that they had murdered Brooke Hart, and that his body was in the Bay near the San Mateo Bridge.

Incidentally, the exact place where he was killed was on the part of the bridge that is in Alameda County. If these two men were to be tried for murder, they would be tried in Alameda County, and it would probably have devolved on Charlie Wehr and me to try the case. So, of course, we were interested in the matter right from the outset, as soon as the place of this murder was discovered.

The kidnapers were put in the jail in Santa Clara County, and on November 17, I think it was, a mob broke into the jail and took them out to the square in front of the jail and hung them from a tree.

Stein: It was the 27th.

Olney: Oh, the 27th, yes. Well, of course, this kidnaping and the investigation of the murder, followed by the lynching, got publicity all over California as well as all the United States, and brought the needs of law enforcement and law enforcement agencies before the public in a very, very vivid way. I think it's fair to say that Earl Warren took full advantage of that. The timing was right. I note an example of that. In a newspaper clipping dated November 18th, there's a report that the Alameda County Anti-Racket Council had that day organized a special kidnaping squad for investigating, and for handling with emergency plans and investigation, kidnapings of the kind that they had had in Santa Clara County.

Perhaps I should have made mention before this of what the Anti-Racket Council was. It was an outgrowth, I think one can say, of these planning functions that had begun after these train robberies that I described. Dick Chamberlain and others can describe this in far greater detail than I can. Dick Chamberlain took part in it, and I know that you have talked to him.

As far back as June 17, 1933, a formal organization called the Anti-Racket Council was organized by Earl Warren. He was the first chairman of it, with the active participation of the FBI, the police chiefs in Alameda County, the sheriff's office, and other agencies. That had for its purpose the study of rackets. They were thinking primarily of extortion rackets at the time that were prevalent in other parts of the state and other parts of the country, and would have been prevalent here if proper planning and steps had not been taken to forestall this.

We had had one example of an attempt by Chicago gangsters to start an extortion racket in the cleaning and dyeing business. They had formed a phony association and were demanding that all cleaners and dyers join the association and pay these dues, which were nothing but extortion money, and then when some of them did not, they hired people to go to the plants of the dissenting companies and throw acid on the clothes, which they did. But this was broken up with a criminal prosecution as promptly as possible. But it was a threat of that kind of organization that led Earl to believe that the way to forestall that was to study this kind of racket and to make plans with the agencies who would be concerned with it, and particularly to alert the law enforcement agencies as a group to what was going on, so that they would have a common fund of knowledge about this and could have a united front. This is what is involved in their exchanging information. This was not a system of running dossiers on private persons, things of this kind. It was an attempt to outline the techniques used in these organized efforts to extort money from business, industry, and sometimes from private individuals.

Olney: Now, that had been an active organization starting in June, 1933, and when this kidnaping came along the occasion arose for setting up this kidnaping squad. The hope was that the authorities in Santa Clara County, Contra Costa County, and San Francisco would take active parts in it too. I don't know how active they were. My impression is there were occasions when they did take part, where information was exchanged with them, but I don't believe it was done on the same regular, routine basis on which this kind of information and planning was carried on in Alameda County.

It was not long after the Hart kidnaping and murder that the election was held on these amendments to the state constitution, all of which were intended and designed to strengthen the organization of law enforcement agencies and to eliminate technicalities in legal proceedings that seemed to be unnecessary. I have no doubt at all that the Hart kidnaping, as well as other sensational crimes of the time, had a great deal to do with the passage of those amendments. They were passed overwhelmingly.

Putting the Reforms to Work

Stein: Once the amendments were in operation in the attorney general's office--and I'm talking now about after Warren became attorney general; we were talking about this the other day when we had lunch with the Chief Justice*--I wonder if there was a problem with local law enforcement people trying to pass the buck to the attorney general's office to get out of a ticklish spot? I think he mentioned that one of the problems was that there was a very small number of investigators in the office, so it really wasn't possible for the attorney general to step in in too many cases.

Olney: Well, that's quite correct. When the amendments were passed, U.S. Webb was still attorney general, and although I don't think he had any great enthusiasm for the amendments, he was an honest, able attorney general. He was getting to be a pretty old man, but he did not ignore them.

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*See Warren, Earl, an oral history interview currently in process, The Bancroft Library, University of California, Berkeley.

Olney: He appointed an investigative staff in his own office. Henry Dietz was in charge of it. He had Red Griffin, who had been chief of police in Salinas, and Joe Schoales, who had an FBI background, and then he had Fred Henderson in Los Angeles, an investigator there. They were competent men, and General Webb moved in on a certain number of activities that were illegal. He took some steps with respect to gamblers. But he had not had the authority long enough, really, to make much impression or much headway until Earl Warren succeeded him as attorney general.

Warren's first appointee in charge of the criminal work of the office was Charles Wehr, who came from the Alameda County District Attorney's Office. He was the man under whom I worked in the trial of the homicide cases there. At the time, I was in private practice. The first thing they tackled when Charlie came and took the position was the dog tracks. You have had from Earl Warren himself a better account of what happened to the dog tracks than I can give you.* I was not in the office. They did put them out of business, and they were out of business by the time I got there.

Charlie died; he got leukemia, and died very suddenly, and it happened that my father, with whom I was practicing, had died in February. I decided not to stay in his firm, and Earl Warren asked me if I would come and take Charlie's position and head up the criminal work in the office. I went there, I believe, in May of 1939.

I took over as the lawyer, but the man who was already there in charge as the chief investigator was Oscar Jahnsen. He was from the district attorney's office too, and a man with whom I had worked for years when I was in the district attorney's office. The others that General Webb had on his staff Earl kept. Henry Dietz, however, who had been the chief investigator, was a lawyer and wanted to practice law. He had been an FBI investigator. He had handled this investigative work for General Webb, but he became one of the lawyers in my legal actvities.

We then had to meet in a practical way the effect of this constitutional amendment, the fact that the attorney general had these responsibilities, and we found out that it's one thing to put it in law, or in a constitution, and it's quite another thing to carry it

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*See Warren, Earl, an oral history interview, The Bancroft Library.

Olney: out. Our resources were incredibly limited. We had for fifty-eight counties in this huge state only the investigators that I have named, and clearly you cannot police an area like that with such a small staff.

The most blatant and widespread violations of law that we had to meet were gambling, prostitution, and bunco rackets, to some extent. These are activities that cannot go on without the connivance, at least, and usually with the corruption of the local law enforcement agencies. When you find activities like that going on, somebody is being paid off, sometimes indirectly and not infrequently politically. It just is most difficult for a sheriff or district attorney or police chief to close down on activities that are being supported by the people who have appointed him or elected him.

So our problem, the practical problem, was how, with a group such as we had, to get sheriffs and district attorneys to perform their duties, so that we would have an even-handed enforcement of the law throughout the state. We didn't succeed completely, but we did succeed to an appreciable extent. It was done by constant interviews with the officials involved at which we would present them with the facts. We were able, with the staff we had, plus the assistance we could get elsewhere, to develop the facts as to what was going on. We would lay these facts before the officials and in most cases that produced action.

We found, especially with those where politics were involved, that the official who had failed to act was glad to be confronted with this, because he could then take what we had given him to the others concerned and say, "Look, I have no alternative. I've got to go ahead. If I don't, the attorney general will do it. We've got to shut this up, so we're going to do it."

We were told privately, and once in a while publicly, that this kind of an approach was welcomed by them, and in most cases we got results. But there were others that were very reluctant, and where the sheriff's or police chief's real allegiance was on the other side. He was in favor of keeping things open, even though the law he was sworn to uphold was being violated.

Stein: I remember that you or the Chief Justice mentioned a case in Riverside with gambling houses.

Olney: That's true. Riverside was one of the most difficult counties that we had. It was typical of that kind of situation. Over and over again, we gathered evidence of very large, widespread gambling operations, especially around Palm Springs. Not only were these big gaming houses, but they were also centers for thieves,

Olney: particularly fur thieves and jewel thieves, who would hang around there looking at the well-to-do people who would come there in the winter, and play these games, and then the thieves would tail them to their hotels, and there would be burglaries and robberies, right and left.

It was not a healthy situation at all. But the ploy that the sheriff used on us repeatedly down there--we had it in other places too--was, "Well, boys, all these gamblers know my men. I can't get anybody in to run a raid because they know all my people. As you've seen, when you've sent this information to us and I've sent my men out to close the place up, when they get there nothing is going on. That's because they know my men and they recognize them when they approach. You take it on. You have your boys go in there quietly and make the arrests."

Well, that all sounds very well, but with four men we would simply be lost in the swamp if we ever got sucked in on that, so that we had to be very, very careful in limiting the direct action that we were going to take. The difficulty there is that if you act against one, you have to act against all, and we simply didn't have enough manpower.

Now, we did succeed in maneuvering the sheriff on one occasion in a place called The Dunes, run by some brothers named Wortheimer. That was one of the biggest and the oldest down there, a place out in the desert. We did succeed in sending reports to the sheriff and getting him stirred up so that he decided that he was going to have to make a raid. So he sent word out--somebody did--to The Dunes that they were going to be raided, so the Wortheimers brought in a number of trucks and they loaded all the equipment in the trucks and took it out and hid it in the scrub around the desert.

The difficulty in that, from their viewpoint, was that we had anticipated they would do that, and we had people out in the brush watching this operation go on. So we knew where the equipment was. On that occasion we did make our own raid after the sheriff's office had been there and said no gambling had been going on. We went in there and, of course, there was nothing happening when we moved in, but we had plenty of evidence from undercover operators as to what had been going on. We had pictures of where the equipment was taken, so we went out and we filled a whole warehouse full of their equipment, and we took it down and forfeited it all.

Stein: Who was out in the brush, these four investigators?

Olney: Well, some of them were. We got others to help us on that. We had some one or two from the local district attorney's office. I don't remember--we borrowed people when we could. They had to be properly deputized. We could do that.

Olney: There was always a great question as to exactly what the constitutional amendment authorized. It gives the attorney general certain responsibilities, and says that he can request written reports from sheriffs and all law enforcement agencies. We used to require written reports, I should say we did, but they wouldn't tell us very much.

It also says that he can supersede a district attorney in the trial of a case if he deems it in the public interest to do so. That was used very, very rarely. I do not recall ever using it in a gambling case for the very reason that applies to the sheriff--if the district attorney could duck his duties of prosecuting gambling cases by shoving that onto the attorney general's office, there would have been too many of them who would have done it.

The times that we used that power to supersede were cases where there were allegations of graft in the local government, or some other possible conflict of interest with the district attorney, or even perhaps county officers in the investigation, and then we had no problem with it. We did it.

But to this day it still remains unclear as to just what the attorney general's authority is over law enforcement. Since my day, I believe there have been some changes in the law. I know that when Bob Kenny became attorney general there was established what was known as the Department of Justice. We did not use that name. There was no such thing in our day. We were functioning like a department of justice, but the name was not used. Now there is officially a Department of Justice in the state government. There were some changes in the law, and I think changes in authority, at the time that was done, but I'm not familiar with them.

Stein: The attorney general is authorized to convene a grand jury if a county refuses to, or a county hasn't. Was that part of the law when you were there?

Olney: Oh, yes.

Stein: Was that ever used?

Olney: Oh, yes. I believe that was part of the law before the amendments. I'm not sure about that. That's only a vague impression I have. I'm really not sure about that. But I know that in our day we felt we could convene a grand jury, but I can't remember a single instance when we did it. We appeared before a grand jury, but I don't think we ever felt we had to convene one, although it's possible we did.

Stein: Is the Division of Narcotics Enforcement new, or was that there when you were?

Olney: There was a California State Bureau of Narcotics that had no organizational relation with the attorney general's office. It was a separate investigative body, and I don't even remember who appointed the head of it. But the only connection that either the district attorney or the attorney general had with it was simply the duty of presenting their cases and handling their criminal work, their legal criminal work, which we did.

Stein: I think that it's part of the Department of Justice now.

Olney: I'm under the impression that it is, too. It seems to me--and I think this is coming back--I think this is in Bob Kenny's day, and when this Department of Justice was created I think they put a lot of things in there, the Bureau of Narcotics, and a few other things like that, but we didn't have that, thank goodness.

Stein: Verne Scoggins mentioned to us that Earl Warren was president of the National Association of Attorneys General, and in that office he did some lobbying in Washington. I wondered if you knew anything about that. What kinds of issues might he have lobbied for?

Olney: I do not. I know that organization had a meeting in San Francisco at the time that Earl was attorney general, and I dare say that he was head of the organization at the time, but I have no recollection of their activities. I'm sure I didn't go to their meetings. I wouldn't, because I was only on the staff, and that organization is for attorneys general and not their staff members. I have no recollection of his doing any lobbying for them, if he did.

Office Personnel

Stein: How many other lawyers did you have in the criminal department?

Olney: Well, the number varied from time to time, but I suppose there were half a dozen who did most of their work for me, under my direction.

My work did not include all the criminal work in the office. For example, long before this amendment, from the beginning of the state, the attorney general always handled criminal appeals in the district courts of appeal and the supreme court. I never handled those. Those were never in my area. Once in a while there would be a case which came along that had an issue in it that was of big concern to us, and occasionally we would write the briefs. Once or twice I

Olney: made the arguments myself; I did on the wire service cases, for example. But the run of the mill criminal appeal was handled in an organization in the office that was entirely separate from mine. I had all I could do with what you would call the investigative and enforcement aspects of the office. I was really trying to implement this new authority that the attorney general's office had, and I didn't take on what to that time had been the standard kind of criminal work.

Now, there was a considerable flexibility in personnel in the office. People moved out of their slots frequently. When we made the raids on the gambling ships, we borrowed every able-bodied man we could find among the lawyers to take part in this. Some of them had had no connection at all with criminal work within the office. Occasionally one of our lawyers would be called on to handle some civil work, file an injunction, or something of that kind. So it's difficult for me to say, especially now, how big the staff was.

Stein: Was the staff increased much over the couple of years that you were there?

Olney: No. I don't think the number of positions in the office was increased substantially, but assignments were changed.

The reason that I think I'm right on this, that there was very little increase in the number of positions, was because of the difficulties that Warren was having with Governor Culbert Olson. But there would be times when people would be added to my division, or whatever we called it--section, I guess. I remember, for example, that early in 1941, we had a lawyer named Julian Thomas who was placed under me. Thomas had been admitted to the bar in the United States and then fought in World War I and after that had stayed in Paris and practiced law there with one foot in France and the other in this country.

He had been compelled to flee just in advance of the Nazis, and came to this country destitute, and for reasons not clear to me came out to California. Earl gave him a job in the attorney general's office and assigned him to me. Now, there's an addition to my staff. We didn't use him for any of the sort of thing I'm talking about, but used him for research on things that related to the war effort, civil defense, and the like.

VIII THE ATTORNEY GENERAL'S OFFICE AND THE GAMBLING SHIPS

Tony Cornero's Early Career

Stein: I'm ready to move on to some of the cases. I think that the gambling ship story is important enough to get most of what we went over in our last conference on tape. So could you begin by just briefly describing some of Tony Cornero's early ventures? You mentioned when we spoke before that he first appeared in Panama.

Olney: Tony was born in San Francisco and was named Anthony Cornero. However, his father died when Tony was quite young, and sometime thereafter his mother married a vinyardist from Napa County named Stralla. Tony adopted his stepfather's name and on all business matters used his full name of Anthony Cornero Stralla, or more often A.C. Stralla. In gambling circles and among rum-runners and bootleggers and to the press, however, he was always known as Tony Cornero.

What I'm saying now is based on information that I got from a remarkable federal investigator. His name is William Dresser, and he was attached to what was then known as the Alcohol Tax Unit of the Treasury Department. Later it had another name. He had a very distinguished career in the federal service. He retired a long time ago, but he was a man of great experience and judgment, and I have always accepted what he told me as gospel. I'm sure that he had it right and it made a great impression on me, so I think I remember it accurately.

I might say that the occasion on which I first got to know Dresser, although I had many dealings with him over the years, was after we had filed suits against the gambling ships. One of the suits that we filed was for penalties for operating a public utility without a license. That was based on the water taxi operation. They were running water taxis without a license from the Public Utilities Commission, and there are civil penalties of $2,500 a day for every day of operation, so that we were talking about $750,000 or more. We had attached all the bank accounts and property that we could think of that belonged to Cornero or any of his associates.

Olney: Dresser had read about this in the paper and realized that we must be trying to find out not only what Tony's assets were but who the people were who were associated with him in the venture. He just walked into the office and discussed the case with me. The reason for that was that he himself was trying to find Tony's assets and his associates and backers, because he had something like a one- or two-hundred-thousand-dollar tax assessment for unpaid alcohol taxes on an illegal still that Tony had been the front for down around Culver City some years before. The tax was unpaid and uncollected. So we had that in common.

Well, Dresser told me that the first information that the federal government had about Cornero was years before in Panama. Tony had appeared in Panama with a considerable quantity of raw, uncut emeralds which he had claimed that he had prospected out of the mountains somewhere in Columbia, where they do, indeed, have emeralds. They had found that Tony had had a partner and the two of them had gone on a prospecting expedition, but that Cornero had come back with the emeralds and no partner. He had a story that some fatal accident had happened to his partner. No one could prove anything differently, although the officers down there didn't think this was very likely.

The next time that Tony came to their notice was during Prohibition, and they knew Tony as the owner and operator of a series of speedboats--big, powerful, ocean-going speedboats--some around the San Francisco area, some in the Los Angeles area, that would go out at night in the fog, and meet these rum ships that were outside the twelve-mile limit, and load and come in and unload them on beaches around here.

Tony Cornero was engaged in that sort of activity, but the federal government couldn't get anything on him, until one day a ship put in at New Orleans. It was on its way from somewhere in Scandinavia, and destined for either Tahiti or Samoa, somewhere down in the South Seas, and they put in to New Orleans on the way to the Canal to get supplies and whatnot.

They had a load of liquor on board, properly manifested, for their cargo. But the captain of that vessel, while the ship was there getting itself ready to go on, went into the federal customs service there and told them that he had taken on this voyage in good faith, but had become convinced that this was an illegal rum-running operation, and that when he had sailed he'd been told that the South Seas was their destination, but now he had received orders to divert the ship's course to the north after he got through the Canal. They were to meet some motorboats at such-and-such an intersection of latitude and longitude, where most of the cargo would be taken off, and then they would proceed on to the South Seas. He said he didn't want any part of that and he thought he'd better report it.

Olney: The customs people thanked him, but told him to go right along as planned. They'd got the details of the place where they [the rum-runners] were supposed to meet. Of course, what they wanted to do was make arrests of the people in the motorboats.

The voyage proceeded according to schedule and they went to the place which was somewhere off the California coast and got there on the proper night. It was foggy as could be, but the motorboats arrived and they did unload a great part of the cargo into the boats when the Coast Guard put in an appearance. The motorboats then promptly cast off with what they had and took off with a roar and disappeared in the fog and they were never caught.

Of course, this started a thorough federal investigation. They went to Scandinavia and found that the man who had ordered the cargo in Scandinavia was none other than Cornero. He'd been over there himself and ordered this stuff. So they realized that he was a big operator, that he had big financing behind him to enable him to do all this.

Then some years later they ran across a large still outside of Culver City where there had been an oil well with some tanks--sort of a half refinery about it. It had been refurbished and the tanks were all painted with aluminum paint and looked nice and neat and the well pump would go up and down. [laughter] Nothing but a front for a great big still.

Stein: They were pumping something, but it wasn't oil. [laughter]

Olney: Yes. The trucks going in and out were carrying black strap molasses one way and alcohol the other, and this is where this tax lien came in. It was for the unpaid taxes. Some way or other they connected Cornero with ownership of that. But they never could find any property that Cornero had in his own name from which they could realize anything.

Tracking Cornero's Backers

Olney: Do you want me to go on with what Dresser told me about Cornero?

He said that they had made the same effort that we had to try to find out who the people were who were putting up the money that Tony was using. They knew that he just didn't have money like that. And he [Dresser] told me that there had been a lawsuit during the Prohibition period, when Tony was running schooners and motorboats, that involved one of the schooners that they knew was involved with

Olney: Tony's business--Tony's trade. They said the record of the case was in the United States District Court in Los Angeles, and the suit was between the owners of the cargo and the owners of the vessel. It was some kind of a hassle they'd gotten into. Dresser said, "You can read the papers in the lawsuit and there isn't a word in them that would indicate there's anything illegal about this ship or the cargo." Of course, nobody could afford to put that in, and there wasn't any need for it to settle their argument. The dispute hadn't related to the character of the cargo.

I can't remember whether Dresser said it was the owners of the cargo or the owners of the ship, but he was satisfied that Tony was financially interested in one side of that case and that the people who appeared there as owners--either of the cargo or the ship--were Tony's backers. But Dresser said that he didn't know who these people were and was never able to get any line on them or even connect them directly with Tony.

I thought that we might get some additional information and had one of our investigators go down and look up this lawsuit and come back with copies of the complaint and of the answer, so that we had everybody's name who was in it. We looked these names over and they didn't mean anything to us. Most of them were the names of individuals and we looked them up in directories and things of that kind and we couldn't find them anywhere.

There were, however, one or two corporations. There was one that I remember distinctly called Burns-Philip, which was a corporation with a hyphenated name, and we did find that in the Los Angeles directory, which was a city directory, listed as importers. I also found it listed in San Francisco as importers, but the name was wholly unfamiliar to me. They had no big office or anything of that kind, and I thought it was some fly-by-night little local importer who had gotten involved in this thing. It wasn't until years later when I was in the South Seas myself that I learned that Burns-Philip was the huge Australian trading company that operated everywhere in the South Pacific.

Shall I go into the rest of this?

Stein: No, I think that story we have on the other tape.

You did mention something when we talked the last time in connection with you and William Dresser both trying to find out who these backers were, that at one point Tony bought some ships in San Francisco Bay and that the attorney general's office got wind of it and you were able to tip off Dresser so that he could--

Olney: That's right. That happened along in November and December of 1939. Tony finally gave up and surrendered on the gambling ship litigation along in November, 1939. Even before that, a week or two before that, he was reported in the paper as negotiating deals for the purchase of ships that were lying out here in San Francisco Bay. I remember that they included some of the Admiral Line ships, which were big ships for the Pacific coast. Because of the Depression they were just at anchor out there. They would have been in mothballs if they'd had any mothballs. They didn't have them then.

Cornero had bought these ships--was negotiating their purchase, I should say--for a very low figure. That was reported in the paper. We were watching him and following him closely enough. I believe it was because of our attachments that we had on the banks that we got wind of the fact that there was going to be an exchange on those ships at the office of some particular bank on a given day, that the cash would be paid in and the title to the ships would be transferred into an escrow right at that time.

So we advised Dresser about this, and he took advantage of it. I guess he got some information out of the banker--I don't know what exactly, the time of day, and whatnot--but it worked. He came in there with his tax lien before the ships were transferred and when the cash was there, and he got the cash and the government got paid.

But I might say, it did not stop the purchase, which is another indication of the amount of cash that Tony had behind him, because they went ahead with this purchase anyway. It turned out to be very, very profitable, because the war had started in Europe in 1939 in August. This was along in November, and it was already apparent that the war was going to go on for some time. Tony was smart enough to realize that war always meant a terrific demand for ships, and any old ship, any old bottom you could get, was going to appreciate in value immensely and he bought up a lot of them. He made a lot of money that way.

Meanwhile, the ordinary shipping people around here were just twiddling their thumbs. [laughter]

Investigating the Ships

Stein: You mentioned some things about the gambling ships themselves that I thought were very interesting. You mentioned that Oscar Jahnsen had made a tour of the ships and had written a very complete report.

Olney: Earl Warren was determined to put those ships out of business, but he was also determined not to get into any more trouble over it than was necessary. These were pretty tough fellows, and if we were to make a sudden raid without warning, someone could well have gotten killed; at least there could have been an awful fight. And that would be justified, you see, if somebody came without warning, because these ships used to hijack each other. They had to keep guards on them all the time. They would rob each other whenever they got the chance.

We thought the best way to avoid trouble was not to take them by surprise, but to let them know we were coming, because that would put them in an indefensible position if they resorted to violence. It would put them in a position of knowingly resisting the law officers, which they couldn't safely do. In addition, Warren always thought that with an operation of that kind, particularly one that had gone on for years, the fair thing to do was to give the man a chance to get out gracefully. He would save an awful lot of time and trouble and save an awful lot of money for the public if he gave them notice and they folded up.

He decided to give them a formal notice to cease and desist. But before doing that he wanted to get the full and complete information on just exactly what this operation was. We had undercover operators whom we thought were reliable, who had proved to be in the past. We believed them, and we thought it would be a good idea if besides that we had one of our investigators give a last minute full inspection of the ship. So Oscar [Jahnsen] decided he'd do it himself.

I think he had someone with him; anyway, he made no attempt to conceal himself or reveal himself either. He just went on board on one of the taxis. But because of this hijacking business, all the ships had somebody right there on the platform watching everybody who came on. When Oscar went on board, he found Mike Connally acting as Tony's spotter. Mike had been around the legislature in Sacramento for years and then had become chief investigator for the liquor administration of the State Board of Equalization. He had been convicted of bribery in Alameda County and Oscar had worked up the case.

Mike spotted Oscar immediately, as soon as he came up the stairs. Oscar hadn't been on that ship five minutes when he was tapped on the shoulder by a man who said, "Welcome aboard, Mr. Jahnsen. I'm Tony Cornero. Is there anything I can do for you?" And Oscar said, "Well, I recognize you, Mr. Cornero. There is. I've come out to take a look at your operation."

Olney: "Well," Tony said, "you're welcome to see anything you want to see. What we're doing out here is entirely legal. We're inside the law because we are outside the state boundary."

Oscar said, "Well, I know you are in your view, but that's not accepted everywhere, so I guess it isn't up to you and me to decide, but I would like to see what the operation is." Tony took him all over the ship, everything. Tony showed him not only all the games and how they were worked and how they handled the cash and the food, but also how the anchorage worked, and what power they had, and how they could shift the position of the ship around depending on where the wind and tides came from--everything. Oscar immediately came back and wrote a report which I think is one of the most remarkable investigator's reports I have ever read. It just went on for pages with detail after detail after detail. It's all there. I kind of wish I had a copy of it.

Anchorage and Telephone Service

Stein: Speaking of the anchorage, you mentioned that the anchoring system was quite a feat in itself because the ships were so far out.

Olney: Well, I'm no seaman, and I'm only told this. That's an open coast, and in the winter it's subjected to very heavy storms, lots of storms, and there have been many sinkings there. In fact, when the Texas, another one of the ships anchored near the Rex, tried to go through the winter of 1940, she sank in the storm. The other ships used to come in during the winter and tie up.

But Cornero kept his ship out there all during the winter with this remarkable system of anchoring. He had four anchors out there, but they were on cables, so that he could haul the thing around. He could maneuver the position of the ship and the waves never hit it broadside. It was almost as if he was sailing with the thing, although he didn't really have power enough to make the ship move, but he could control the ship's position.

It worked very well. They told me that there were groups of naval officers who came out there to inspect the set-up to see how this was done, because it was supposed to be really quite a feat.

Cornero was a very smart, able, practical man. He wasn't educated. He got all his know-how in a practical way. As a rum-runner with these motorboats, he had gotten to know the coast of California like the back of his hand. There wasn't a harbor or a cove or a

Olney: rock around there that he didn't know, and he'd had tremendous experience with the tides and the weather and even the wind and this kind of thing. And he was very ingenious, and I'd say gutsy. He would tackle things like this where other people would be afraid of the risk. He tackled it and did it.

Stein: Didn't he do something like that in getting the racing information to his boat?

Olney: Yes, he certainly did. He puzzled us for a long time because he was operating a bookmaking establishment on the Rex which was the equal of the bookie joints that were operating on shore. We had a lot of them operating at that time. That was before we had tried to crack down on the racing wire service. For their operations they had to have this almost instantaneous report of the operations--the results from the various race tracks. They'd put the race results on a great blackboard, like a stock exchange board.

Well, we found that Tony's service was just as fast and just as complete and adequate as anybody was getting on shore, but he was over three miles out at sea. We thought at first he must be doing this by radio, so we contacted the FCC, because that would be illegal, would be inviolation of the Federal Communications Act. They thought he must be doing it too, but they made a thorough check, and it wasn't being done by radio.

Well, then we found that he did have a leased telephone line from the wire service headquarters in Los Angeles out to the end of the Santa Monica pier, and they had a little room out there. It was hardly bigger than a telephone booth, but had a man in it, a little room out there. Then we knew it must go from there some way to the ship. In due course we found there had been a cable run from that room out to the ship. That stuff came in on the speaker in the little room, and the man on duty would put a mike up against the speaker, and the race track information went through the cable and blasted out on board the ship.

The curious thing about this was that this was all done without a permit. You needed a permit from the War Department to run a cable from shore to a ship three miles or more out at sea. Tony had applied to the War Department in Washington over and over again. He had lawyers working on it, and whatnot, but no success. They wouldn't entertain this idea, not because they cared anything about what he was going to do with the cable, but because they said it was impossible to make such a cable work. You can't run a telephone cable of the kind he proposed to use that distance under the ocean and bring it on board a ship and have it work. The snapper on this was that it was working all the time! [laughter]

Stein: That's really incredible.

Had there already been legal efforts, even before Warren was attorney general, to get rid of the gambling ships?

Olney: Yes, there had been, and I think at the time that we had our discussions out there at the Faculty Club*, that I had not yet checked this in the newspaper files. Had I?

Stein: No.

Olney: Well, it's all in there, exactly what had happened.

A Brief History of the Gambling Ships

[Interview 6: January 27, 1972]

Olney: The gambling ships off the California coast had a long history. I believe the first one was the Joanna Smith and she operated in the 1920s. I'm not sure where she operated first. I think that it was off of Santa Barbara. Percy Heckendorf, later District Attorney of Santa Barbara County, told me this.

Then that proved to be impractical. The channel was altogether too rough. They couldn't anchor her successfully, and then there was interference with the water taxis by the authorities on the shore, so she was later moved. I believe she must have operated three or four different seasons.

I believe she finally was anchored in San Pedro Bay off Long Beach. By that time there were competitors in the field. Other ships--gambling ships--were operating, and there was a great deal of hostility between the operators of the various ships. The professional help, the gamblers, from one ship on one occasion went on board another and proceeded to play the games and run up heavy winnings. When the operators of that ship found out what was going on, why, there was a terrific fight on board.

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*Refers to a luncheon at the University of California Men's Faculty Club, at which Earl Warren, Warren Olney, and several members of the staff of the Regional Oral History Office were present. Transcripts of the conversation will be deposited in The Bancroft Library.

Olney: On another occasion a group of men with guns came on board one of the ships and held it up and robbed it of the whole bank roll. The owners of that ship came to the conclusion that this job had been done or had been instigated by one of their competitors. So a week or so later they went on board the ship they thought was responsible for the hijacking, got everybody off, and set fire to it. It burned all night off of Long Beach down to the water line. My recollection is that that was the Joanna Smith. That's how she ended up.

These activities were seasonal, of course, because of the weather (you can't operate those ships successfully in stormy and rough weather); but during the seasons they had operated in San Pedro Bay, Santa Monica Bay, and once, at least, in Santa Barbara, over a period of years. They were a terrific nuisance. There was always violence going on. There was one occasion when a well-to-do odds-maker, Zeke Caress, was kidnaped, and he was held for ransom out on one of those ships. Eventually he was ransomed.

But besides these fights, ordinary customers were not infrequently beaten up if they made heavy winnings, and more often than not, right on board the ships. Complaints were made to the local police and the sheriff's office, but I can't recall their ever taking any action on any of these complaints.

The long history of inaction (among other things) led us to a well-founded suspicion that some of the key law enforcement officials on the shore probably had financial interests in these ships. They could justify this in their own eyes, we thought, as not being bribery or a violation of the law if the ships were outside the limits of the state, because then the activities that they were engaged in were not illegal. They would claim that as far as the state law was concerned, they were not in violation of any statutes that they were under duty to enforce. It would be just as though they had an interest in a gambling house in Arizona or Nevada, or some place like that.

Along in the late '30s, for two or three years, the gambling ship operators had a regular little song and dance they put on with the local law enforcement agencies. It would start off in the spring, as soon as the weather got good enough to run the taxis back and forth. The ships would open and they'd advertise and they'd go as long as they could. Pretty soon public pressure would build up in the district attorney's and the sheriff's offices. The county officials would make noises and threaten to close the ships down, and finally they'd go out and they'd make a raid, and somebody would get arrested. The people arrested would be out on bail, and the case would be in the court. They would proceed in due course to have a preliminary hearing, and meanwhile the ships were operating all the time.

Olney: Sometimes they would get around to a trial. They didn't always; sometimes the delaying tactics were sufficient to keep it from getting to trial, but if they did get to trial, if there wasn't an acquittal, there would always be an appeal. By then, so much time would have passed that it would be the end of the season; it would be along in September or October when the first storms could be expected. So with the end of the season, the ships would close down, and they'd tow them back in, and they wouldn't be out there operating any more. The ship operators would promise not to do it again, so legal proceedings would be dismissed on the ground the case was moot. The next year they would do the same thing, only under different front names.

Stein: Now, with these legal proceedings, were they brought on the theory that the ships were within the three-mile limit and therefore illegal?

Olney: Yes, and most of them were based on arrests. There were no proceedings brought by any county officials on the notion that the ships were outside the three-mile limit.

At any rate, it was a circumstance that bothered us, that no action had been taken about the violence. There were killings involved, too. The Long Beach police had repeatedly picked out of the Bay dead bodies floating around off shore. When they had holes shot in the back of their heads, it didn't look much like suicide. And then there had been an occasion when a killing had taken place on one of the ships that got into the federal court. It was the case of United States vs. Carrillo, decided in 1935. I have forgotten exactly how that case goes.

I believe that that was a murder case in which the charge was brought originally in the state court and then Carrillo applied for a writ of habeas corpus to the United States District Court on the theory that the ship was on the high seas, and therefore the state could have no jurisdiction to try him for homicide. He claimed that he should have been tried in the federal court. I may be wrong about the circumstances under which this arose, but I do recall that the federal court held that the location of this ship, although more than three miles from shore, was inside a bay and therefore within the territorial limits of California. It was one of the cases that we later used as authority for our position.

The Cornero-Adams Arrest and the Adams Appeal

Olney: Now, the litigation which finally led to Earl Warren's gambling ship raids began before he was attorney general. The sequence goes like this: On May 5th, 1938, the S.S. Rex was opened by Tony Cornero to capacity crowds. It was located off Santa Monica, and it was supplied with water taxis from the Santa Monica municipal pier.

On May 13, the Rex was raided by officers from the district attorney's office, the sheriff's office, and the Santa Monica Police Department. The district attorney was Buron Fitts and the sheriff was Eugene Biscailuz. On that occasion, fifty-one persons, including Cornero, were arrested.

On June 14, 1938, because the Santa Monica city authorities had halted the water taxi operations from the municipal pier, the Rex was moved to a point about four miles off Redondo Beach. That's still in Santa Monica Bay, but it's a different location in the Bay and the water taxis could operate from the city of Redondo Beach.

On July 19, 1938, three of the operators of the Rex, including Cornero and Adams, were indicted by the Los Angeles County grand jury on bookmaking charges, a felony. Adams was the gambler who was in immediate charge of the bookmaking operation on board the Rex. The evidence of gambling was based entirely on the bookmaking operation. They didn't put into evidence anything about slot machines or roulette wheels or the like. On July 20th, that year, Cornero and Adams were arrested.

On September 7th, 1938, the Rex, which had been operating all this time, was again raided while off Redondo Beach by the district attorney's and the sheriff's offices. On this occasion, Cornero and nine others were arrested on misdemeanor charges. A quantity of gambling equipment was taken ashore as evidence, and after this raid the Rex was moved again, this time beyond the twelve-mile limit, and preparations were made to re-open.

But on September 23rd, 1938, Cornero and his employees were freed of the misdemeanor charges that had resulted from the raid of September 7th. They were freed by Judge C.A. Bridge, who concluded that the waters between Point Vincente and Point Dume were open seas, and within that area the state boundary followed three miles from the shore.

Then, on September 26th, 1938, Cornero and Adams were put on trial on felony bookmaking charges that were based on the indictment that had been returned on July 19th. In October, Adams was convicted on this charge by a jury, but the jury disagreed as to Cornero, and the case against him was dropped.

Olney: Earl Warren took office as attorney general in January, 1939. Adams took an appeal to the district court of appeal and on March 20th, 1939, Adams' conviction was reversed by the district court of appeal on the ground that the Rex was on the high seas at the time of the alleged offense of May 13th, 1938, and was not within the territorial limits and jurisdiction of the state of California.

The first thing Earl Warren had to decide when he became attorney general was what to do about that decision. Should he accept it from the district court of appeal, or should he appeal it to the [California] Supreme Court? After consulting with Bayard Rhone, a deputy attorney general in U.S. Webb's office, and looking at his brief with the rest of us, he decided that we should appeal to the supreme court. We had nothing to lose by taking the appeal, anyway.

We had to devise some way, without waiting for the supreme court, of bringing that operation to a halt, because they were piling in so much money. In those days we weren't using paper money very much in California. The gamblers used little except coin, those big silver dollars. They were quite heavy. They were taking in so many silver dollars every day that the bank in Santa Monica that handled Tony's account told them that they would close out the account unless he did something about meeting the expense of handling the weight. And so he had to buy a truck for the bank to haul all the cash.

Well, naturally, the ship operators were not interested in the fine points of the law if they could operate in that fashion, and we had to stop them. That was our practical problem.

On March 21st, 1939, Buron Fitts, the district attorney, ordered a petition for hearing of Adams' case to be filed in the supreme court, according to the newspaper clippings, "...with the cooperation of Earl Warren, attorney general, assured in the matter." Thomas O'Brien, the deputy district attorney who had prosecuted Harold Adams on the bookmaking charge, said he had already prepared the necessary papers to petition the supreme court for a review of the case. The newspaper says, "The petition will be filed in the name of the attorney general of this state and of the district attorney."

There is what at first appears to be a discrepancy in the dates in the newspaper clippings with respect to the arrests on which the Adams case is based. May 6th is mentioned as the date of the offense of which Adams was convicted, but the raid and the arrest were May 13th. The reason for this is the criminal charge was based on evidence which was secured by operators on May 6th, and the arrests followed later.

On April 11th, 1939, a petition for hearing of the Adams case in the supreme court was filed by Bayard Rhone, deputy attorney general. The petition was prepared in cooperation with the district

Olney: attorney's office, and Thomas O'Brien and Jerry Sullivan, who were deputy district attorneys. On April 18th, the supreme court granted the state a hearing on the Adams case, and the matter was put on the court's June calendar.

On June 30th, 1939, the Los Angeles Times carried an item from which this is a quote: "District Attorney Fitts, who twice led night raids on the gambling ship Rex anchored off Santa Monica and Redondo, yesterday said that a pending ruling by the supreme court on gambling boat operations will determine his policy toward their operations. 'If the supreme court upholds the district court ruling saying the courts do not have the power to fix the three-mile limit, this office will be powerless to act,' Fitts stated."

Legal Theories

Olney: Now, I must inject a personal note here. I joined the staff of the attorney general's office under Earl Warren about the middle of May, 1939. When I appeared there for duty, the first assignment that was given to me was to work on these gambling ship cases. A lot of work had been done already. The Adams case, the petition for hearing in the supreme court, had been prepared; the hearing had been granted; the briefs were being written by Bayard Rhone in the office in Los Angeles.

There were two points raised on that appeal. The first one was that the ship was located in Santa Monica Bay, which was a true bay under international law, and that meant that the limits of the state did not follow three miles from the shore, but were a straight line drawn three miles at sea from Point Vincente to Point Dume, all the area on the east of that line being within the state. That was the first point.

The other point involved the interpretation of the Treaty of Guadalupe-Hidalgo, which set the international boundary between the United States and Mexico, and determined not only the land boundaries of the United States, but the sea boundaries along the California coast as well. The treaty describes a land line running from the east and hitting the Pacific coast at a place described in the treaty as one league south of the southern tip of San Diego Bay, and "thence one marine league into the sea, including the islands." The state constitution uses the same language. The point that was argued in the brief was that that language meant that the boundary--the sea boundary--ran from this point near the end of San Diego Bay in a series of straight lines extending outside the outermost of the Channel Islands, so that all the Channel Islands and all the water in between were under the jurisdiction of the United States and of the State of California.

Olney: We thought that these points had merit, but we were by no means sure that we could win these cases in the supreme court. But that was not the matter that was assigned to me. Earl Warren told me that he had been down to Los Angeles after his election and had found that the gambling ships were so defiant and so arrogant that he would have to do something effective to stop their operations, or he couldn't possibly be taken seriously in his efforts to halt gambling on the shore. He said he discovered that the ships were taking full-page newspaper ads about their operations, all the games that were being played, where to take the water taxis, and the like; that they were posting billboards all around town with pictures of the ships in the ads; that they were advertising on the radio, "Come play on the ships"; and the Rex even had a skywriter that was writing in smoke, "Play on the S.S. Rex."

Warren said, "With things like this going on, nobody can take us seriously when we're talking about dog tracks and gambling houses on the shore. We have to find some practical way of bringing these operations to a stop. And it's your job to figure out how to do it."

Now, as I approached this, I found there had been work done in the attorney general's office before I got there. I know that Helen MacGregor had some connection with it. It may well be that she is the lawyer who first worked up the nuisance theory. At any rate, the idea of using the law on public nuisances was under consideration. There were statutes which defined what a public nuisance was. It seemed to us that the gambling ships clearly came within the definition of the statutes.

There were decisions of the Supreme Court of the United States, and of the State of California, about a nuisance which has its origin in one jurisdiction but its effects in another, and those cases held that if the jurisdiction where the effects of the nuisance were felt can get physical control over the persons responsible, they can issue injunctions requiring them to abate the nuisance even though the cause of it might be outside their territorial limits. And the way they enforce that is, of course, by locking the defendants up in jail until they cause the nuisance to be abated.

Now, this was well thought out and pretty well developed, as I recall. But there was a contribution, in addition, which I made to this, and this was the one on which we finally acted. The nuisance theory, as I have outlined it, contemplated a lawsuit, that a complaint would be filed and an order to show cause issued, and there would have to be a trial of the issues before the court would issue a final order directing the defendants to abate the nuisance and threatening to lock them up if they didn't.

Olney: Well, that meant a lawsuit and a long delay, and we knew if we started that kind of litigation that our opponents would simply do everything they could to postpone the trial, to delay the proceedings at every point, and meanwhile they would go ahead operating the ships and taking in huge sums of money. We realized we couldn't possibly get that case to trial against that kind of opposition before the end of the present season, and then they'd fold up anyway because of the winter. And then they would go into court and move that the case be dismissed as moot because the ships weren't operating any more (they would probably tow them in for the winter), and it would be over. And then the next season they'd open up again and we'd go through this once more. As I have mentioned, this had happened two or three times in years before with the district attorney's and sheriff's offices.

It had happened so regularly that we no longer had any confidence in the genuineness of the intention of the district attorney's office and sheriff's office to really put these ships out of business. They'd have these raids--they were little more than token raids--but each year the ships operated the full season and made the full profit and then they'd start in all over again next season.

Now, the more direct approach to this situation was an additional remedy which the statutes provided for public nuisance. This is the remedy of summary abatement. It means that if there is a public nuisance established, the law permits the public authorities to move right in on the property and stop the nuisance physically, without going to any court. Now, from our point of view, the tremendous advantage of that would be that we could abate the nuisance by our own physical intervention and they wouldn't be operating in the meantime. We were prepared to lititate their right to operate, but if we intervened physically by way of abatement, they couldn't operate while the litigation was going on. They would not be dragging their feet in the litigation. Indeed, if they thought they really had any legal standing, we could expect them to press for a prompt decision.

Planning for Summary Abatement

Olney: In consultation with Earl Warren and Oscar Jahnsen and others, we decided to lay plans for a summary abatement of those ships. But we felt that we had to keep these plans to ourselves because if our opponents on the other side became aware that we did intend to act directly and immediately, we were afraid that they would go into court and try to get a restraining order from the court against us in advance of our taking the necessary moves. Then we would be right in the middle of a lawsuit while the ships were continuing to operate.

Olney: So we made no secret that we were thinking in terms of public nuisance, but we were very secretive about any plan for summary abatement.

The procedure which we had agreed on and outlined was to first serve a formal notice on each of the ships and their operators to abate the nuisance. We wanted to do this so that they could not claim that they were taken by surprise. We didn't expect that they would quit, but they might. This would make it clear that we were going to take some further course. They would probably expect a lawsuit to abate the nuisance by injunction.

We wanted them to know that some action was going to be taken, because when we went out--actually got men out to go on board those ships for the direct abatement--we didn't want them to run any undue risks of being shot at or resisted if we could help it. We felt that if the ship operators knew that something was going to happen, that something would come, they would not think it was hijackers when our men arrived and cause any serious trouble.

Well, a notice to abate the nuisance was prepared. It was a lengthy one. It listed some seven different grounds on which the ships constituted public nuisances in our opinion. The notices were taken out by law enforcement officers and openly and publicly served on the operators of the ships. The newspapers described it as a raid. It wasn't any raid at all. It was merely serving of these notices to abate.

The notices were dated July 29th, and were signed by the attorney general, the district attorney, and the sheriff. But before this was done, we had to get ready for the next step. A complaint asking for a permanent injunction was being drafted with the same allegations that were in the notice for an abatement, and we were working with the district attorney's and sheriff's offices in drafting this complaint. But at the same time, and without consulting anyone else, Oscar Jahnsen and I were laying plans as to how we were going to close those ships down physically. The things we had to go into turned out to be difficult and elaborate.

We concluded the only thing that would stop those ships was to actually tow them into harbor. That meant that we would have to go on board and we would have to have them towed in. There wouldn't be so much difficulty in getting on board, but towing them in might be another matter. Only one of these ships had enough power on it to be able to move under its own power; that was the Mount Baker, also known as Showboat. The others were mere barges that were anchored and would certainly have to be towed.

Olney: We realized they didn't even have enough power on board to raise their own anchors, and this would mean we would have to cut the lines. Well, anchors of that size are worth a good deal of money, and if we were to cut the lines, there would be a very considerable loss unless we could devise some way of marking the anchors on the bottom, so that later they could be hauled up. This means that we had to, and did, arrange to have floats made. They were made out of old oil drums with rings welded on them where you could attach a cable to them and put it on the anchor chain, and put a float out there, and you could find the anchor. We had to have these made.

Then we realized that these were steel cables, I think, and in more than one instance a steel chain, and we would have to get welders to cut these, so we had to (and did) arrange for a crew of welders for each of the four ships, so that they could go out there and cut those chains and attach the floats and we could find the anchors later.

Then, of course, we would have to tow the ships. Well, I think there was only one tow company down there--at least, there was only one large enough to have four tugs available at one time. We went around and had some confidential talks with the management of this tow boat company. We had to tell them, of course, what we wanted the tow boats for. They said, as far as they were concerned, they were willing to take the job and they had the boats available, so that they could tow them in. We felt it was very important to move on all four ships at the same time, so we had to arrange for four tugs and their crews.

But the tow boat management told us that they thought we might have a real problem because the maritime union rules prohibited the sailors on the tugboats from taking a line from anybody excepting a union member. Incidentally, the gambling ship boys had been smart enough to make their crews on these gambling ships members of the union.

The tugboat people said, "Of course, if you can persuade the crew of the ship to pass the line, our people will take it without question, but if they won't do it, and you've got some deputy sheriffs or somebody passing the line, they may not be willing to take it."

Well, to us, this was insurmountable. We could not go to the unions and tell them what we were doing. If we did, that would be just as good as telling the ship operators themselves. Not only were the permanent crew members of the gambling ships all members of the union, but the ships themselves had subsidized the union treasuries with all kinds of gifts, and things of this kind, for public relations reasons. And indeed, when the attorney general went to Los Angeles and announced his intention of closing the

Olney: ships, the only vocal opposition came from the maritime unions. They objected to it on the ground that it would deprive some of their members of jobs.

Well, Oscar and I decided that there was no way in which we could solve this tugboat problem in advance; we'd simply have to go ahead and take our chances on what happened. We felt that if the ships were cut loose, and were just drifting, somebody would have to tow them in. The Coast Guard would probably order it, if nothing else. But there was that weak spot in our plan.

Now, we also had to think of who we were going to get to go on board these ships, and what was going to happen when we got there. We decided that we must raid these ships in open daylight and not try it at night the way Fitts had done with his raids. But there was a manpower problem. We had only four investigators in the attorney general's office and it was obvious we were going to have to use personnel from somewhere else. We were hesitant about using the sheriff's men and the district attorney's men because we were very concerned about the unknown relationships that might exist there. And yet, they were the logical peace officers for it.

Another problem came up when the attorney general got to Los Angeles when we were deciding to take action against the ships. When he took the matter up with the district attorney and with the sheriff, they were very, very reluctant to do anything more than they had done. They said they felt that it would be flying right into the teeth of the decision of the district court of appeal, and that they would be running a very great risk on their bonds if they were to go out there and take part in another raid on the ships when the decision of the district court of appeal was that the ships were outside of the state. It took a lot of arguing to induce them to realize that the nuisance theory which we intended to use as the basis of our action assumed that the ships <u>were</u> outside the state. This action could be taken anyway, even though they were beyond the state line.

The thing, however, that really brought Fitts and Biscailuz around to agreeing that they would take part was the action of Mayor Bowron of Los Angeles. On July 27th, 1939, he made a public announcement that he would "cooperate fully with Attorney General Earl Warren in the attorney general's proposed drastic campaign to clean up gambling in Los Angeles city and county, and on land and sea." He told the newspapers and he told the attorney general that if he needed manpower to carry out this operation, it would be provided by the Los Angeles Police Department.

Olney: Now, this, of course, put the sheriff and the district attorney on the spot. It forced them to agree that their men would take part in this operation under the attorney general's direction. Well, matters were moving quite rapidly, of course; they had to. The attorney general gave Fitts and Biscailuz a figure of how many men he thought would be needed from the sheriff's office and how many from the district attorney's office. There was to be an equal number of sheriff's deputies and district attorney's investigators for each of the four ships. I do not remember the number, but I think it was about twelve from each office for each ship. We needed that many to smother any possible resistance.

We asked the sheriff and the district attorney to make their own decisions as to which men from their offices should be assigned and to give us their names, which they did. We also wanted to have people from our own office--lawyers, in particular--to go out on these trips to keep things under control.

Oscar was assigned to handling the two ships in Santa Monica Bay, and I was assigned to handling the two in San Pedro Bay. We needed other people from our office to provide leadership for these boarding parties. We used all the investigators we had, and we also took a lawyer--at least one--from the attorney general's staff for each of the ships. These were men that we did not know very well. They were General Webb's people, and since this was the first trip to Los Angeles I made after being appointed, I in particular didn't know them. But we had confidence in them, and we took them in on our plans, and told them what they were expected to do.

But then we also had to give thought to the conditions we would meet when we got on board. We thought that the ships might well be in operation and that there would be members of the public there. In fact, three of them were in full public operation. This is why we needed as many men from the sheriff's office as we did, in order to see that nobody got hurt if fights started, and things of that sort, and also that members of the public were taken off the ships as rapidly as possible.

But we realized that if the ships were in operation, there was going to be a lot of money around on the tables, and also, whether they were operating or not, there would be the bank roll of the ships. They all had offices and security cages where the money was kept. And this, we realized, presented a delicate problem. We must take possession of the money immediately, and we must be able to account for it. We had to be able to account for it so we couldn't be accused of stealing any of it. Given a chance, they would accuse us of this.

Olney: So to handle this, we decided the thing to do was take some accountants with each one of the boarding parties. We used Price-Waterhouse. They assigned two accountants for each of the boarding parties to go along and take immediate charge of all the money and finances. Their job--which they carried out--was to go on board and see that all the money was gathered up from the tables and taken to the cages, and then get the office manager of the ship and proceed to count it in front of him and give him a receipt and put it all in bags and get it into the boats and bring it in and put it in the vault of the bank.

This they did, and much to the great pleasure of the accountants. (I never saw men have a better time than they did; apparently it was quite a change from the ordinary accounting practice that they were accustomed to.) Well, with arrangements like this, you can see that it could take quite a number of water taxis to carry all these people out there.

Stein: I was just going to ask where you got your boats.

Olney: Well, this was a problem, too. We did have one great help. The Fish and Game Commission had patrol boats--there were four of them--that they made available to us, together with their crews. They were larger and faster than any of the water taxis, and very maneuverable. But they were nowhere near big enough to carry all the people that we needed, so we rented water taxis. I think we had four water taxis plus a Fish and Game patrol boat for each of these ships. It was a regular fleet!

It was not easy getting the Fish and Game Commission patrol boats, notwithstanding the willingness of the commission chairman to go just as far as he could to help us. He pointed out that his men were authorized to enforce the fish and game laws only and did not have the broad authority of peace officers. The patrol boats also were authorized for the same limited purpose and there might well be serious problems arising if the property, funds, or personnel of the commission were diverted to unauthorized purposes. Furthermore, the insurance carried by the commission on both boats and crews would be inoperative when they were used for something outside their regular jurisdiction and duties.

These difficulties were met by our entering into a formal agreement with the commission to charter their boats for a stipulated time period for an agreed rental and to employ their crews to operate the boats. We also took out separate insurance policies on both boats and crews to cover them while under our command. The crews were chosen for us by the chairman of the commission based on his personal knowledge of their individual reliability and willingness to take part in this kind of an operation.

Olney: When the time came I found myself, to my great surprise, the commander for all practical purposes of a fleet of four patrol boats, sixteen water taxis, and seventy-five or one hundred men. We were to board and take possession of four large ships located in two widely separated bays and manned by hostile crews and all in the presence of unfriendly and excitable public participants. Quite an assignment for a young man who had never commanded so much as a corporal's guard.

D Day

Olney: D Day for our operation was the day following the day we got the list of names from the district attorney's and sheriff's offices. We asked the sheriff's and the district attorney's men whose names had been given to us to report at 8:30 in the morning to Patriotic Hall, which is a hall we hired down on Figueroa Street, without any indications as to what the purpose of it was. Even the sheriff and district attorney did not realize we were going to act so soon.

Well, they all showed up, and when they were there we locked the doors, and Oscar proceeded to explain what was going to happen. They were divided up into these four groups. He read the names of all the men who were to be in each boarding party, got them segregated in the room, and told them that they were leaving from Patriotic Hall right then and there and were going out to take these ships.

Well, you never heard such a hollering and squawking--"Oh, you can't do this." "I'm not feeling well." "I've got to meet my wife downtown." "Well, I've got to phone home," and almost everything you can think of. But Oscar handled these people, not I, and he was absolutely adamant. No one was allowed to phone and no one was allowed off the hook either. We had buses out there. We loaded buses for Santa Monica and buses for San Pedro, and we tried to time it so we'd get on board these water taxis and put to sea about the same time, so that there wouldn't be any more advance notice to anybody than we could help.

Well, considering the difficulties, it worked remarkably well. We had more trouble in Santa Monica Bay than we did in San Pedro. When they went on board the Texas, which was in Santa Monica Bay, there was a crowd of people there playing. Our people did not remove the crowd fast enough. They stayed on until it was after dark. Somebody pulled the light switch and a regular melee started in the dark. They had some overly enthusiastic officers who proceeded to chop up crap tables and throw stuff overboard. There

Olney: were a lot of pictures in the papers of this going on, which shouldn't have happened. Not with the public on board there like that. It got out of hand. It was not run the way it should have been run.

On the other hand, with the Rex, they were going full blast and Tony was on board, and they pulled up their gangplank and got out their fire hoses and wouldn't let anybody on board--kept them off with the hoses. Our people made no effort to force their way on board. This was on instructions, not to do that. There was lots of defiance and Tony got his name in the papers and all kinds of pictures. They accused us of being pirates and things of this kind, and at first it looked as though the law enforcement people were impotent. Actually, we were in control right from the very beginning.

When Tony said the officers couldn't come on board, their response was, "Well, nobody's going to get off either." Tony had over six hundred people on board there, and there were a lot of housewives who wanted to get home and get dinner, and there were a lot of people with other people's wives who weren't supposed to be out there [laughter], and it wasn't long until the crowd got very indignant and very outraged with Tony for not doing something to get them off that ship.

Stein: That's a very clever tactic.

Olney: Oh, we could hear them holler! [laughter] When they'd stood around there for a while, Oscar made a suggestion that he'd bring water taxis in there one at a time to take all these members of the public off, on the agreement that none of the ship personnel and none of the gamblers would go off at the same time. Our men would make no effort to board while this was going on. And this was done; they took them all off. We had no doubt that some of the ship personnel went ashore at that time, but not enough to make any difference.

But then there they were with all their hired help on the ship. Nobody could get on and nobody could get off. Now, this blockade made a difficult personnel problem for us, because our office with only four men could not keep that blockade up, so what we decided to do was to turn the full responsibility over to the sheriff's office. They had the men and they couldn't afford to admit that their blockade couldn't be successful. So Oscar and the other people from the attorney general's office came away. George Contreras, the undersheriff, and his people stayed.

They sat out there three or four nights and days. Now, ostensibly the ship was blockaded all that time, but we noticed with both interest and amusement in the litigation that followed that we

Olney: received notarized affidavits from Tony Cornero sworn before a notary public in his lawyer's office in Santa Monica during the time he was supposed to be blockaded on that ship! [laughter]

But in the meantime, of course, all of Tony's people were out there. Their wages were going on. The cost of this was the equivalent of a very heavy fine every day. [laughter] So it didn't last too long, and Tony finally agreed that he would let our men come on board to make sure that there would be no further operation. Tony could get his people off while we proceeded to litigate.

Now, in San Pedro Bay it was a little bit different. The ship that I went to was the Tango, which had formerly been owned by Tony. It was the biggest ship of them all, a better ship than the Rex. Tony had owned and operated that in former years, but he lost his financial interest in it in a crap game, and it was being operated by the others.

The man who went out to the other ship, the Mount Baker, was Burdette Daniels from the attorney general's office, and he was in charge there. Now, the Mount Baker was in operation, and Burdette and his men had no difficulty at all in going on board, and they served their papers and proceeded as planned. The accountants did what they were supposed to do and the public was taken off the ship immediately. No problems developed there.

When I went out to the Tango, they had gotten word in advance and there were no members of the public on it. The ship had a platform on the side with a steel door that would roll up and down like a garage door. You worked it with a crank. They had that thing down so that nobody could get on. The reason for that set-up was because of the dangers of hijacking. They had to have some way of shutting off access.

When we came up with our five boats, the captain and others were looking over the rail. I told them that I wanted to come on board and they said, "Nope, you can't come." So I said, "All right, we'll be back later." Then I took all our boats, the whole procession of them, and we went over to the Mount Baker to see how they were making out there, and found that everything was under control there. So then we started back to the Tango, but this time we took only the patrol boat and left everyone else behind. We weren't going to need them if the public wasn't there; I mean, not need them immediately.

So there was only one boat that came up to the Tango. I had everybody else on the patrol boat below deck, so that the fellows that were driving the boat and I were the only ones visible. We came up again and I said, "I want to come aboard. I want to talk to you." Well, they cranked this door up so I could come on board

Olney: and I stepped off onto the landing platform with my shoulder under the door. You know, if you do that, you can't crank those things down. So I held the door up and then everybody else came up from the bottom of the patrol boat. The sailor with the crank lifted it in the air as though to strike me, but one of our crew jumped on the landing, grabbed his arm, and threw the crank into the ocean. There was no other resistance. We signaled for our other boats to come over and we occupied the Tango.

One of the things that I failed to mention that we had to plan for in advance was the liquor. They had liquor on all these ships. We knew that if we didn't want to have trouble, we had to be sure that that stuff was locked up and locked up immediately. And with a lot of the kind of deputy sheriffs we had who were going to have to stay on the boats, we wanted to make sure that that stuff was secure. We took out special locks and we took every precaution against anybody getting into the liquor on board the ships.

When I finally got on the Tango, the tables were not in operation and were all covered over. We went into the office and found this huge amount of money. In those days, as I have mentioned before, they were using silver dollars, mostly. The amount of money was very impressive. I suddenly realized that we had actual physical possession of their bank roll and we did on all four ships! We had anticipated this to some extent. We had thought enough about it to have the accountants come along to handle the money, but it really did not occur to me until it was accomplished that if we got physical possession of the bank roll it would be decisive. Gamblers can't operate without money. There might be question as to whether these funds were subject to forfeiture, but to get them back they would have to bring a suit, which would take time, and they couldn't operate in the meantime. They could not operate as long as we had possession of their bank rolls.

I did not send for any tugs or for any welders to cut any chains. The longer I was out there, the surer I was that we didn't have to tow those boats in now to keep them from operating. They would have to litigate with us without being able to operate in the meantime because we had the money.

While I was out there, a Coast Guard cutter came steaming by and the skipper hollered that he had heard what we were doing and that we had no right out there and to get off. I said, "I'll come aboard and show you our authority." So they sent a boat over and picked me up and I went aboard his cutter. (I didn't want them coming on board the Tango.) The commander, whose name was Greenwood, was quite hostile and said that we had no jurisdiction out there; we weren't any better than a bunch of pirates, using Tony's language.

Olney: I said, "We are properly authorized law officers and we were acting under legal authority from our courts and you interfered with us at your own risk."

I should have mentioned to you that besides the notice to abate, which we'd served a day or so before, we also took with us felony warrants for operating bookmaking on the ships, based on the theory they were inside the state limits. It wouldn't do any harm to have them and to serve them if needed.

We also had prepared our complaint for an injunction and had gotten a temporary restraining order against the further operation of these nuisances from Judge Wilson, and we had served that on the ships' personnel. We we hit them with all the legal proceedings we could. I had the papers, at least, and could show them to the skipper on the Coast Guard vessel. After looking at the papers, he finally said, "Well, I guess you know what you're doing. I think I'll go over to Santa Monica Bay. There's trouble there." I did not tell Commander Greenwood that the attorney general had informed his superior, Captain Parker, of our plans in advance and had received his approval.

Stein: Why do you suppose he was so hostile?

Olney: He was very friendly with Tony Cornero. We ran across very buddy-buddy conversations between the two of them when I had a tap put on Tony's telephone. Cornero buttered up everybody he could, even the ministers. There was a minister in a little old church in Santa Monica, and every time he needed something like a new pulpit or a paint job or something like that, he'd get it out of Tony. This Coast Guard commander had been given the same course of treatment, I think.

Anyway, later in the day, another boat came out and circled us and hollered at us. This was a very swank motor yacht, beautiful. One of the men on it was a lawyer named Stratton from Long Beach. He was the attorney for the owners of the Tango, and identified himself, and wanted to know what we were doing out there on his clients' ship. So I told him, "Well, if you want to come on board, I'll give you all the papers." He said, "Thanks, no." I said, "You can count on it that the attorney general's office will be happy to send them anywhere you want." So he said, "All right." Later on I got to know him better. For a time he was Fred Howser's first assistant when he became district attorney of Los Angeles County.

I got word--we had no telephone messages and no radio out there--but I got word by somebody who came out in one of the boats (it was the skipper of the Coast Guard cutter) that they were having problems down in Santa Monica Bay. I didn't know what, and there wasn't anything I could do about it, but from what I'd seen on the Tango, I

Olney: realized that we would be taking unnecessary chances, completely unnecessary chances, if we tried to cut those ships loose and tow them in as we had originally planned. It wasn't necessary, and so I sent a messenger to Oscar to tell him under no circumstances to cut the ships loose or to try to tow them in. We didn't need to do that.

I also sent word to the attorney general that I was convinced that we didn't need to do it. I might say that while this was going on, Earl Warren and Buron Fitts and Eugene Biscailuz were in a suite of rooms that they had at one of the beach clubs at Santa Monica, and they could sit there, and with field glasses they could watch what was going on in Santa Monica Bay. They stayed there until it got dark. Because of this, we knew where they were, and if we needed to get any instructions we could get them.

Well, when the night came, there was nothing to do but stay out there on the ships. I stayed on mine, Burdette Daniels stayed on his, Oscar stayed out on the boats blockading the Rex, and Paul McCormick, I think it was, stayed on the Texas.

Stein: Was this when you slept on the crap tables?

Olney: Well, I slept on the Tango. I guess I slept on a crap table--no, I didn't. That was later when I slept on the Rex.

Results of the Litigation

Olney: The litigation went about as you would expect. The owners of these operations ran for cover when this raid took place, because they didn't know what they were going to get hit with. This was something that they had not expected. But they had to come out of the woodwork because we had their bank rolls as well as the ships; and they did, through their attorneys.

We quickly reached an agreement with the operators of the Tango that they would not attempt to operate the ship any more, that they would, in fact, agree to discontinue the ship's operation. They knew they couldn't operate again that season with the litigation going on. They agreed to tow the ship in themselves at their own expense, and to leave the gambling equipment on board to be determined whether it should be forfeited or not, if we agreed to release the bank roll, and we agreed to do that.

Olney: That was done very quickly. The arrangement that we made with the Showboat, the Mount Baker (that was known by two names) was a little bit different. They refused to tow their boat in and refused to make any concessions about the gambling equipment. The only agreement they would make is that they would not attempt to operate, and they would take everybody off and keep everybody off excepting the minimum crew that was needed to keep it at sea. And there were other guarantees that they gave us that I don't remember--that they wouldn't operate--in return for which we gave them their bank roll. I believe they consented to a preliminary injunction against operating gambling games on the ship.

The Texas in Santa Monica Bay ended up with some similar arrangement. I think it was just about like that with the Mount Baker, but they wanted to stay out at sea. They wouldn't bring it in, but just kept a minimal crew on board. They tried to go through the winter out there, but they got hit by a storm and the ship sank.

With Cornero, after we got aboard, the arrangement was similar. The equipment would be left on the ship; whether it was subject to forfeiture would be determined at a later date. They consented to the preliminary injunction not to operate the games in the meantime. What other concessions we made to them, I don't remember. My recollection is that in the case of the Rex we did not give them the bank roll. I'm unclear about that.

Well, the cases rattled along as you would expect them to. I was supposed to be overseeing the litigation for these cases, but we had accomplished our purpose, as you can see by what we had done. Those ships stopped their operations the day we went on board and they never operated again. We litigated. We ended up by winning the litigation. Judge Wilson decided that our nuisance theory was valid, and he issued a permanent injunction against each of the ship's managements and owners, not only from operating those ships, but from operating any similar ships in the future. Those were injunctions against the persons involved.

The Outcome for Tony Cornero

Olney: But we went ahead with further litigation with Cornero. He got very obstreperous. In the injunction suit we wanted to take his deposition. He appeared with his lawyer, Louis Pink, to answer the questions, but he refused to answer any questions except his name. I asked him about the ownership of the operation, and who he was principal for, and things of this kind, and he wouldn't answer those questions, although his lawyer advised him to. So on the basis of

Olney: this we cited him for contempt of court for failing to answer the questions. Judge Wilson ruled that the questions were proper and that he should answer them. When the questions were repeated, Cornero pleaded the Fifth Amendment to each and every one.

We also brought a suit, with permission of the Public Utilities Commission, for operating the water taxis as a public utility without a permit, with a $2,500 per day penalty for every day of operation without a permit. Neither Cornero nor the taxis had ever gotten a permit. So a suit for something like $750,000 in penalties was filed. The state, unlike a private person, in a suit for penalties of that kind can attach without posting a bond. So we attached a lot of things, bank accounts, all sorts of things. This is why I'm quite sure we did not give Cornero back his bank roll, because we got his bank accounts attached, too, and a lot of other things.

As part of our legal blitz against Cornero, we also had issued a felony warrant for bookmaking, a new one, in connection with the 1939 operations, and had him arrested on that. He had a preliminary hearing before Judge William McKay. Judge McKay discharged him on the ground that the decision of the court of appeal was controlling, the ship was not inside the state, and so Cornero was dismissed. We later learned, almost at the same time, it was not an honest decision. It was paid for by Tony.

Stein: Could you just tell the story briefly of how you found that out? I thought that was an interesting story.

Olney: Well, we had a tap on Tony's telephone. In those days that was not regarded as illegal, either as a violation of state or federal law. The view was that it was not covered by the Federal Communications Act. There were no decisions of courts saying that it was illegal when the taps were made by law enforcement officers in the investigation of crime. That is why we felt we had proper authority to do it.

We heard this conversation between Tony and Judge McKay which left us in no doubt about the situation.

With all this litigation, as you can see, it was getting very thick for Cornero. It was October, November; the season was all over. In August of '39 the war had started in Europe and the future of fancy things like the gambling ships was pretty questionable. Tony was a very sharp operator and already, even before his troubles with the gambling ships were over, had perceived the rise in value of ship bottoms that was bound to occur because of the outbreak of hostilities, and he was actually in the process of trying to buy up other ships, not for gambling purposes, but for wartime trade purposes. He wanted to get out of all this litigation.

Olney: He came to San Francisco with Jerry Giesler, who was his attorney at this time (in the criminal aspects at least), to see the attorney general and to see about getting the litigation cleared up. Tony wanted to come into the conference, and the attorney general told Giesler that under no circumstances could Cornero come into his office, that his conduct had been outrageous, and he'd be happy to talk to Giesler, but he wasn't going to have Tony around. So Tony cooled his heels in the reception room while Giesler explained that they were tired of the litigation and they wanted to discuss winding it all up.

At that time the attorney general told Giesler that he thought it was a wise thing for him to do, and told him that it would be bound to come out sooner or later if litigation continued that Tony had paid for Judge McKay's decision and we could prove it. He told him frankly what we had. Giesler, who had represented Tony at that preliminary hearing, said this was a great deflation to his ego, that he had thought he had won that case through his own legal ability. But he asked permission to consult with his client, which, of course, he was given, and they talked somewhere privately in the building for an hour or more, and Giesler came back and (making no reference to this earlier conversation) simply said they wanted to end it on whatever terms the attorney general thought were fair.

Well, we insisted that he consent to the entering of a permanent injunction against his operating any gambling ships then or in the future. We agreed to return the bank roll, I'm sure.

Now, I have in front of me some notes that were taken from newspaper clippings that I think are correct, that in the settlement Cornero agreed that all of the gaming equipment would be destroyed. He agreed to pay $13,200 in abatement and costs. That was to reimburse the attorney general's office for the expenses to which the office had been put. There was $4,200 in taxes that he agreed to pay, and a $7,500 compromise claim with the Public Utilities Commission for operating a public utility without a license.

The Rex was eventually sold. It was taken to Newport Beach and reconverted into a sea-going ship. I believe that the motor power was taken out and she was reconverted to a sailing ship. The Rex had been built as a sailing ship in England in 1886. Tony had rebuilt her with two four-hundred-foot decks for gambling at a cost of $250,000. At any rate, she went on a voyage, as I understand, loaded with grain, and eventually was torpedoed in the Indian Ocean, so she came to an honorable end.

The basis of the settlement was not to try to stick Tony for every penny he had. We tried to get back into the state treasury the amount of money that it had cost the state in the investigations and litigation, plus a moderate amount as fine. Now, these were

Olney: figured on a rough basis. We did not press the criminal charges, the bookmaking indictments and things of that kind, because Tony had always claimed that he was operating within the law, that the law didn't reach him out there, and we couldn't say that he was in bad faith on that, especially after he had a couple of lower court rulings in his favor.

Then there was the matter of the gambling equipment; that was still an issue. We insisted, and this was a hard thing for Tony to take, that the equipment still on board the Rex be forfeited, taken ashore and destroyed. They finally agreed to that. Now, it was in carrying that out that we had another little to-do with the ship itself.

That was agreed to by Giesler, and even by Tony, but Tony always claimed just to be an agent. We got wind of the fact that others, who were going to claim that they were the real owners and were not bound by this agreement, were going to try to move the Rex or at least take the equipment off the ship so that we couldn't get at it and destroy it. Oscar and George Griffin and I and others went out onto the ship and we stayed overnight on that ship that time; that's when I think I slept on the crap table. At any rate, that's when I got to know Tony's captain of the Rex. We all had dinner together and stayed around there on that ship overnight killing time until this equipment thing got settled.

Stein: What happened with the equipment eventually? Was it burned?

Olney: We took the equipment ashore. I believe that the slot machines were dumped into the ocean because they would sink. They were metal and would sink, and they wouldn't be any good if you dredged them up. But anything that would float or was wood we burned. It was taken ashore and put in a pile and kerosene poured on it and burned. We were careful to take photographs of all of it from each of the ships. We destroyed the equipment on the Tango the same way. The Texas equipment went down with the ship except for the stuff that was thrown off and destroyed in the initial raid.

The Mount Baker tried to haul up anchor and escape rather than surrender their equipment, and Oscar Jahnsen and others in one of the patrol boats which happened to be down there (I wasn't) saw the tug out there working with the ship, and they went out and went on board at the point of a gun and stopped them from doing it. We took that equipment off and after long litigation eventually destroyed that, too.

The reason for destroying this was that we had had experience with gambling houses on shore where raids were made and equipment was left with the owners on the promise that it wouldn't be used

Olney: again, that they would ship it into Nevada. But this stuff could always come back into our state again and claims would be made that it was with our connivance. So we didn't want this stuff coming back and it never did.

The Nootka Sound Convention

Stein: You mentioned when we were talking earlier, before the tape was turned on, that the question about the three-mile limit is still in the courts.

Olney: Well, this is a point that has to do with the limits of the state that was never raised in this litigation at all. It's never been raised in any litigation that I know of. It was one that I worked out myself, but it came simply through information that I had about the Nootka Sound controversy of 1790. It has never occurred to anybody (as far as I know) who has been concerned with our seaward boundary that the Nootka Sound controversy and compact has any bearing on this. The history of this is all in Bancroft's works.

Nootka Sound on the west side of Vancouver Island was a fur trading post. In the late 1780s, the English had succeeded in crossing Canada and the Hudson's Bay Company had put a trader or two in a little hut at Nootka Sound for trading purposes. This was the first settlement of any kind on the shores of the Pacific by anybody excepting the Spaniards.

The Spaniards had always claimed that they had exclusive ownership and jurisdiction of the Pacific Ocean because of Columbus's and Balboa's discoveries, confirmed by a papal bull of many years before in the 1500s, when the pope had divided the newly found areas between Spain on the one hand and Portugal on the other. The award to Spain included the whole Pacific coast of America and most of the Pacific Ocean, and Spain had always insisted on her exclusive rights.

The first intruders were the Russians, but they were all the way up in the Aleutian Islands. They alarmed the Spanish very much, and their intrusion was one of the reasons why the Spaniards sent out colonizing expeditions from Mexico into California. About 1789, they got wind of the fact that the English were on Nootka Sound, and they sent a naval expedition to Nootka. They proceeded to capture the English traders there, to reduce the trading post, to make prisoners of the traders, to take them to Acapulco, to send them to Spain, and they eventually were re-patriated to England.

Olney: But this caused a tremendous international hullabaloo. The English at the time were spoiling for an excuse to go to war with Spain and started beating the war drums, and they undoubtedly would have gone to war with Spain excepting that their land allies in such a war, on whom they were counting, were the French. They were looking to France for the foot soldiers, and they came to the realization that the French monarchy was so shaky that it couldn't be relied on in any kind of a war.

The result of all this was that there was a settlement at a conference between the Spanish and the English. In the resulting compact, Spain relinquished for the first time her claim to exclusive jurisdiction over the whole Pacific Ocean and recognized the right of the British to cruise there. She also recognized the right of the British to establish settlements on the Pacific coast in areas not occupied by the Spanish, i.e. north of Cape Mendocino. In return Great Britain agreed not to permit her subjects to engage in trade with the colonies of Spain contrary to Spanish law and also agreed that her subjects and ships would not approach the Spanish Pacific coast, i.e. the coast south of Cape Mendocino, closer than ten marine leagues. On this point the language of the compact is: "Art. 4. His Britannic majesty engages to take the most effectual measures to prevent the navigation and fishery of his subjects in the Pacific Ocean, or in the South Seas, from being made a pretext for illicit trade with the Spanish settlements; and with this view, it is moreover expressly stipulated, that British subjects shall not navigate, or carry on their fishery in the said seas, within the space of ten sea leagues from any part of the coasts already occupied by Spain," Nootka Sound Compact, signed by Great Britain and Spain, October 28, 1790. This established for Spain, as against Great Britain, a limit along the major part of the California coast of ten marine leagues or thirty miles. As against the rest of the world, Spain still claimed her ancient exclusive right to the whole ocean and its Pacific coast.

Mexico succeeded to the Spanish title to California and consistently claimed a limit of ten marine leagues offshore which no foreign ship could legally enter by virtue of Spain's ancient rights and the Nootka Sound Compact.

The United States succeeded to the Mexican title to California and by the Treaty of Guadalupe Hidalgo acquired all Mexico's jurisdiction or claims to jurisdiction over the land and the bordering seas.

This is a very abbreviated sketch of the historical steps which seemed to me to make it possible for the United States and the State of California to claim a seaward limit along the California coast of ten marine leagues, or thirty miles, based on Spain's ancient claims to jurisdiction over the Pacific as subsequently limited by the Nootka Sound Compact of 1790.

The California Supreme Court and the S.S. Rex

Olney: Going back to the gambling ships and Tony Cornero and the S.S. Rex, I'm not sure that I put in the factual data about the end of the case.

It was on November 20, 1939 that the California Supreme Court announced its decision in the Adams case that the Rex was inside the territorial limits of the state of California. In that case they held that Santa Monica Bay was a true bay, that the sea boundary of the state did not follow the line three miles offshore. On the contrary, it included all the bays, so that the sea boundary was three miles to the sea beyond a straight line going from Point Vincente to Point Dume.

The opinion was written by Mr. Justice Shenk of the state supreme court, and when I read it I saw that the language used in describing the limit was that the sea boundary of this state was a line three miles west of a line drawn between the two points.

That language bothered me because it, by implication, at least, foreclosed any later argument that the true boundary was even farther west. So I went down to see the justice in his chambers as soon as I read this, and asked him whether he or the court had had any intention of foreclosing an argument that under the Treaty of Guadalupe Hidalgo the line might go way around the outside of the islands, or whether under the theory of Spanish history and the Nootka Sound Convention it might extend even farther west than that.

He said no, they had had no intention at all of foreclosing the state from making any such argument as that, because it hadn't been presented and the argument hadn't been considered. So he modified his opinion by inserting the words "at least"--that the jurisdictional boundary was "at least" as far west as the line described in the opinion.

Following this decision, we realized that Cornero knew the case was lost and we were concerned about that gambling equipment, lest he try to remove it from the ship. So Oscar Jahnsen and others went on board the Rex. It wasn't any full-scale raid, because there were only a few people on it, the captain and just enough of a crew to keep the Rex at sea. I think they had something of an argument trying to get on board, but they could do it and did. I went out there, too, not at the time they went but later, and stayed on board overnight for some reason; I can't remember what. The equipment was taken off and eventually destroyed. It was right about that time that Cornero went to the attorney general's office and agreed to give up the fight, as I have previously related.

Stein: I think you mentioned after we turned the tape off last time that that conference between Warren and Cornero's attorney, Jerry Giesler, occurred just after the supreme court made the decision on the Adams case.

Olney: I think that's correct. I don't have anything that fixes the date of that conference, but that's my recollection, that it was right after the supreme court decision.

An Attempt to Revive the Gambling Ships

Olney: After the war there was another curious resumption on Tony's part of gambling ship activity. By this time Earl Warren was governor, of course. I had left the marine corps and was in private practice in San Francisco. Cornero with his usual flair for publicity announced that he was going to resume operating a gambling ship and he had outfitted one very much like the Rex, a similar size and everything else, but this one was named the S.S. Lux.

Now, the governor felt this was a direct challenge, almost a personal challenge, and he made publicly and privately many statements indicating that no matter what it took, he was going to see that that ship did not operate. But Tony wasn't daunted by any threats of that kind. Robert Kenny, the California attorney general, at the time was at the trials of the war criminals in Nuremberg. Fred Howser was district attorney of Los Angeles County and he had as his chief assistant a lawyer from Long Beach--Stratton was his name--a very able lawyer, indeed. Stratton had been counsel for the owners of the Tango at the time that I had raided it. He was the man who had come around in the motorboat to look us over when we were on board.

Howser claimed that he didn't know how to go about preventing Tony from putting his ship back in operation. Stratton called me up and asked me if I would accept an appointment as special assistant to Howser to try to keep the Lux from operating. I told him that it wasn't necessary at all for them to get me or anyone else as a special assistant, that any lawyer that he had in the district attorney's office could do it single-handed, because in the settlement which we had made with Cornero in 1939, he had consented to a permanent injunction against himself, not only against operating the Rex, but against operating any kind of a gambling ship at any time off the California coast. All that was needed was to issue a citation to come into court and show cause why he shouldn't be punished for contempt for violating the injunction if he went ahead. It didn't require any raid or any special counsel.

Olney: Well, nothing was done. No citation was issued. The ship was towed out to anchorage at sea and all the preparations were made to start operations again. Then, I understand, what occurred was that Governor Warren called up President Truman on the telephone and told him about this. Warren called the president's attention to the fact that the Lux was licensed by the United States as a sea-going vessel to engage in coast-wise trade, but that it was not equipped for voyages since it had no power of its own; it was only a barge. It was not engaged in coast-wide trade and couldn't engage in anything coast-wise. It was only a gambling barge.

President Truman assured him that appropriate action would be taken and taken at once. Shortly afterward the governor got a phone call from the United States Attorney General, who at that time was Tom Clark. The attorney general also assured the governor that action would be taken very promptly, which it was.

The United States Attorney in Southern California at that time was James Carter, and the Department of Justice instructed Carter to proceed at once to bring forfeiture proceedings against the Lux because it had departed from the purpose of its license to engage in coast-wise trade. The officers went out there and went on board and forfeited the ship and had it towed in, and that was the end of that operation.

Stein: One of the other things we talked about briefly last week was the question of offshore oil rights and the three-mile limit. Do you want to comment briefly on that?

Olney: Well, you expressed an interest in it. I looked at a file that I had. You know, there is uncertainty about state boundary matters in California. There are some very curious things. So I stuck papers relating to these uncertainties about boundaries in a file. I had filed there a decision of the Supreme Court which was the last one that had to do with those oil lands.

The case is entitled U.S. v. California and was decided May 17, 1965. The majority opinion was written by Mr. Justice Harlan and the dissent by Mr. Justice Black. Mr. Justice Black thought that under the Submerged Lands Act of 1953, California should be entitled to prove that all the waters between her offshore islands and the mainland were within her historic boundaries and hence were inland waters with ownership of the submerged lands in the state. The majority held the Submerged Lands Act foreclosed such a hearing and established ownership of the submerged lands in the United States.

Mr. Justice Black's opinion is interesting to me because he recites some of the evidence supporting California's claim of "historic boundaries" but fails to mention the extent of Spanish and Mexican title, as recognized and limited by the Nootka Sound Compact, a title to which the State of California succeeded.

IX WARTIME EXPERIENCE IN THE OFFICES OF THE DISTRICT ATTORNEY OF ALAMEDA COUNTY AND THE ATTORNEY GENERAL OF CALIFORNIA - EXCLUSION OF THE JAPANESE FROM CALIFORNIA

[Interview 7: January 31, 1972]*

Olney: The decade ending in 1939 with the outbreak of war in Europe was for me a period of gradually changing attitude toward military service. The commencement of open warfare in 1939 was followed by a series of rude surprises culminating with increasingly severe shocks in 1941 and 1942 as the United States suffered one military disaster after another.

During the 1930s no one in the office of the district attorney or the attorney general possessed any crystal ball that would foretell the future and during this period none of us had any greater awareness of the approach and imminence of war than people generally. In 1930 and '31 a number of the lawyers in the district attorney's office were supplementing their very meager salaries by summer service in the Officers' Training Camps or in the National Guard. Among these was Earl Warren himself as well as Dick Chamberlain, who at that time was

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*Editor's note: In reviewing the transcript of his interview about the Japanese-American relocation, Mr. Olney substituted this account, which offers more detail and insight than did the original tape recordings.

In a July 19-20, 1978 interview with writer Dori Dressander, Mr. Olney commented, "I hadn't looked at [this section on the Japanese-Americans] for months, and I was under the impression that it was in pretty bad shape. But when I read it over, I changed my mind. I think it's in very good shape, excepting it needs a concluding paragraph or two."

Olney: a deputy district attorney. I remember this particularly because when they went to the summer OTC camp, Dick held the higher military rank and Earl Warren, who was normally his boss, served as Dick's subordinate. This service was no indication of a belief that war was approaching, nor did it indicate any special fondness for the army. To the best of my belief, it was motivated entirely by the desire to earn the pay.

In my own case, I had a strong aversion for the military and was quite unwilling to serve for any amount of money. This aversion goes back to my college days when two years of training in the ROTC was compulsory at the University of California. For two years I was compelled to drill twice a week as a member of a machine gun squad, being required to help carry a part of the heavy tripod which served as a base for our water-cooled machine gun. My government issue uniform was heavy wool, olive drab in color, very scratchy, and with a high tight collar around the neck. It was unsightly and uncomfortable and contributed strongly, I am sure, to my hearty dislike for the army or the service in any form.

Pacifism now became widespread. We saw such anti-war moving pictures as The Big Parade, What Price Glory, and The Four Horsemen of the Apocalypse, and we read such books as Farewell to Arms and All Quiet on the Western Front, which were produced as moving pictures as well. It was at this time that a large number of students at Oxford University in England took an oath together that never under any circumstances would they take up arms in the defense of God or king. These were the same men who eventually were to fight for long years, with great gallantry and dogged determination, against what seemed to be almost hopeless odds, in defense of God, king, and all the rest of us. The Oxford oath got world-wide publicity and I found myself very much in sympathy with it. I did not actually take the Oxford oath, but I can recall only too well expounding to my wife, my friends, and my associates, my own determination never, never to go to war in defense of anything. I considered myself a convinced pacifist. Eric Sevareid, in his autobiography entitled Not So Wild A Dream, describes the psychology of the time very well as he experienced it at the University of Minnesota. It was the same with us in Berkeley both on and off the campus.

I cannot recall when my own ideas about participating in war began to change. It was so gradual that I was not aware that my thinking was becoming different. I was not particularly alarmed by Mussolini's seizure of power in Italy and the emergence of fascism as a doctrine and system of government. When I accompanied my father, mother, and sister to Italy in the summer of 1924, Mussolini was already Il Duce. We saw his black-shirted ruffians everywhere, but on the surface everything was quiet and peaceful and the trains did run on time. However, while we were there, the Italian newspapers were full of the kidnaping

Olney: and murder of the anti-fascist political leader Matteotti and the suspicion was being voiced in the press that he had been killed on order of the fascist party and probably on the order of Mussolini himself. We did not like the look, sound, or smell of this, but we did not see that it portended anything for us.

When Hitler came to power in January, 1933 and immediately began the rearmament of the German Reich, we all believed it showed a serious weakness and indecision on the part of France, England, and all the signatories to the Versailles Treaty. But I, at least, did not imagine that my country would ever be involved in the consequences.

Hitler's anti-Semitism was a great puzzle to me at first. I couldn't understand it. I knew that there were some people who did not like Jews, just as I knew that there were some who did not like Irish, and others who did not like Russians, or Negroes, and some who did not like the English, but I had never experienced or imagined the virulent nature of Nazi anti-Semitism. At first I was very skeptical; I thought the news reports from Germany must be grossly exaggerated and that a civilized people would never behave that way.

My own naivete on this subject led me into conduct towards some of my own friends which was almost unforgivable, although they did forgive me. Two of the lawyers in the district attorney's office were Jewish, Leonard Meltzer and Harry Miller. I worked on problems and tried cases with them and they were my associates and friends. In the telephone room of the office was a spindle used by the lawyers for leaving notes and messages for one another. When the reports of anti-Semitism began emerging from Germany, I took to decorating my notes for Harry and Leonard, which I would leave on the spindle, with penciled swastikas. That was supposed to be a joke.

Finally news came from Germany of the notorious Night of Glass when the Nazi stormtroopers broke the windows in every Jewish shop and desecrated every synagogue in the country. After reading about this, I went to see Leonard Meltzer in his office. I said to him, "Leonard, what is going on in Germany? Why do the Germans hate the Jews so much? Is the treatment of Jews really as bad in Germany as the papers say?" His answer was, "It is worse than the papers say. I cannot tell you why the Jews are so hated in Germany. I know nothing that would justify it. I only know that anti-Semitism has a long and bloody history in Europe and a long history in this country too."

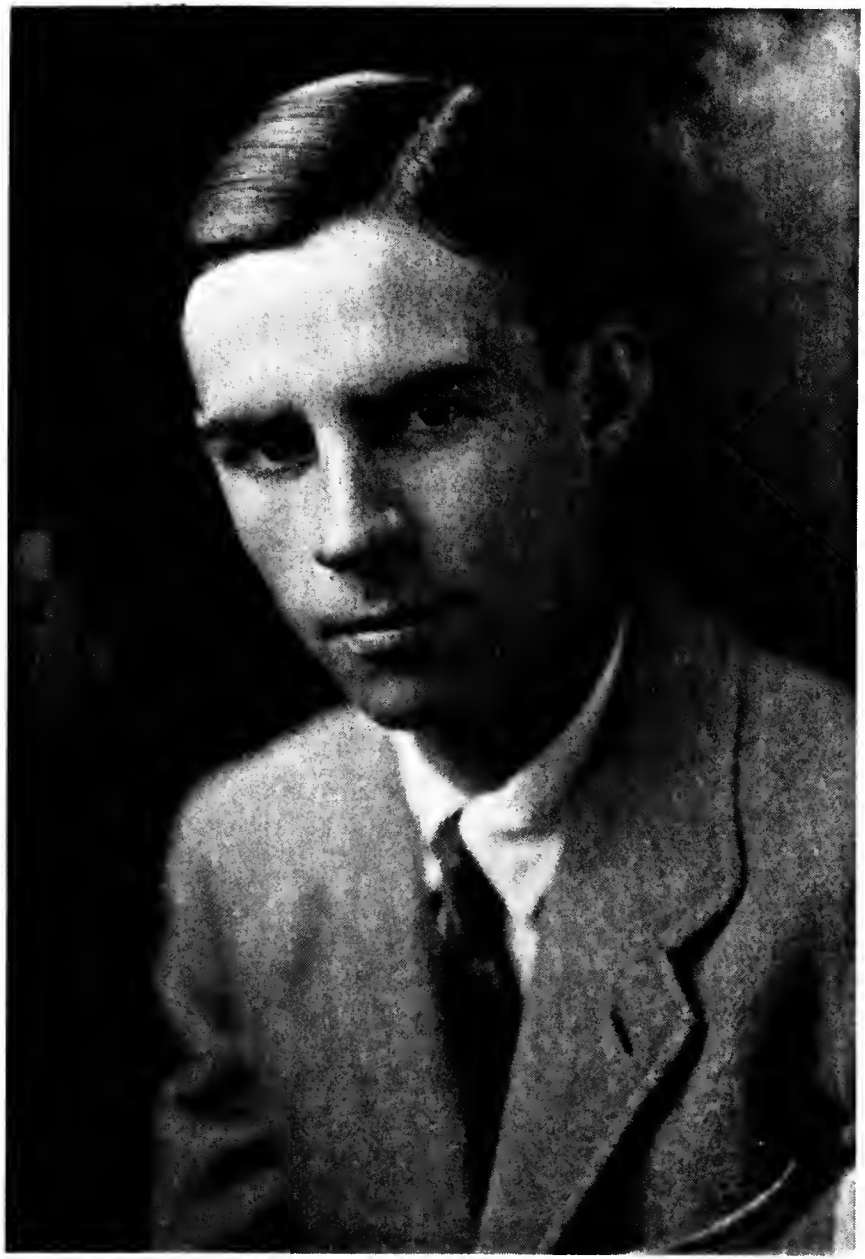
Olney: I apologized to Leonard and to Harry Miller for my swastikas and they forgave me because they knew how abysmally ignorant I was on the subject of the Nazis and anti-Semitism in general. There were, I suppose, in America millions of people like me. It was very hard for us to recognize on first sight the evil and the danger in anti-Semitism and fascism.

I think that one reason that many of us like myself were slow in recognizing the danger from the Nazis and the fascists was that for years such international apprehensions as we had had been focused on the communists. We were well aware of the nature of communist tyranny, their objective of world revolution, and their constant effort to impede and break down democratic governments. The Nazis and fascists were strongly anti-communist and this inclined us to the fatuous belief that there must be something good about them and led us to discount, to a certain extent, the poisonous nature of their doctrines and theories.

The 1930s brought many disturbing developments. In 1935 Mussolini made a totally unprovoked, unjustified attack on Abyssinia resulting in the military conquest of that country. The League of Nations was quite unable to invoke any effective sanctions against Italy. In 1936 Hitler suddenly reoccupied the Rhineland in flagrant and open violation of the Treaty of Versailles with a secretly organized, heavily armed army, and neither the League of Nations nor France nor Britain was able to take any effective action against him. In 1936 when civil war broke out in Spain, the Russians, Germans, and Italians all intervened with military advisers, armaments, and troops, and the struggle seemed to be a rehearsal for an international war in the future. In 1938 Hitler moved his armies into Austria and took over the country without resistance and a little later he gave Czechoslovakia the same treatment.

Probably the biggest surprise of the 1930s was on August 23, 1939 when the two great dictatorships, communist Russia and Nazi Germany, who had been at enmity for so long, suddenly signed a non-aggression pact. It was the signal for a common attack on Poland. Hitler attacked Poland on September 1st and Stalin a few days later. Poland was crushed and divided between the two dictators. Stalin, taking advantage of the situation, ordered the Red Army to overrun Estonia, Latvia, and Lithuania, all three quickly falling under communist dictatorship and Russian occupation. Tyranny was spreading worldwide in the 1930s under the names of communism, fascism, national socialism, and in the Orient under the strange name of the East Asia Co-Prosperity Sphere.

In the United States, organizations as well as individuals appeared during the 1930s in support of each one of these tyrannies. Of these groups, the communists were the oldest, the most numerous,



Warren Olney III about 25 years old

Lieutenant Colonel Warren Olney,
Marine Air Wing, 1944

Olney: the best organized, and probably the most active. Their policies and programs in the United States were taken from the Comintern and directed for the most part by Stalinist organizations in Moscow such as the OGPU.

The Italian fascists also had their organizations in the United States. They included such organizations as OARA in U.S., the Fascist League of North America, Combattenti U.S.A., Woman's Auxiliary, Lictor Federation, American Union of Fascists, the Fasci, the Fascist Society of Italians Abroad in U.S., the Dante Alighieri Society in U.S., the National United Italian Associations, Council of Marconi, Gruppo Giovanile, Mario Morgantini Circle, Dopolavoro, and the Italian Chamber of Commerce. These were all more or less concealed fascist propaganda agencies active in California and elsewhere.

Early in the 1930s the Nazis set up in the United States an organization called the Friends of New Germany which later on became the German-American Bund. This was a paramilitary organization addicted to uniforms, arm salutes, and the Nazi greeting of "Heil Hitler." It was organized and disciplined like an army. Its national Fuehrer was one Fritz Kuhn, who was succeeded in office by Wilhelm Kunze. The organization had a national headquarters in New York with regional headquarters in other parts of the country, each of which was known locally as the "Deutsches Haus." These headquarters were in imitation of the Brown House of Munich, which was Adolf Hitler's party headquarters. Eleven western states comprised the Far Western Division of the Bund, which was controlled by a Gauleiter, one Hermann Max Schwinn, from the Deutsches Haus in Los Angeles.

The German-American Bunds ran summer camps where they engaged in military drill and maneuvers. They were in effect an auxiliary to the National Socialist party and government of Germany. They glorified the leadership principle and one-man government and they spat upon the principles of democracy and ridiculed democratic leadership as weak and corrupt. In addition, the Nazis instituted a whole network of undercover operations designed to penetrate secretly the economic, social, and political institutions of the United States. The German-American Vocational League, a very old organization, is one whose name I can remember which was used for these purposes. Others were I.G. Farben, VPA Organizations Abroad, Hitler Youth in U.S.A., and Winter Help Abroad.

During the 1930s we also had a spate in California of home-grown organizations seeking the establishment of dictatorship in one form or another in our own country. This includes, of course, all of the communist organizations, since the establishment of a dictatorship

Olney: is a fundamental precept of Marxist-Leninism. But it also includes such organizations as the Ku Klux Klan, The United Men and Women of America, The National Patriots, The League to Save America First, The American Guards, The Silver Shirts, The National Copperheads of America, The Militant Christian Patriots, The American White Guards, and The Friends of Progress, to list only a few. These organizations were not merely engaged in supporting communism or fascism or Nazism abroad, but were also advocating either the establishment in the United States of the dictatorship of the proletariat or the leadership principles of Hitler and Mussolini.

The appearance in our own country of anti-democratic organizations espousing the principles of dictatorship and military organization was not a matter of great concern to most Americans. In their origin and in their principles these organizations were so alien to American history, tradition, and temperament that it seemed most unlikely to us that any of them could ever rise to power or even influence in the United States. Most of us thought their leadership stupid, their principles unacceptable, and their methods of secrecy and deception repulsive. Until his assassination many of us were much more concerned about the demagoguery of Huey Long and the virtual dictatorship he had established in Louisiana and which he obviously intended to spread over the whole country by capturing the White House through election.

Of course, the war in Europe from its beginnings in 1939 had been a matter of grave concern to people in the United States. Virtually all of us hoped and wished that American involvement could be avoided. But as time went on, the menace to the very esistence of the United States and other democratic countries posed by the dictatorships of Nazi Germany, fascist Italy, imperial Japan, and communist Russia became plainer and plainer. The possibility of American involvement became more probable as time went on. Somewhere along in this period I came to the realization that my own attitude towards the defense of the United States had changed. I knew that if our country was attacked or its existence seriously endangered, I would favor the country going to war and would be willing to join the armed forces myself if needed. As I thought of the 1920s and the early 1930s, it seemed to me that I must have been living in another world. I no longer considered myself a pacifist.

The situation facing the United States at the beginning of the year 1941 was gloomy indeed. In California we knew that if war came, we would be as much involved as any other part of the country. The dictatorships seemed to be successful almost everywhere. Nazi Germany and Soviet Russia acting together had destroyed and absorbed all of Poland. The Russians had also gobbled the independent countries of Latvia, Estonia, and Lithuania. In a lightning campaign of hardly more than six weeks, Hitler had destroyed the

Olney: French army, which for decades had been considered the most powerful military force in Europe. France was occupied and under the heel of Nazi conquerors. The Nazis had overrun Holland and Belgium and occupied Denmark and Norway. In Scandinavia, only Sweden was left with any independence and she, surrounded by Nazi occupied territory, was busily engaged in supplying iron ore and steel for the Nazi war machine.

Britain alone was holding out against the dictators. But she was in a desperate plight. The British army had gone down to defeat along with the French in the debacle on the Continent, and while an amazing number of British soldiers had been brought home in a spectacular evacuation from Dunkirk, all of their guns, ammunition, and other military equipment had been lost in the process. Excepting for the Royal Navy and the Royal Air Force, Britain at the beginning of 1941 was almost unarmed and her cities and industries were being subjected to a terrible bombardment from the air by the Nazi Luftwaffe. The very lifelines of the British Isles were being cut by the Nazi submarine warfare, which by the beginning of the year 1941 had been accelerated to a point where British resistance must collapse if ship sinkings continued at the rate achieved by the U-boats.

This desperate situation had caused President Roosevelt in his State of the Union message to Congress in January, 1941 to ask for "lend lease" legislation to permit the transfer of American destroyers to Britain for use in her defense against German submarines. The legislation was passed, but not without a fierce battle in the Congress. The president also asked Congress for greatly increased new appropriations to manufacture additional munitions and war supplies to be turned over to those nations engaged in actual war with the aggressor powers. America would be, he declared, the "arsenal of democracy". These actions by our government were sufficient to have justified a declaration of war by the Nazis. They certainly made our eventual involvement in the war in Europe ever more probable.

The Axis Powers, especially the Nazis, had developed subversion, espionage, and sabotage into an effective adjunct to warfare. This became the subject of examination and study in the attorney general's office during the last part of 1940 and all of 1941. The Germans had the assistance of an organized party of traitors in nearly every country they attacked. In Austria they had Seyss-Inquart and his Austrian Nazi party. In Czechoslovakia they had Konrad Henlein and the Sudeten German party. In Norway it was Vidkun Quisling and his Norwegian National Union. And in France there were a number of political parties advocating fascism and numerous traitors, the outstanding one being Pierre Laval, who became second in importance in

Olney: the Vichy regime which occupied France under Nazi instruction and domination. These traitors and their followers had developed deceit, subversion, espionage, and sabotage to a high point. This was recognized as an innovation in warfare deserving of study and comprehension for an adequate American civilian defense. Our inquiries and studies of this matter did not involve, however, any investigation of persons, organizations, or movements because that was being done adequately by the Federal Bureau of Investigation and any parallel effort on our part might well interfere with their work.

Of course, the national government was fully alert to the growing danger of our involvement in war. The administration sponsored a plan for civilian defense to be implemented and carried out by state and local government throughout the nation. The Federal Civilian Defense Program was developed with the war in Europe very much in mind. It was designed to meet the problems of a civilian population undergoing aerial and artillery bombardment and attacks by tanks and other ground forces.

It was against the background of these events that Attorney General Earl Warren began the organization of the law enforcement officers of the state to meet the new and additional responsibilities which would fall upon them in the event of our becoming involved in war. A quite comprehensive study was made of the problems that had arisen in France and other countries from attacking armies and especially the problem of the civilian government in Britain arising from the aerial bombardment of the cities. A year or two earlier, because of the need for more effective law enforcement against organized crime, the attorney general had divided the state into several regions in each of which there had been established an organization of the chiefs of police, the sheriffs, and the district attorneys. Each region held regularly scheduled meetings and the attorney general made a practice of attending them in person. Information was exchanged, ideas for better crime prevention were discussed, and enforcement projects were planned, developed, and reported. The fire chiefs were added to these regional organizations following the incendiary bombings of British cities because everyone realized the unusual danger from fire in California with its long, dry seasons and inflammable cities and forests. These regional organizations had not been created for any wartime purpose, but they could and did function very effectively as an organization for civil defense when the war came.

During the late 1930s and 1940 and '41, the danger to the United States and all the western democracies from the military power and success of the Nazis had become so overwhelming and so immediate that it completely overshadowed in our minds any possible danger

Olney: from Japan. Japan had been our ally in World War I, although her contribution had been only to seize the German-held islands in the Pacific. It was mildly disturbing to us to learn that when these same islands were put under Japanese jurisdiction by a mandate of the League of Nations, Japan immediately lowered a curtain of secrecy with strong indications coming from beneath the curtain that the islands were being heavily fortified. It was disturbing too to read about the ever growing dominance of the military over the civilian government in Japan. Civilian ministers were being assassinated with increasing frequency by organizations of military zealots. One such group actually tried to kidnap the emperor because he favored the more moderate elements in the Japanese government.

It became evident that in foreign affairs the Japanese military had become uncontrollable. They provoked incidents which involved the country in large-scale military operations without the consent of or even against the orders of the civilian government. In 1931 the Japanese army without any justification or authorization from the Japanese government occupied the city of Mukden, the capital of Manchuria, and also included in their occupation the whole zone of the Manchurian railway. In 1932 the Japanese army secured control of all of Manchuria by the creation of the puppet state of Manchukuo. That same year the Japanese army also landed in Shanghai and here for the first time they encountered heavy resistance from the Chinese. At the request of the Chinese government, the League of Nations appointed a commission to investigate on the spot Japanese activities in Manchuria. The commission was an able one and their inquiries were thorough. In due course they published their report, which declared that Manchukuo was an artificial creation of the Japanese General Staff and that the wishes of the local population had played no part in the formation of this puppet state. The League applied no sanctions, however, so the report had little effect. Indeed, in 1933, in defiance of the League of Nations, the Japanese army occupied and annexed the Chinese province of Jehol. These developments were accompanied by many brutal acts of arrogance by the Japanese military, not only against the Chinese, but also against all westerners and non-Japanese people. This course of conduct naturally aroused strong resentment in the United States and elsewhere. On December 12, 1937 Japanese naval aviators deliberately attacked and sank the U.S. gunboat Panay on the Yangtze River and fired on the British gunboat Ladybird and then seized it. But these actions were immediately disavowed by the Japanese government and apologies were made.

The Japanese militarists finally became so provocative that in July of 1940 the United States government placed an embargo on strategic materials and aviation fuel which was being sent to Japan.

Olney: On September 27, 1940 the Japanese, notwithstanding, signed in Berlin the Tri-Partite Pact with Hitler and Mussolini. To the British and Americans this was further evidence that Japan was no better than Nazi Germany and fascist Italy and that the three "gangster nations" had joined forces to conquer the world. The United States retaliated immediately by adding scrap metal of every kind to the list of embargoes which had been announced in July. Even with all these hostile developments it certainly did not occur to me, and as far as I am aware to anyone else whom I knew, that the United States was in any danger of a declaration of war or of a military attack on our territory by the Japanese.

On June 22, 1941 Hitler launched his sudden and unexpected attack upon Russia and the communist dictator, Stalin, his former associate in the mutual security pact between the Nazis and the communists which had triggered the war in 1939. During the first few hours the Luftwaffe wiped out sixty-six Soviet air fields and destroyed twelve hundred planes while ground forces swept forward capturing almost two thousand big guns, three thousand tanks, and two thousand truck-loads of ammunition. On July 24, while Hitler was sweeping into Russia, encircling and capturing large communist armies, the Japanese forced an agreement from the Vichy French to allow the entry of Japanese troops into Indochina. The American government reacted immediately and strongly. On the night of July 26, President Roosevelt ordered all Japanese assets in America frozen and Britain and the Netherlands soon followed suit. As a consequence, all trade between Japan and the United States stopped. But the fact that the United States had been Japan's major source of oil imports left Japan in an untenable situation. It was described in the New York Times as "the most drastic blow short of war."

During the following weeks the Japanese sent a delegation to Washington to negotiate for a lifting of the embargo and ostensibly to arrive at a mutual understanding that would lead to the preservation of peace. These negotiations were adequately reported in the local press, and while they were recognized as being crucial, an actual military attack by Japan upon the United States seemed a very remote possibility indeed. Our general state of mind appears quite clearly from the items in the public press during the week before Pearl Harbor. I have recently been through the issues of the San Francisco Chronicle and have listed characteristic headlines and items as follows:

December 1, 1941:

1. Secession movement in the Siskiyous - meeting at Cave Junction, Oregon - new state to be formed from Southern Oregon and Northern California counties.

2. USC and Duke will play in the Rose Bowl on New Year's.

Olney:

3. Big battle on Moscow and Rostov fronts.

4. British mop up in Tobruk - Rommel masses tanks for last struggle.

5. Hull and Halafax exchange views on Japanese crisis.

6. Japan's cabinet met for short session at home of Prime Minister Tojo.

7 Russia's Ambassador Litvinov arrives at Manila.

8. 7th Division United States Army may soon be motorized.

9. Waste paper for Defense Week starts.

10. Casualty rate at United States war games.

11. Claudette Colbert in Skylark will start tomorrow.

12. Contributions by community leaders Adrien J. Falk, R.B. Hale, J. Paul St. Sure, R.H. Shainwald, John S. Watson, on the question of: What abuses of its rights or power by organized lator are of particular concern to you, and how would you remedy them?

13. Carl Sandburg - analysis and plea for U.S. unity to combat espionage.

14. Tanforan opens full week of charity racing tomorrow.

December 2, 1941:

1. Italians in headlong flight on Africa front.

2. Nazis say they are almost within sight of Moscow.

3. Japan reopens U.S. talks - continues to rush to arms.

4. Lawmakers given a "ride" by Mankind United and Arthur S. Bell.

5. Litvinov takes off from Manila.

Olney:

6. Wiedemann gets bust in Nanking. Datelined Shanghai, December 1st: "The arrival in Nanking today of Captain Fritz Wiedemann, former Consul General in San Francisco and now Consul General in Tientsin, marked intensification of Nazi diplomatic activity in Japanese occupied China."

7. Photo of H.M.S. Arkroyal sinking in the Mediterranean on November 14th.

8. War tension in the Pacific.

9. Selective service - delinquents listed from draft boards in San Francisco numbered 76, 86, and 97.

10. 250 women enroll for U.S. defense.

11. Puget Sound - San Francisco troops take to boats, storm foe.

12. America First eyes 42 votes.

13. British sink Nazi raider in South Atlantic.

14. Admiral Tom Phillips appointed to command British fleet in eastern waters.

15. United Airlines advertises special flights to the Rose Bowl.

16. Civilian defense - city needs 22,000 more registrants. 10,000 air raid wardens and 12,000 auxiliary firemen are needed. Enlistments are running only about 100 per day.

December 3, 1941:

1. Mayor Gable, 49th state leader and mayor of Port Orford, Oregon, dies.

2. Assembly committee holds hearing on parole of Earl King, Ernest Ramsey, and Frank Conner (the ship murderers) - Stevens, a member of the Board of Parole, says, "It was greased." Earl Warren is to testify tomorrow.

3. Soviet says victory at Rostov is complete.

4. Why troops in Indochina? FDR asks Tokyo.

Olney:

5. Nazis break out of British encirclement in the desert.

6. Huge plot to assassinate Duce foiled as reported from Rome.

7. Two battleships, the new 35,000-ton Prince of Wales, one of the most powerful battleships in the world, and an unidentified capital ship, together with a large flotilla of other ships, arrived in Singapore.

8. War alert - the entire Far East is on a war footing - the next move is up to Japan.

9. Litvinov will arrive in San Francisco on Saturday.

10. America First plans for the 1942 elections.

11. Civilian defense - here is a chance to become a fireman.

12. Charity day at Tanforan tomorrow.

13. Smitty Allen, the celebrated driver of dog teams in Alaska, has died.

December 4, 1941:

1. House passes drastic anti-strike bill.

2. Warren calls the three paroles of the ship murderers a "blow to the law" in his testimony before the committee.

3. Litvinov lands at Midway Island.

4. Hull - Japan talks have led nowhere.

5. U.S. arms Turkey.

6. Nazis reported fleeing Marinpol in disorder.

7. Libya battle is in a lull - desert armies reorganize - Nazis have the edge.

8. Dr. Alexis Carrel will do research for Vichy.

Olney:

9. Willkie will tour Australia.

10. Aircraft report - that 50,000 a year goal is very near accomplishment.

11. Inefficiency and graft block the Burma Road, but a lot of stuff gets to Chunking.

12. Archbishop Curly - "Stalin may yet make war on the U.S."

13. Heavy rains boost the season total.

December 5, 1941:

1. German rout in South Russia continues - forces withdrawn from Crimea to stem Russian tide - Moscow defenders take initiative.

2. Threat to Turkey. Nazi troops reported massing on Bulgarian border.

3. State of Jefferson inaugurates a governor (Judge John C. Childs of Crescent City) in Yreka.

4. "X - 2" tells of four fascist schools in San Francisco - Sylvester Andriano, former San Francisco supervisor, is named.

5. Litvinov due to arrive in San Francisco tomorrow.

6. The draft - 52 in the Bay area are delinquent.

December 6, 1941:

1. Russians break new Nazi line, but Moscow again threatened.

2. Britain declares war on the Finns.

3. British smash Nazi attacks on their line in Libya.

4. Duce spreads fascism here hearing told - two leaders of Italian American colony give details to Assembly Un-American Activities Committee.

Olney:

5. Pacific crisis - Japan answers FDR - "Troops in Indochina don't exceed treaty limit." Tokyo's answer soft and meaningless. "At Tokyo the new Japanese press spokesman continued to insist that everything could be all right if America and others would only 'understand'. He said, 'We are amazed to find a big misunderstanding on the part of the United States government regarding our policy in the Far East. The whole statement seems to allege that we are following a policy of force and conquest in establishing a military despotism. They (Washington) have misunderstood our fundamental policy - the negotiations will continue in an effort to correct this misunderstanding. I do not think that the United States is delaying an agreement purposely. We have made clear that we have no territorial ambitions.'" The new spokesman, Tomokazu Hori, former Consul General at Los Angeles, has evidently been installed to carry out the speak softly policy till things get a little clearer in Russia and the Near East.

6. House votes $8 billion for defense.

7. Serbs claim guerrilla successes.

8. Parisians defy Nazis again. Two are attacked.

9. Probe of ban on soldiers in local hotels.

10. Induction speed-up is expected.

11. Trenton, New Jersey. Bundists are set free - New Jersey Supreme Court reversed convictions of Wilhelm Kunze, leader of the German-American Bund, and others, for inciting hatred of Jews at Bund meetings, etc.

December 7, 1941, a Sunday, was the day that changed all this. In the morning, as usual, I read my copy of the San Francisco Chronicle. It contained a section called "This World." Its cover was a picture of Admiral Phillips in Singapore. The article about him inside described him as "all brains." It also summarized the existing situation in the Pacific perfectly in the following language:

> "For the first time in a century, not a British merchantman lay in Shanghai's harbor last week. All ships flying the Red Duster had scurried south from Shanghai's

Olney: malodorous, muddy Whangpoo River to Hong Kong or Manila. The last Dutch ship had left quietly one night, and U.S. merchantmen had not come in for weeks.

Shanghai's great garish International Settlement on the Whangpoo had been abandoned to the Japanese troops who pressed on all sides. In case of war, its loss would be inevitable and its defense suicidal. The last 700 U.S. Marines filed aboard a transport leaving behind on the jetty a tearful mob of Russian cabaret girls.

Through Eastern Asia men took to arms and ships took to safe harbor and throughout the world lay the intense expectancy of war - Japan against the United States, Britain, the Dutch East Indies, and China.

In Singapore thousands of volunteers were mobilized into active service. In Rangoon the docks were crowded with newly landed Indian troops, and the Burmese roads were lined with trucks carrying them north to the Indo-china frontier, where the Japanese crouched to spring.

In the Dutch East Indies the militiamen were called up and the Air Force mobilized. In Cavite and Olangapo U.S. Naval Stations in the Philippines total blackouts began. All leaves from the garrison of Corregidor Island, defending Manila Bay, were cancelled. In Hong Kong defenses were in 'an advanced state of readiness' and planes roared over in mock raids.

Whether or not real raids would come depended on a long drawn-out 'conversation' in Washington, D.C. Japan's Ambassador Kichisaburo Nomura, alone for nine-teen months and with Special Envoy Saburo Kurusu for three weeks, had talked often with America's Secretary of State Cordel Hull.

Men were mobilized and ships had fled last week because the climax had come. The United States had presented a document of 'fundamental American policies' on which any settlement must be based.

At week's end the Japanese had yet to reply, but official news agency Domei stormed, 'It is utterly impossible for Japan to accept. The American document cannot serve as the basis for further negotiations.' In Washington Kurusu said bravely, 'I do not give up that easily.'"

Olney: This was disturbing reading on that quiet Sunday morning, but it did not seem to me to require any alteration in our family plans for the day. Our three children were fourteen, twelve, and four at the time, and Elizabeth put up a lunch and we all went to Golden Gate Park for a picnic. We took along some extra bread crusts and had our lunch at the edge of one of the lakes while the children fed the bread crusts to the ducks. Then we went to the part of the park called the Fleishhacker Zoo where there were swings, slides, and other amusements for children. Our visit was capped off about three o'clock or four o'clock in the afternoon by a ride on the miniature steam train. When we got on the train, a Japanese couple with their little child were on the seat in front of us. They were having as good a time as we were. It took the little train only a few minutes to make its circular trip, but during that time fresh newspapers had been inserted on the racks. Even before we stepped off the car we read the huge headline, "JAPS BOMB PEARL HARBOR." The Japanese couple in front of us said not a word. They just looked at each other with the most horrified, woeful expressions I've ever seen. They knew, as we did, that the world would never be the same again for any of us.

These first reports were only that Pearl Harbor had been bombed. There was nothing to indicate the extent of the damage. We supposed that the damage must have been slight since the Pacific fleet certainly had the capability of protecting itself. It never occurred to us that the fleet could have been caught by surprise.

Our family went home from Golden Gate Park and, of course, I immediately telephoned the attorney general's office, but there was nobody there. Elizabeth and I then put in a brief appearance at a cocktail party and returned home to listen to the radio until late into the night. There was little on the radio excepting talk about the attack on Hawaii and a great deal of speculation as to where the attacking Japanese planes could have come from. Most of the commentators thought the planes had come from the Japanese air base on Kwajalein Island in the Marshalls and only a few guessed the attack might have come from a fleet of aircraft carriers.

I reported at my office in the attorney general's office early on Monday morning and immediately stepped into a flurry of activity so great and so confusing that I cannot now remember it all and have particular difficulty recalling the sequence of events. This was a strange period to live through. All our coastal cities were blacked out at night. This meant all houses and buildings without any light visible from the outside and traffic without any headlights excepting only a small allowable slit with insufficient light to illuminate the roadway but with enough so that one could be seen by an approaching vehicle. One of my first duties was working with William Sweigert, Earl Warren's chief assistant attorney general, and "Bud"

Olney: Carpenter, assistant counsel for the League of California Cities, in drafting a blackout ordinance for adoption by the coastal cities and counties in order to enforce the blackout.

The army took immediate precautions against a possible Japanese landing. A system of air watchers was organized covering every mile of the Pacific coast. These were civilian volunteers organized under the direction of Army Air Corps officers. They were trained in the recognition of aircraft both "ours" and "theirs." They were supplied with field glasses and telephones and reported to a number of information centers every airplane they saw in the air night or day. All flying along the coast was forbidden except for military aircraft and scheduled airlines. The airlines were required to fly with the windows obscured with shutters or curtains, so that the passengers could not see out and so at night the plane from the outside would show nothing excepting its running lights. Huge search lights were installed around points considered to be of strategic importance and they searched out and illuminated every aircraft that came near.

At Mare Island and Vallejo a whole fleet of barrage balloons were installed. These balloons were unmanned and were on cables and could be raised or lowered as desired. Their purpose was to force attacking Japanese bombers to fly high enough so that they could be hit with anti-aircraft fire. At the time of the Pearl Harbor attack, all of the major airplane factories in the United States were in the Pacific coast areas of Seattle, Santa Monica, and San Diego. Their importance was beyond exaggeration. A tremendous effort was made to camouflage them. These factories were covered with huge nettings, and on the nettings there were erected dummy houses and other buildings, streets, trees, lamp posts, and everything else necessary to make it appear from the air like a suburban residential area. These were intended to deceive Japanese aerial reconnaissance and attack. Believing in the possibility of incendiary air raids, a system of civilian defense was organized with an air raid warden for every block in every coastal town and city, and all householders were asked to whitewash their attics and keep fire extinguishers in their houses, as such measures had been found to be helpful when London was bombed.

Late in February, 1942 in Los Angeles there was an air raid alert. One night the radar spotted an unidentified object and some trigger-happy fellow let fly with an anti-aircraft gun. Other anti-aircraft batteries followed suit and there was a very considerable banging and quite a rain of metal from the sky, but nothing was hit. Of course, it alarmed everybody. We had a similar incident in San Francisco. It was a rather foggy night and the radar spotted something that could not be identified. The sirens blew and the entire city was blacked out. It happened that Elizabeth and I and two other couples were going to the theater that night and we were

Olney: having dinner at Solari's on Post Street next to the St. Francis Hotel when the air raid alarm was sounded. The restaurant was, of course, already equipped with blackout blinds, so the lights were kept on at the bar and they served dinner. I left the party because I felt that during an emergency of this kind I ought to be at the attorney general's office in the State Building. So I walked in the pitch dark from Solari's on Post Street to the State Building on McAllister. It was a unique experience. There was not one little pinpoint of light and there were no cars moving. It was almost like a dead city. I could hear people talking but no other sound. When I got to the State Building, I couldn't find any elevator working, so I walked up to the sixth floor where our offices were. Then I discovered that while this air raid was supposed to be going on, Oscar Jahnsen, the attorney general's chief investigator, and a couple of our secretaries had gotten stuck in the elevator between floors. They could hear the sirens and knew that an air raid was supposed to be in progress. By the time we got that elevator working they really had claustrophobia.

Now, these air scares may sound amusing in retrospect, but they were certainly not funny at the time. It is really not fair to laugh at the military because they saw a blip on the radar and sounded the alarm. The radar is anything but foolproof. It will pick up a flight of ducks or even certain kinds of clouds. There can be no doubt that in both these cases some kind of unidentified object showed up on the radar screen. We now know that whatever it was, it was not a Japanese plane. However, it might have been, and in my opinion it was proper to sound the alarm lest it be too late. One need only recall the blips that showed up on the radar screen in Hawaii that were thought to be birds or perhaps some arriving American B-17s, when it turned out that it was an immense Japanese air armada heading directly for Pearl Harbor.

Following Pearl Harbor, the federal authorities acted promptly to assure the country's internal security. On December 7 and 8, 1941, President Roosevelt issued proclamations declaring all nationals of the nations with which we were at war to be enemy aliens. This followed the precedent of World War I and was based upon the same statutory enactment which supported the proclamations of President Woodrow Wilson in this regard. By executive action, certain restrictive measures were applied to all enemy aliens without regard to their particular nationality. The Attorney General of the United States, through the Department of Justice, including the FBI, was charged with the administration and enforcement of these proclamations. When necessary fully to implement his action, the attorney general was assigned the responsibility of issuing administrative regulations. He also had the authority to declare prohibited zones to which enemy aliens were to be denied admittance

Olney: or from which they were to be excluded in any case where the national security required. The possession of certain articles (such as radio transmitters, cameras, firearms, etc.) was declared by the proclamations to be unlawful and these articles were described as contraband. The attorney general had authority to intern some enemy aliens as might be regarded as dangerous to the national security if permitted to remain at large.

On the night of December 7, 1941 and during the days that followed, certain enemy aliens (German, Italian, and some Japanese) were apprehended and held in detention pending the determination as to whether they should be interned. These arrests were based on lists of suspects previously compiled by the Federal Bureau of Investigation, the Office of Naval Intelligence, and the army's intelligence service, known as G-2. During the initial stages of this action, some two thousand persons were arrested. Some Japanese aliens were included in this number, but most were Germans and Italians. However, no steps were taken by the attorney general to provide for the collection of contraband and no prohibited zones were proclaimed.

Towards the end of December, 1941, General John L. DeWitt, Commanding General, Western Defense Command, which included the areas of Washington, Oregon, California, Montana, Idaho, Nevada, Utah, and Arizona, and whose headquarters were at the San Francisco Presidio, requested the attorney general to enforce the contraband prohibitions and to declare prohibited zones surrounding vital installations along the coast. General DeWitt's conclusion that this was a military necessity was based in part upon the interception of unauthorized radio communications identified as emanating from certain areas along the coast during the weeks following December 7th when nearly every ship leaving a west coast port was attacked by an enemy submarine, thus seeming to evidence conclusively the existence of hostile shore-to-submarine communication.

General DeWitt's request led to a series of conferences in Washington and San Francisco between representatives of the War and Justice Departments. As a result, it was agreed that searches without warrants of the premises occupied by enemy aliens for the presence of contraband would be authorized. The Department of Justice agreed to declare prohibited zones surrounding vital installations and to provide for the exclusion from these zones of enemy aliens. The extent and location of these zones were to be determined on the basis of recommendations submitted by the commanding general. Thereupon, General DeWitt submitted recommendations calling for the establishment of ninety-nine prohibited zones in the state of California and two restricted zones. These were followed by similar recommendations pertaining to Arizona, Oregon, and Washington. The prohibited zones in California surrounded various points along the sea coast, installations in the San Francisco

Olney: Bay Area, particularly along the waterfront, and in Los Angeles and San Diego. The recommendations with respect to California were received by the attorney general on January 25, 1942. The attorney general, in a series of press releases, designated as prohibited zones the ninety-nine areas recommended by General DeWitt.

Some evacuation was thus necessitated, but most of the enemy aliens affected were able to take up residence in or near places adjacent to the prohibited zone. For example, a large prohibited zone embraced the San Francisco waterfront. Enemy aliens living in this section were required only to move elsewhere in San Francisco. Only aliens of enemy nationality (German, Italian, and Japanese) were affected and they were all affected equally. No persons of Japanese ancestry born in the United States were required to move under this program.

Some problems were presented which involved individual assistance and the Justice Department arranged for the Federal Security Agency to lend assistance in unusually needy cases. Tom C. Clark, then the west coast representative of the Antitrust Division of the Justice Department and later Associate Justice of the United States Supreme Court, supervised these activities and coordinated all the activities of the Justice Department during this phase of alien enemy control. It was in this capacity that I first met him.

The proclamations with respect to the possession of contraband by enemy aliens and the declaration of zones prohibited to enemy aliens, which were the maximum measures authorized by peace-time and World War I laws, proved to be totally inadequate for meeting the situation on the Pacific coast. Notwithstanding these measures, there were many evidences of successful communication of information to the enemy concerning our military installations, three of which are illustrative. On February 22, 1942, the shore battery defending Goleta had been withdrawn to be replaced by different guns. On February 23, a Japanese submarine shelled Goleta without opposition in an effort to destroy the oil installation there. At the time of the shelling, this was the only point along the coast where an enemy submarine could have surfaced and fired on an important installation without coming within the range of coast defense guns.

This attack on the American mainland was an enormous shock to our civil population. It was the first time since the War of 1812 that an enemy military force had inflicted damage on the continental United States. It was the first time in all history that we'd had an enemy ship on the Pacific coast. A little after this incident, a submarine-based aircraft dropped incendiary bombs near Brookings, Oregon in an effort to start forest fires. This, according to the army, was in the only section of the Pacific coast which could have been approached by enemy aircraft without detection by aircraft warning devices. At

Olney: Astoria, Oregon a Japanese submarine surfaced and shelled our shore batteries there from the only position at which a surfaced submarine could have approached the coast line close enough to shell a part of the coast defenses without being in range of the coastal batteries, thus displaying a precise knowledge of the position and range of the coast defense guns at Astoria. Of course, there was also the Pearl Harbor experience, which involved a most detailed and accurate knowledge by the Japanese naval aviators of American patrols, naval dispositions, and so forth on the morning of December 7, 1941. (We know now that part of this information was supplied from Honolulu by Takeo Yoshikawa, a spy and an ensign in the Japanese naval intelligence.)

The enforcement of the contraband proclamations was impeded by the fact that many Japanese aliens resided in premises owned by American born persons of Japanese descent. The existing law permitted spot raids without a warrant only on those premises occupied exclusively by aliens. Mixed-occupancy premises or those occupied solely by American citizens could be searched for contraband only by warrant based upon probable cause. The attorney general's proclamations of contraband and the declaration of restricted zones left unanswered a host of important, practical questions, some of which were listed by the army as follows:

(a) "A fix is established on a radio transmitter. Transmission of unlawful radio signals is established, but the location is determined only within a defined area such as a city block. Manifestly an accurate description of the premises, the operator's name, and a description of equipment cannot be furnished. What action can be taken?"

(b) "The unlawful transmission of radio signals has been established through interception. A series of fixes determines the location of the transmitter within a general area, such as Monterey County. Further, there is convincing evidence of shore-to-enemy submarine communication. What action can be taken to isolate the area and conduct an effective search to locate the mobile unit?"

(c) "An enemy alien is resident with a citizen, perhaps a relative such as a wife. While it cannot be proven that he owns or actually controls contraband, it can be proven that he has unlimited access to such. The situation is as potentially dangerous as if it could be proven that he actually owned or controlled the contraband. What action can be taken?"

Olney: (d) "The dual citizenship problem is perplexing. Self-serving declarations of an election are of little meaning, particularly where conduct is incompatible with the so-called election. What methods exist or what steps are in contemplation looking toward the control of 1) dual citizens, 2) disloyal, subversive citizens (where there has been no overt act detected)?"

General DeWitt was putting these and other difficult questions to the attorney general as early as Jaunary 5, 1942. There was no answer to them under the then existing law and authority. Of course, at this time the War and Navy Departments and the Department of Justice were doing everything they possibly could to identify and take into custody all disloyal or subversive persons whether aliens or not. This was an important and necessary program, but it was no answer to the practical problems of defense that were plaguing General DeWitt.

On February 19, 1942, President Roosevelt issued Executive Order no. 9066. It provided after its recitals:

"Now, therefore, by virtue of the authority vested in me as President of the United States, and Commander in Chief of the Army and Navy, I hereby authorize and direct the Secretary of War, and the military commanders whom he may from time to time designate, whenever he or any designated commander deems such action necessary or desirable, to prescribe military areas in such places and of such extent as he or the appropriate military commander may determine, from which any or all persons may be excluded, and with respect to which, the right of any person to enter, remain in, or leave shall be subject to whatever restrictions the Secretary of War or the appropriate military commander may impose in his discretion...Franklin D. Roosevelt, The White House, February 19, 1942"

Executive Order no. 9066 was issued by the Commander in Chief as a military order made necessary by the military situation. It was designed and intended to be used by military commanders in defense of the Pacific coast. It was not issued in response to any civilian clamor or importunities.

In the turmoil of the days and weeks immediately following December 7th, there was great confusion in the minds of us civilians as to exactly what had happened at Pearl Harbor and particularly as to the extent of the damage inflicted on our Pacific fleet. For military reasons the extent of the damage was not announced. Many of us supposed the damage to have been rather light, as it never occurred to us, with all the tension and forebodings of the times, that the United States Navy could have been caught with its guard down and unprepared for an attack.

Olney: As time went by, however, and we in the attorney general's office came into more and more frequent contact with both the army and the navy, we came gradually to realize the amazing extent of the damage which the Japanese had inflicted in only a few hours. We came to realize that Japanese airplanes flown from carriers somewhere in the Pacific (we knew not where) had in the space of only four or five hours blown up the battleship Arizona, capsized the Oklahoma, sunk the West Virginia and the California at their moorings, so heavily damaged the four additional battleships that completed the Pacific fleet that they could not leave harbor without repairs, killed over two thousand Americans and wounded two thousand more. We had to face the fact, along with the military, that the fleet on which the United States had expected to rely for our defense in case of war in the Pacific was suddenly at the bottom of the sea and that mastery of the Pacific Ocean had passed into the hands of the Japanese.

But Pearl Harbor was only the beginning of defeat. Disaster succeeded disaster with stunning rapidity. On December 8th, Japanese planes attacked in the Philippines and without damage to themselves destroyed General MacArthur's air force as it sat on the ground. On December 10th, the United States naval base at Cavite was destroyed by fire and on the same day the Japanese made their first landing in the Philippines. On the same day, the Japanese made an amphibious landing on the coast of Malaya, putting ashore an army which moved through the jungle to attack Singapore from the rear. Also on that day, Japanese torpedo planes and fighters attacked the powerful British battleships the Prince of Wales and the Repulse off the coast of Indochina and sank them both - the first time in history that major battleships while at sea and on the alert had been sunk by aircraft. These were the two British ships whose arrival at Singapore had been reported in the San Francisco Chronicle on December 7th, and Admiral Phillips, whose picture had appeared on the cover of "This World" only three days before, had gone down with his ship and was dead.

The Japanese quickly attacked and captured the American held island of Guam. On December 11th, the Japanese attacked the small American garrison under Marine Major James Devereux on Wake Island with a light cruiser, six destroyers, two transports, and a landing party of 560 infantry trained sailors. The American resistance was savage and the Japanese were forced to retire. Everyone knew the Japanese would return and that the garrison must have reinforcements and more ammunition if they were to hold out. Reinforcements and supplies were actually dispatched from Pearl Harbor, but the ships were so few in number and so lightly armed that they were ordered to return to Pearl Harbor before reaching Wake, being quite unable to contend with the Japanese navy. The Japanese did return on December 23rd and succeeded in landing 830 men. The 250 United States Marines and one hundred civilian volunteers fought to the last bullet, but in the end were forced to surrender.

Olney: The inability of the United States Navy to relieve the garrison on Wake was the clearest possible demonstration of its weakness. It was certainly a shock to us Californians. For the first time we civilians grasped the fact that our situation in the Pacific was really desperate.

The disasters continued. The Japanese landed in Borneo and Hong Kong. They captured Bangkok and Siam without firing a shot. Shortly after Christmas, General MacArthur declared Manila an open city, left the Philippines, and retired to Australia. Most of the American troops trapped in the Philippines had been driven into Corregidor Island and Bataan Peninsula where they fought back very stubbornly and tied up a very sizeable Japanese force for months before they were forced to surrender. By January, 1942, Japanese planes from their island stronghold of Truk were bombing the Australians in Rabaul, and on February 19, the same day that President Roosevelt issued Executive Order no. 9066, Japanese carrier-based planes wrecked Allied shipping in the harbor at Darwin, Australia. On February 26th, a large Japanese expeditionary force was approaching the island of Java. The so-called ABDA Navy sailed out to meet them, including the American cruiser Houston, which had been host to President Roosevelt on four cruises. All of the ABDA ships were sunk with little loss to the Japanese. The Houston simply disappeared and her fate remained a mystery until the end of the war when most of her crew was found in Japanese prison camps. The suddenness, number, and completeness of these Japanese successes made us fearful, understandably, I think, of more to come. Writing of the strategic situation at this time in his History of the United States Navy in World War II, Volume III, page 218, Samuel Eliot Morrison has written:

> "Anything might happen. Even strikes on Puget Sound, San Francisco, or the Panama Canal were not beyond the range of possibility."

Surely the military believed this, as all their barricaded beaches, barrage balloons, air watchers, and camouflaged factories and blackouts attested. There seemed to be, even to us amateurs, some logical reasons for a Japanese strike at the Pacific coast. There were no formidable defenses. There was very little military hardware available because we had been sending everything we had in the way of airplanes, guns, and munitions to Britain to enable her to survive in the war with Hitler. Most of the Pacific fleet was on the bottom and what remained was so badly damaged as to be inoperable for some months at least. We had no air force on the Pacific coast, as was evidenced by our inability to contend with the Japanese submarines.

Olney: When the Union Oil Company oil tanker Montebello was torpedoed off Cambria in San Luis Obispo County, Abe Brazil, the district attorney of San Luis Obispo County, telephoned Attorney General Earl Warren to inform him about the occurrence and the excitement and consternation in the little town of Cambria from where the burning tanker was plainly visible. In Cambria they were very upset because no planes had appeared and no defense measures seemed to be in progress. The attorney general then made a personal call on Admiral Greenslade, commanding the 12th Naval District, to ask if this could be true. The admiral replied that he could state in confidence that it was indeed true. The torpedoing of the tanker had occurred exactly as reported, but the admiral said nothing could be done about the submarine because there were only four military planes operational on the entire Pacific coast and all four of these were fighters incapable of bombing a submarine.

The Japanese, on the other hand, had virtually complete control of the waters off the entire Pacific, for the time being at least. They had sufficient cruisers, carriers, and planes with supporting ships to mount a strike almost anywhere. They had demonstrated their capability of fueling their ships at sea. They also had the two most powerful battleships in the world, the Yamato and the Musachi, both 63,000-ton monsters carrying the heaviest naval guns ever built. Less than a year before in May, 1941, the less heavily built Nazi battleship Bismarck, without any accompanying air cover, had raised havoc with Allied shipping all over the North Atlantic, sinking the great British battleship Hood in the process.

Virtually all of the American airplane factories were located on the Pacific coast, Boeing in Seattle, Douglas and Lockheed in Santa Monica and Burbank, and others in Los Angeles and San Diego. Our principal naval construction yards were, of course, at Bremerton, Mare Island, Hunters Point, San Pedro, and San Diego. A heavy strike at any or all of these targets seemed to be well within Japanese military capability. It seemed to us that there would be unusual advantages to the Japanese from such a strike. In addition to the actual damage which might be done, especially if they were to shell our factories and installations with the Yamato or Musachi, the psychological effects would be immense. A major part of our war effort would be diverted into building defenses for the Pacific coast. This would delay and impede our efforts to rebuild the Pacific fleet, to provide defense for Australia, and to supply tottering Britain. It would probably cause us to reduce the volume of arms and munitions that we were exporting and keep them in the United States to defend our own shores. The military not only saw all this but seemed to have other reasons of its own for believing that a Japanese strike against the Pacific coast was not only possible, but probable. Such was the external military threat we faced during the months after Pearl Harbor.

Olney: Now, what was our internal situation during this same period? As mentioned above, beginning on the night of December 7, 1941, the FBI began a roundup of all known dangerous subversives, both aliens and citizens alike. This included the ringleaders in such organizations as the German-American Bund, the leaders of the militant Italian fascist organizations, and also the leaders of the more virulent home-grown American organizations such as The Silver Shirts in the Middle West and The Friends of Progress in Los Angeles. Most of these people remained in custody for the remainder of the war, although the leaders of The Friends of Progress in Los Angeles were freed within a week by order of Attorney General Biddle on the ground that while there was no lack of proof of their adherence to the principles of Hitler's Nazi regime, their promotion of the cause had gone no farther than verbal utterances and urgings and they had as yet committed no overt act. There were a few subversive Japanese, some aliens, some with American citizenship, who were caught in this initial roundup, but they were few indeed when compared with the number of subversive Germans and Italians and fewer still when compared with the total population in California of Germans, Italians, and Japanese.

In January, 1942, when the ninety-nine prohibited zones and two restricted zones from which all enemy aliens were to be excluded were proclaimed by the attorney general on the recommendation of General DeWitt, they seriously affected the state's commercial fishing industry. The questions at once arose as to whether it was necessary to exclude all these fishermen from coastal water for no other reason than that they lacked American citizenship and in the eyes of the law were citizens or subjects of countries with whom we were at war. Should there be some exception to the exclusion order?

Examination into the matter quickly disclosed important practical differences between the Italian and the Japanese fishermen. Most of the Italian alien fishermen had been resident in the United States for many years. They had come from Italy as young men, usually speaking no English, had taken up fishing for a livelihood and continued in it all these years. Most of them had married and had children who were, of course, natural born American citizens. These children had been educated in the public schools. Some of them had entered the professions and the business community, while others continued the fishing business with their fathers, but all of them were thoroughly integrated into their local communities. There were many Italian social and political organizations of which these alien fishermen were members, but these organizations were free and independent and nearly always democratically organized. There were no controls from above and abroad as there were in Japanese and Nazi societies. Furthermore, the Italian fascist organizations in the United States had been under FBI scrutiny for several years and the dangerous subversives among them had been carefully spotted and listed. As a result they were already interned.

Olney: There was an even more important distinction between the position of the alien Italian and that of the alien Japanese. The Italian navy posed no danger whatever to the security of the Pacific coast. The danger lay in the Japanese navy exclusively. The Italian fishermen in California coastal waters could be of no imaginable use or value to the Japanese navy when engaged in a bombardment, landing, or aerial strike, while Japanese fishermen could be helpful in such a case. It was because of differences and considerations such as these that an exception was made in favor of the alien Italian fishermen from the order excluding all enemy aliens from coastal waters.

I have gone into this explanation at some length because in recent years it has been asserted that the reason for the difference in the treatment of the alien Italian and the alien Japanese with respect to exclusion from California's coastal waters was racial prejudice. It was no such thing. To have enforced the exclusion order against the alien Italian fishermen would have served no military purpose and would have added nothing to the security of the country. The situation was just the opposite with the alien Japanese.

Confronted suddenly and unexpectedly with the massive attack upon us by the Japanese empire, we suddenly discovered that we knew next to nothing about our enemy. We knew little more about our own Japanese population, either alien or American born. It is true that a few years before the Office of Naval Intelligence had detected a disgruntled American naval officer selling military secrets to Japanese agents. He was arrested, tried, and convicted and the Japanese who had corrupted him were expelled from the country. Army intelligence, known as G-2, was quite aware of the efforts of Japanese agents to gather intelligence about our military installations, equipment, and plans and had taken proper precautionary measures.

The Federal Bureau of Investigation, however, which had the assignment and jurisdiction of protecting the country against espionage and subversion, had done little with respect to the Japanese. For years the Bureau's intelligence resources had been centered on the communists and, since 1939 at least, the Nazis and fascists had been given appropriate attention. In comparison, the Japanese had been almost igonred by the Bureau. As a result, there was practically no accumulation of official information about Japanese-American organizations, their aims, officials, and any potential danger that they might present. Only a few Japanese secret agents and spies, real or potential, had been identified. These were virtually all Japanese aliens who could be, and were, immediately taken into custody. As to the rest of the Japanese population living in the

Olney: United States, the FBI knew next to nothing. The Bureau should not be criticized for this. The Bureau's resources were limited. It was proper to devote the resources available to the areas where the greatest danger appeared to lie. The Bureau was no more at fault than the rest of us for failing to understand and foresee the Japanese aims and course of action.

Following the attack on Pearl Harbor, we in the California attorney general's office were sought out by army intelligence, which was part of General DeWitt's command. They were very interested in having us draft and get adopted a uniform blackout ordinance, which would make it possible to enforce the blackout through regular civilian authority and legal process. They consulted with us on a good many other matters as well, but right from the beginning they kept asking us for all the information we could give them about the Japanese population of the state. Naturally, we made every effort to respond to this request, but at the beginning we could be of no help at all, as we knew no more and indeed probably not as much about our Japanese population as the military did. Some things were well known or were easy to ascertain. In December, 1941, there were about 122,000 Japanese living on the Pacific coast. About 96,000 of this number were citizens of the United States by virtue of the accident of birth. The rest were Japanese born and were not eligible for American citizenship under the Oriental Exclusion Act. The alien Japanese were known as Issei and those born in the United States of Japanese alien parents and who under our laws were American citizens were called Nisei, or second-generation Japanese. Many of the Nisei (second-generation, American born Japanese) had been sent to Japan for the purpose of pursuing "cultural training." They were known as Kibei. During the 1930s there were so many Kibei in Japan that local Japanese leaders on the Pacific coast became embarrassed and an effort was made with the full support of the Japanese government to bring them back to the United States. The situation was described in an article published in the Hawaii Sentinel of January 27, 1938, as follows:

> "As a result of the Manchurian incident and the spectacular performances of Japanese athletics in the recent Olympic games, the love of Japan reached its boiling point among the second-generation Japanese, who possess American citizenship rights.
>
> Things Japanese attract them so much, that hundreds of these American born youths are returning steadily to Japan for education. So great is this exodus of promising youths, that Japanese on the Pacific coast are faced with a great catastrophy of losing their cherished rights, which took them almost fifty years to gain.

Olney: At a great meeting, held recently by the Los Angeles Japanese Association and the Los Angeles Japanese Chamber of Commerce, it was unanimously moved to call back the second generation now in Japan. The Wakayama Prefectural Association in America formed an organization called 'The Association of Calling Back Second Generation' and sent Shiro Fukioka, 59, General Secretary of Los Angeles Japanese Chamber of Commerce, as special envoy. The foreign office was so moved by Fukioka's plea, that it sent out word to all immigration organizations in different prefectures to encourage a united drive, using this slogan, 'Second generation return immediately to America!'

Fukioka, who has spent nearly forty years in Pacific Coast States, says thus in part: 'There are roughly about 20,000 American born youths between the ages of 18 and 25 residing now in Japan. Being high school graduates, they are well versed with the conditions and things Japanese and would make ideal immigrants to North America.'"

As a result of this drive, thousands of Kibei did return to the United States. Many of the returning Kibei who, of course, were American citizens, had been in Japan so long that they could not speak English. Many of them had served in the Japanese army or navy as required by Japanese law and in fulfillment of their duty to the emperor.

It was also well known that the Nisei enjoyed dual citizenship. This was possible because under American law, Japanese born in the United States of alien parents were citizens of the United States; while under Japanese law, the children born of subjects of the emperor were Japanese citizens or subjects, no matter what their place of birth. Japanese law did provide that Japanese born in foreign countries might renounce their Japanese citizenship, if they so chose, by filing certain papers with the Japanese consulate. Some Nisei had followed these procedures and had renounced their Japanese citizenship, but they were very few.

The principal reason the Japanese in the United States were anxious to have the Kibei returned to the land of their birth was because of the Alien Land Laws in effect in the Pacific coast states. These laws prohibited the ownership of agricultural lands by persons who were ineligible for American citizenship, and the purpose of these laws had been widely circumvented by the device of placing the legal title to agriculturan lands in the names of American born Japanese who were American citizens; that is, the Nisei. In California, a very large and important part of the agricultural lands of the state was thus held by Japanese. This device worked quite well as long as the land-owning Nisei lived with their parents, but it became transparent when the Nisei went to Japan to live, as so many of them did.

Olney: There was one aspect of Japanese society which was hardly known to and not appreciated at all by the American public generally, although it was well understood by the American Department of State and in American scholastic and religious circles. This was Shintoism. Prior to 1932 or 1933, there were many large religious groups who were active in Japan. At that time, a large part of the population was Buddhist, although there were many different sects. A large number were Christians, who were divided into many different denominations. The majority, probably, were believers in Shinto. Shinto is a very old and complicated kind of religion. It had certain basic tenets. Central is the belief that the first emperor, Jimnu Tenno, who reigned in 660 B.C., was descended directly from the Goddess of the Sun and that the whole race, therefore, is descended from divine ancestors and, consequently, superior to any other race on the face of the earth. The Japanese Shintoist is taught from the cradle to revere the emperor as the Son of the Son Goddess. This same reverence is displayed toward the parents and grandparents and manifests itself in ancestor worship.

These beliefs were used by the militarists when they came to power to bind the Japanese together all over the world, creating a unique sense of nationalism. The militarists made Shinto the state religion. The militarists used their political power to break up all other religious organizations and to eradicate all other religious beliefs as far as possible. Confrontations and overt incidents were avoided, but the pressure against other religions and their practices was constant and effective. The result was the development of a national fanaticism of extraordinary virulence.

From the time of the accession of the militarists to power, the Japanese people were subject to psychological conditioning, propaganda, and pressure in favor of Shinto beliefs. This accounts for their dream of world empire and world supremacy. It accounts for the determined, dangerous, and desperate character of the Japanese soldier in World War II. It accounts for the kamikaze pilots, who volunteered in large numbers for certain death, flying their planes like missiles to crash into American ships. It accounts for the determination of the Japanese army, navy, and civilian population to fight to the last man, notwithstanding the fact that their cities had been devastated by fire bombs and they were without hope of a successful outcome for the war. In 1941 and 1942, Shinto-based nationalism reached its most dramatic pitch.

This development of Shinto attracted little attention at the time, but there was every reason for Americans to be concerned about it because Shintoism had been widely spread among our Japanese population by means of the Japanese language schools. The Japanese language schools in California were established long before the accession to power by the Japanese military fascists. Japanese

Olney: immigrants, like those from many other countries, have always wanted to maintain close ties with their original homeland. Japanese children in California were required by California law to attend school just like all other children. There they were taught in the English language and subject to the same curricula as everybody else. The Japanese community did not object to this, but they thought it insufficient. They wanted their children to know the Japanese language as well and to be educated in Japanese culture. Accordingly, they organized their own system of Japanese language schools. Classes were taught in the Japanese language and the subjects related to Japanese culture. The result was that all of the Japanese children attended the American schools as required by law and most of them attended Japanese language schools as well. For many years there was nothing objectionable about this system. Indeed, it had some incidental virtues. For example, the Japanese child was so busy going to two schools that he or she had little opportunity to get into trouble. This, no doubt, was one of the reasons for the very low rate of juvenile delinquency in the Japanese population.

However, when the Japanese militarists began to lend the full support of the Japanese government to Shintoism, the situation in the schools changed. The appointment of Shinto priests or believers as teachers in the Japanese language schools was everywhere encouraged and, if necessary, pressure was applied. The educational program of the schools was directed from Tokyo and the divinity of the emperor and the unique origins of the Japanese race were heavily emphasized. It is estimated that there were more than 240 Japanese language schools in California alone. Some nineteen thousand Japanese boys and girls attended these schools before Pearl Harbor. It is estimated that nearly $400,000 was spent in 1941 alone for the Japanese educational program directed from Tokyo. In November, 1933, there was founded, with its headquarters in Tokyo, an organization called Institute for the Education of Over-Sea Japanese. The purpose and objective of this organization was published in the Japanese newspaper Osaka Mainichi, which has been translated as follows:

> "The Institute of Over-Sea People's Education is an organization for infusing the Japanese spirit into the second generation of Japanese abroad. In other words, leave the second generation in the land of their residence, but don't let them forget the Japanese spirit. In buying, select Japanese goods, in voting, cast ballots for politicians friendly to Japanese."

As late as February 17, 1941, the Japanese daily newspaper Rafu Shimpo, published in Los Angeles, touched on this subject in an article which reads, in part, and in translation, as follows:

Olney: "Re-educational plan for the promotion of the fatherland. The Nisei who were born and raised in the foreign land are to come to the fatherland far away to find the company of the other sex. But they are confronted with difficulty coming from the differences of their habits and customs with those of the fatherland. Here comes the problem of 're-education of the Nisei.'

Meantime, to make the abroad compatriots understand the position of the fatherland under the new regime of Pan-Asiatic principles, and to unite them to act for the realization of 'enlightened Asia,' re-education of Nisei is necessary. So, Imperial Education Association made a budget of yen 100,000 for the education of Nisei. For this purpose, the Committee on Overseas Education of the Association, in cooperation with the Department of Education and the Department of Foreign Affairs of the Government and the Goain (Institute for the Promotion of Asia), elected secretaries and established an office for educational guidance of the Nisei. The functions of the office at present are as follows: 1. Investigation of the educational conditions of Nisei, and of the living conditions of the teachers abroad. 2. Establishment of the fundamental plan for the education of Nisei. 3. Assistance in sending good teachers.

At present, among the teachers abroad who are teaching Nisei, a good number of them want to come to the fatherland. Meantime, many of the teachers here in this country have the desire to go abroad to fulfill their ambitions. A proper disposal of this situation alone would make a new atmosphere in the educational field. So, this new project of the Association will be successful in every way."

General information about the Japanese population which we acquired or developed in the state attorney general's office, we passed on to members of General DeWitt's staff, simply because they had requested us to do so. I doubt that it was of importance to them, because they had far better sources of information in the FBI, the Immigration Service, and Treasury agents. I doubt that we told the army officers anything that they did not already know, with one exception. This was information as to the exact parcels of land which were in possession of the Japanese in December, 1941 and January, 1942. This information was developed through the following occurrences.

Olney: The army was well aware that there were many vital military installations and many key civilian facilities needed in the re-armament program which had Japanese living next to them or at least very close. The army did not know whether these Japanese were aliens or American citizens and was still less able to distinguish between those who were loyal to the United States and those with strong affinities or allegiance to the Japanese empire. In the very first meetings that we in the attorney general's office had with army officers following Pearl Harbor, they expressed their concern about this matter and they asked about the possibility of using state laws if any were available to break up this proximity.

We gave immediate attention to this and concluded that the enforcement of the Alien Land Law might produce the desired result in at least some instances. The law provided that if agricultural land came into the ownership of an alien ineligible for American citizenship, the land would be forfeited and would escheat to the state. Inquiry convinced us that some of the agricultural land near some of the important strategic installations was, in fact, owned by Japanese aliens ineligible for citizenship and, hence, was subject to escheat proceedings and the ouster of those in present possession.

Consequently, Attorney General Earl Warren called a conference of sheriffs and district attorneys on the subject of Alien Land Law enforcement, which was held in the State Building in San Francisco on February 2, 1942. His original intention had been to invite only the district attorneys and sheriffs of those few counties where we thought it was likely that there was a provable case. But at the suggestion of the army and navy and other federal authorities, he expanded the list of invitees to include the district attorneys and sheriffs from all counties where the federal government felt there was a security problem. This did not include all of California's fifty-eight counties, but nevertheless, the meeting was a large one. At the conference, it soon became evident that neither the sheriff nor the district attorney had information as to who was occupying what agricultural land and where the ownership lay, but all agreed that each county had one official who did have precisely this information, and that was the county agricultural agent. His duties kept him in constant contact with all the agricultural lands of his county and with their occupants and owners. It was concluded, therefore, that with the assistance of the district attorneys and sheriffs, full information about Japanese land occupancy could be secured from each county agricultural agent and forwarded to the attorney general's office for transmission to the army.

To carry out this program, we in the attorney general's office secured a set of maps of each county on a scale large enough to make it possible to indicate with respect to each parcel whether it was or was not owned or occupied by Japanese. The maps were on a

Olney: uniform scale and it usually took three or four sheets to cover a single county. The maps for each county were sent to the district attorney and sheriff and they, in conference with the local agricultural agents, marked each parcel of agricultural land which was occupied or owned by Japanese, and with this information the maps were then returned to the attorney general's office. Of course, the maps could not show who was a citizen and who was not or where the occupants' loyalties lay.

It had been our intention in gathering this information to use it in deciding where and against whom escheat proceedings should be filed for Alien Land Law violation. This program was carried out as rapidly as possible. The Alien Land Law cases were placed under my supervision and I assigned Sherrill Halbert to handle them (Sherrill Halbert later became a judge of the Superior Court of Stanislaus County and in the 1950s became a judge of the United States District Court for the Northern District of California). A number of escheat proceedings involving lands adjacent to strategic installations were filed and pressed to a successful conclusion, taking their control and ownership out of the hands of enemy aliens. Later on the program was expanded into one of general enforcement of the Alien Land Law, with the resulting escheat of large land areas without regard to whether they were or were not near military or other important installations.

The county maps which had been prepared by the county agricultural agents, the district attorneys, and sheriffs for use in the program for the enforcement of the Alien Land Law, when received in the attorney general's office and put together, disclosed a situation with respect to Japanese land occupancy which none of us had ever suspected. The maps disclosed that from Point Reyes south, virtually every feasible landing beach, air field, power house, oil field, water reservoir or pumping plant, radio station, and other points of strategic military importance had several and usually a considerable number of Japanese-occupied properties in their immediate vicinity. The same was true with respect to military camps and other defense installations.

While the location of many of these Japanese properties was undoubtedly mere coincidence, it did seem clear to us that the location of others was not. This seemed apparent because while all or practically all of these Japanese were ostensibly engaged in agricultural pursuits, there were a number of large agricultural areas having only a few strategic points in them, and the maps disclosed that in such areas the Japanese were congregated at the strategic points and at those points alone. The coastal plain of Santa Barbara County from Point Conception south to Ventura was an example. This plain, though long, is quite narrow and lies between the Santa Barbara Mountains and the sea. Throughout its length, it was subject to intensive cultivation and all parts are equally open to cultivation and agricultural

Olney: pursuits. Among the particular points on the plain which were regarded as of strategic importance were the El Capitain Oil Fields, Elwood Oil Field, Summerland Oil Field, Santa Barbara Airport, and Santa Barbara Lighthouse and harbor entrance. The Santa Barbara County maps disclosed that every one of these points was surrounded by Japanese-occupied properties and that there were no Japanese on the equally attractive agricultural areas between these points.

The Santa Inez Valley was another example. At the lower end of the valley was Camp Cook, where the only armored force on the Pacific coast was stationed. There were Japanese farming around the bridge entrances to the fort, but there were no Japanese in the central and upper part of the valley, which was just as good or better agricultural land. Another example was found in the Santa Maria area. There was a great deal of productive agricultural land in the Santa Maria-Guadalupe area, but the Japanese were not scattered here and there. Their property ringed the Santa Maria Airport and penetrated the oil field around Orcutt.

We became much concerned about these patterns of Japanese land occupancy. It seemed impossible that they could be the result of coincidence alone. This ringing or blanketing by Japanese of strategic points throughout the state, we believed, must have had some plan and direction behind it. We were thoroughly convinced that the Japanese population in general was unaware that there was any pattern to their land occupancy and ownership. The idea of a giant conspiracy was too preposterous and was never entertained. In the attorney general's office we came to the conclusion that the explanation of these patterns was really quite simple and that it lay in the manner in which Japanese society in California was organized. At that time the Japanese population in California was very thoroughly organized. There were a large number of organizations covering every branch of life. There were Japanese agricultural, commercial, educational, social, religious, and patriotic associations in every Japanese community. Almost every Japanese in the state was included in one or more of these organizations. Although the several organizations in Japanese communities were concerned with different fields of activity, they were all quite closely integrated by means of interlocking directors and officers, honorary advisers, and interlocking membership among the ordinary members. Furthermore, their leaders were seldom selected by a democratic process. The leadership was usually self-perpetuating, selecting their successors on the basis of special fitness.

At the top of this organizational pyramid was the Japanese Association of America in Northern California and the Japanese Central Association in Southern California. Their connection with the Japanese government had always been very close. When the Japanese

Olney: Association of America was organized many years before, its by-laws provided: "Article 3: This association is organized by the local Japanese association under the jurisdiction of the Japanese Consulate General of San Francisco." The aid of one or another of these associations was usually invoked, according to the information we received, when a Japanese farmer wanted to acquire agricultural property. Inquiry would be made of the association as to the location of available parcels of land. The associations had such information and it would have been easy for the association officials to manipulate these inquiries and acquisitions according to a general plan. We had no proof of this, but we believed, nevertheless, that it was the explanation of the patterns disclosed by the maps.

There was plenty of evidence that the Japanese Associations, as organizations, had supported and provided aid for the military campaigns of the Japanese empire. This support had been publicized in Japanese papers throughout California. Some of the newspaper items, in translation, are as follows:

> "March 13, 1941. Thirty-two bales of tin foil were shipped to Japan through the Japanese Consulate General and were contributed by the Japanese Associations of Fresno County, Kern County, Delano, and San Bernardino."

> "July 6, 1941. Central California Japanese Association announces the collection and transmission to the war ministry of the sum of $3,542.05."

> "March 6, 1938. G. Yoshida, San Francisco Japanese Association, yesterday sent 400 pounds of tin foil, making a record total of 2,800 pounds of tin foil which he has collected, according to the records of the Consulate General's office."

The Japanese Veterans Association, which was always highly militaristic, was similarly engaged:

> "March 20, 1941. It is announced that the War Veterans Associations in Japan, Germany, and Italy, in keeping with the spirit of the Axis treaty, have formed joint and advisory committees to aid and establish the new world order. There are three and a half million veterans and reservists headed by General Imei who have pledged their cooperation to Axis aims."

Olney: "July 6, 1941. The Japanese Veterans Association of America, in its sixty-sixth meeting, reported the collection of $5,968.00, making a total of 829,440.34 yen collected and transmitted to Japan for the use of the military services, the collection being from Japanese organizations in the following places: Chico; Monterey; Tulare; Thornton; Richmond; Sonoma County; Eden Township; Alameda County; Marin County; Lodi; Mountain View; Alvarado; San Bonito County; Contra Costa County; Watsonville; Santa Cruz; Redwood City; Vacaville; San Mateo; Bingham, Utah; Berkeley; Oakland; San Francisco; Pescadero; Salinas; Ogden, Utah; Reno, Nevada; Honeyville; Rock Springs, Wyoming; Idaho Falls, Idaho; Salt Lake City."

The item also announced that during the five years since the outbreak of the China incident, the organization had collected 850,000 yen for the aid of Japanese soldiers and a tremendous number of bundles for the Japanese soldiers overseas. At one time, the association is said to have numbered eight thousand members. After the freezing of Japanese assets by order of President Roosevelt, the Japanese Veterans Association was dissolved. Some three hundred representatives were reported to have been present and the meeting closed with the showing of a Japanese motion picture entitled "Flaming Skies."

It was the Japanese Veterans Association that sponsored the tour of Major G. Tanaka of the Japanese army and a member of the Army General Staff, who arrived in San Francisco on January 1, 1941 with full uniform, sword, and metals and toured the state, lecturing before various Japanese groups, eventually returning to Japan via New York. While here, he is reported to have said, "Japan and the United States will go to war this autumn."

It seemed quite evident that the fanatical nationalism typified by Japanese Shinto had filtered into and taken hold of the leadership of the principal Japanese associations in California. Men with such ideas could easily have steered Japanese agriculturalists to locations close to strategic installations where they might be of use in the event of the expected hostilities.

Of course, we passed on to the army the information disclosed by the maps and such information as we were able to gather about the Japanese associations and organizations.

Long prior to Pearl Harbor, the 77th Congress had authorized a select committee to investigate national defense migration. The committee was formed pursuant to House Resolution 113, "A resolution to inquire further into the interstate migration of citizens,

Olney: emphasizing the present and potential consequences of migration caused by the national defense program." The chairman of the committee was Congressman John Tolan of California. The committee was particularly concerned with the wholesale migration of workers and their families from the states of Louisiana, Alabama, and Mississippi to work in war industries in other parts of the country. The committee was holding hearings on this subject in New Orleans at the time of Pearl Harbor. With the outbreak of war and the exclusion of many people from military zones along the Pacific coast, the committee decided to hold hearings in a number of cities in the affected areas.

In San Francisco, the committee set hearings for February 21 and 23, 1942, on the subject of "Problems of Evacuation of Enemy Aliens and Others from Prohibited Zones." Attorney General Earl Warren, among others, was invited to testify. By the time the committee opened its hearings on February 21st, the inadequacy of the ninety-nine prohibited zones and two restricted zones designated by the attorney general at the request of General DeWitt and which applied only to enemy aliens and not to American citizens had become apparent to everyone. With the federal authorities and state authorities unable to distinguish dangerously disloyal Japanese from those who were loyal, and with convincing evidence that the Japanese population did include an unknown number of citizens as well as noncitizens whose loyalties were with the Japanese empire, the question had already been raised as to what further measures were needed in the national defense. The attorney general was very reluctant to take a position on this matter and he did so only after consulting with the sheriffs and district attorneys with whom he had been working. They were unanimous in believing that it was impossible to distinguish disloyal from loyal Japanese, either among those who were aliens or those who were citizens, and that the only way to provide adequate security for the vital areas of California and the rest of the Pacific coast was to exclude all persons of Japanese descent, regardless of citizenship, from the area.

Since the attorney general had come to the same conclusion himself, he decided it was the only position he could take and that he would have to accept the committee's invitation to testify. In his appearance before the committee and in an extension of his testimony filed after the hearing, the attorney general gave the committee such information as we had about Japanese landownership, their location as shown by the maps of the counties, Japanese organizations, and, indeed, all the information we had been able to compile. He also explained why we found it impossible to distinguish disloyal from loyal Japanese. However, in discussing the nature of the danger that we faced, he limited himself to the subject of possible sabotage. No mention at all was made of the possibility of a strike by Japanese naval and air power. This was deliberate. The military believed that the Japanese did not know how seriously weak our coastal defenses

Olney: actually were and they wanted nothing said in public that would suggest that anyone in authority in this country believed that such a strike was feasible. Accordingly, he spoke only of the danger of sabotage. Most of his listeners were acutely aware that he was really referring to the far greater and more serious danger of actual attack from the sea. Interestingly enough, while the committee was holding its second day of hearings on February 23, a Japanese submarine surfaced and shelled the oil installation at Goleta.

I have never believed that the Tolan Committee hearings were helpful to anyone. The basic question to be decided was whether the safety and security of the United States required that all persons of Japanese descent be excluded from the Pacific coastal areas. This was strictly a military question. It was pointless for the committee to call local civilian officials and leaders to express their opinions in public as to what should be done. Witnesses could not be called from the military and even the committee realized they should not be called to testify. The hearings, in my opinion, were mere congressional meddling.

Under all the circumstances, what could the military do? They knew that the Japanese had the capability for a major naval and aerial strike at our aircraft factories, shipyards, and naval bases--facilities which were absolutely essential for the rebuilding of American military and naval strength. They had to assume that such an attack might well have been planned long ago as a follow-up in the event the Japanese achieved a high degree of success at Pearl Harbor. They knew the temporary helplessness of the United States Navy and the weakness of our coastal defense. They knew that such naval strength as we had left had to be devoted to keeping open the supply lines to Australia, where American troops had to be shipped and supplied with all of their armament to stop the Japanese attempt to overrun that continent. They knew that if the Japanese attacked the Pacific coast, it would be a desperate affair, and in the middle would be 122,000 Japanese civilians whose sentiments and loyalties it was impossible to gauge and whose conduct as individuals was impossible to predict. Furthermore, they knew that if any action at all was to be taken, it had to be taken immediately. If the Japanese were going to attack or even raid the coast, it had to be very, very soon. The Japanese would not and could not wait until we had built up our defenses and repaired our damaged fleet. These are all obvious considerations that must have gone into the decision which was finally made.

On March 2, 1942, only eighty-five days after the bombing of Pearl Harbor, General DeWitt, under authority of President Roosevelt's Executive Order no. 9066, issued his order requiring the exclusion from the coastal states of California, Oregon, and Washington of all

Olney: persons of Japanese descent, whether aliens or American citizens. The issuance of this order had the full approval of the War Department and of the Roosevelt administration. In California, it was approved almost unanimously by the law enforcement officers of the state and it had very strong popular support as well. However, it was a military and not a civilian decision. It was believed to be necessary in order to meet an immediate and major danger to the safety of the country. I was convinced then and am convinced now that it was motivated by nothing else.

Every effort was made to put General DeWitt's order into immediate effect. Time was vital. The sole purpose of the order was to get the Japanese out of the area before an attack, raid, or other trouble could materialize. The shortness of the notice and the brevity of the time to allow for preparation caused great hardship and loss to many Japanese and their families, but the requirements of time made such hardships unavoidable. There was some quite unnecessary unpleasantness that accompanied the Japanese exodus. Jeering signs were occasionally displayed. A few demogogic radio commentators had poisonous words to say. Some very unfortunate remarks can even be attributed to the military. General DeWitt was quoted (whether correctly or not, I do not know) as having said on one occasion, "The Japs are an enemy race," and on another, "Once a Jap, always a Jap." But these were really isolated incidents. Californians, on the whole, had great sympathy for the Japanese and great regret for the hardships that they must undergo. There were countless acts of kindness towards these people who were being forced from their homes.

General DeWitt's exclusion order went no farther than was necessary. It did not order the Japanese into concentration camps. It only excluded them from the Pacific coast states and left them free to go anywhere else. Most of those who had the means did move to other states and settle there, but the majority of the Japanese lacked the means to relocate themselves in other places of their own choice, and many of the inland states objected strenuously to receiving large numbers of people who had been removed from the Pacific coast states as war risks. The only possible alternative was for the federal government to provide relocation camps in which the displaced Japanese could live for the duration of the war. I had nothing whatever to do with these relocation camps and never had the opportunity of visiting one, but I do know that the records show they were administered humanely and efficiently and with no more restraints on the occupants than the circumstances required. It is in my opinion a complete falsehood to liken them to the concentration camps of the Germans or the prison-labor camps of the communists.

During the thirty-three years since the end of the war with Japan, there has been mounting criticism of Executive Order no. 9066 and the relocation of Japanese-Americans which was carried

Olney: out under its authority. Some of this criticism has come from persons who supported the program at the time and were active in its implementation. For example, in 1972 the California Historical Society published a book entitled Executive Order 9066: The Internment of 110,000 Japanese-Americans. The book consists of photographs, for the most part, taken by Dorothea Lange and other obviously talented photographers. They portray the hardships of the relocation program in a most vivid and moving way. No one can question the authenticity of the pictures or the reality of the hardship and suffering which they portray, but they have no relevance to the basic question as to whether the exclusion of the Japanese was or seemed to be a military necessity. The book includes an introduction written by Edison Tomimaro Uno of San Francisco, who describes himself as an American of Japanese ancestry whose earliest recollections are of a desert relocation camp such as are portrayed in the book. He finds the pictures to be powerful reminders of his own experiences of over four years of camp life and of the experiences of his family and parents. He writes:

> "It was not until the winter of 1969 that this tide of Asian-American consciousness reached its peak. It was not until the pilgrimage to Manzanar, the desert camp site some three hundred miles northeast of Los Angeles, that these previously inchoate feelings found a concrete expression. It was not until the moment when we glimpsed the site itself, when we saw again its desert barrenness, the tattered remnants of the barracks, the tufts of sagebrush and mesquite, until we felt again the sharp, early morning desert wind, that we fully perceived what was in the offing for us, that we perceived how tragic the past really was.
>
> We had been too busy -- too busy repairing our lives, too busy trying to catch up with careers cut short, too busy trying to make up for years snatched out of our lives -- yet with full enthusiasm to realize the American dream.
>
> Perhaps some of us were ashamed that it had even happened. We were like the victim of a rape -- we could not even bear to speak of the assault, of the unspeakable crime. Thus, for many years we had not even spoken of our imprisonment. And when we did speak of it, we were guarded. We dared not fully reveal the depths of our feeling about it.
>
> In fact, we were inclined in some ways to blame ourselves. Some Nisei (U.S. citizens by birth) had even gone so far as to suggest that we had been

Olney: incarcerated because we had not made ourselves known to our Caucasian neighbors, that we should have been more open, less clannish, that we should have gone to the length of becoming two hundred percent Americans. Then, they reasoned, the Caucasians would have known us and trusted us and would have seen that our loyalty lay first, last, and always with America. For such people, the truth was simply too awesome to be faced. The truth was that our unjust imprisonment was the result of two closely related emotions: racism and hysteria...History must be written by those who lived it. We must give full recognition to the facts that were responsible for such an outrage against the United States Constitution. Racism, economic and political opportunism were the root causes of this crime that is now a part of our American heritage. This, our legacy, is a reminder to all Americans that it can happen again."

The book also includes an epilogue by the late Tom C. Clark, Associate Justice of the United States Supreme Court. In it, he writes:

"Soon after Pearl Harbor, at the instance of the Attorney General of the United States, I was appointed Civilian Coordinator for General John DeWitt, Commanding General, Western Defense Command, United States Army. It was his duty to protect our West Coast from subversion as well as invasion, and it was my task to be his 'go-between' with the public. Following my appointment, I was deluged by demands that regardless of citizenship, every person of Japanese descent must be removed from the West Coast.

In the beginning, in an effort to force all removal, a curfew was instituted...but the threatening public attitude reached a fever heat that would permit nothing less than total mass relocation. Moreover, as Civilian Coordinator, I found a complete lack of understanding, respect, and regard for our fellow Japanese-Americans in the very communities where they were born, where they were reared, and where they worked. Some said that they were too clannish, too race-conscious, too emperor-oriented; that they would not cultivate American ways and could not be assimilated. But mutual understanding and respect is not a one-way street -- to be loved and to be respected, one must himself love and be respectful. Racial hatred coupled with economic and

Olney: political opportunism kept hearts closed and fear predominant; it was a sad day in our Constitutional history...Despite the unequivocal language of the Constitution of the United States that the writ of habeas corpus shall not be suspended, and despite the Fifth Amendment's command that no person shall be deprived of life, liberty or property without due process of law, both of these Constitutional safeguards were denied by military action under Executive Order 9066. While the Supreme Court in Hirabayashi vs. U.S., 820 U.S. 81 (1943), and Korematsu vs. U.S., 323 U.S. 214 (1944), gave the Fifth Amendment some lip service on the basis that there might have been some saboteurs among the thousands of persons of Japanese descent who were incarcerated, it wholly ignored the fundamental principle that a free society judges by individual acts, not by ancestry. Even though some malefactors might have been present -- which was never proven -- the liberty of the many cannot be forfeited because of the guilt of the few. Indeed, the Department of Justice successfully handled a similar problem involving persons of Italian and German extraction, dealing with them on an individual basis rather than by mass incarceration. The stubborn fact is, our fellow Japanese-American citizens lost their liberty simply and only because of their ancestry."

Even the late Chief Justice Earl Warren, who as attorney general of California in 1942 had urged, as representative of the peace officers and district attorneys of the state before the Tolan Committee, the exclusion from the coastal areas of all Japanese regardless of citizenship, seems to have changed his mind in later years. In his recently published memoirs he has written:

"I have since deeply regretted the removal order and my own testimony advocating it, because it was not in keeping with our American concept of freedom and the rights of citizens. Whenever I thought of the innocent little children who were torn from home, school, friends and congenial surroundings, I was conscience stricken. It was wrong to act so impulsively, without positive evidence of disloyalty, even though we felt we had a good motive in the security of our state. It demonstrates the cruelty of war when fear, get-tough military psychology, propaganda, and racial antagonism combine with one's responsibility for public security to produce such acts. I have always believed I had no prejudice against the

Olney: Japanese as such, except that directly spawned by Pearl Harbor and its aftermath. As District Attorney, I had great respect for people of Japanese ancestry, because during my years in that office, they created no law enforcement problems. Although we had a sizeable Japanese population, neither the young nor the old violated the law."

Elsewhere in his memoirs, the late Chief Justice writes:

> "In the meantime, Japanese military successes continued throughout the Pacific basin. One of our units composed of Californians was decimated and captured at Bataan and Corregidor, and our people were outraged by much publicized stories of the tortures and sufferings of captured U.S. soldiers. American propaganda portrayed the Japanese as having adopted the Hitlerian theory of a master race, departing from it only in asserting that <u>they</u> were the chosen ones, not the Germans. Published stories of their savagery and sadism charged the atmosphere."

These are several severe strictures on the decision-makers of 1942 in the military and the federal civil administration and on the people of California in general. With all due respect, I must challenge their validity.

In the first place, they are factually inaccurate. They picture the exclusion order and the relocation program as a "get-tough" military policy carried out at the demand of an hysterical citizenry, stirred up and boiling over as the result of years of anti-Japanese agitation and more recent wartime atrocity propaganda. That picture will not stand scrutiny.

It is true that during the first two decades of this century, and before, there had been much agitation in California against the Japanese, some of which was disgraceful and cruel indeed. This was the period of the Oriental Exclusion Act at the federal level and the Alien Land Laws at the state level. Many organizations, such as the Native Sons of the Golden West, urged boycotts and other measures against the Japanese. I remember that when my father was an Associate Justice on the California Supreme Court in the early twenties, my mother received a letter of reproof from the N.S.G.W. because she had parked her car in front of a Japanese market and made purchases there.

Olney: But this sort of thing was pretty much ancient history by the 1930s. There were still occasional articles or radio broadcasts inveighing against the Japanese. William Randolph Hearst continued to ride his hobbyhorse of "The Yellow Peril" in his newspapers, and the N.S.G.W. and the Associated Farmers continued their support of the Alien Land Laws. But the great majority of Californians were unimpressed and disinterested. There was an increasing willingness to accept Japanese on the basis of equality. This was due, in part, to the growth of a more tolerant spirit generally and even more to the Nisei educated in American schools who proved themselves to be so intelligent, competent, friendly, and attractive. During the years 1927 to 1942, I was employed most of the time on criminal cases, either in a district attorney's office or the office of the attorney general. I cannot now recall a single hostile incident against the Japanese during those years. There may have been some, but if so, they cannot have been serious or I would remember them.

A more persuasive piece of evidence that there was no great amount of hostility to the Japanese in California during this period is the demonstrable fact that they did not have the government on their backs. Had there been widespread, deep, under-the-surface hatred or fear of the Japanese, they could not have escaped the attention of the security and investigative agencies of the federal and state governments. Their organizations would have been infiltrated; their meetings, movements, and activities would have been covered and reported; and extensive dossiers on their leaders would have been compiled. Yet none of this happened. It is obvious that there were no feelings on the part of government officers or the public generally that any such measures were necessary or desirable. This is totally inconsistent with the idea of an inflamed populace seething with hatred and fear.

When Mr. Justice Clark writes that following his appointment as Civilian Coordinator for General DeWitt, he was "deluged by demands that regardless of citizenship, every person of Japanese descent must be removed from the West Coast," I do not question his recollection. We in the attorney general's office were deluged too, and I in particular, since I was assigned to handling such demands. I think half the crackpots in a state that is noted for its crackpots came in to see me. The rest were from organizations like the Associated Farmers or other groups who had Japanese competitors. To be sure, they were numerous and it did take time to see them all, as we had to do, but none of us, not even Tom Clark, I am sure, regarded these people or their demands as representative of Californians as a whole.

When Chief Justice Warren writes in his memoirs, "One of our units composed of Californians was decimated and captured at Bataan and Corregidor, and our people were outraged by much publicized

Olney: stories of the tortures and sufferings of captured U.S. soldiers. American propaganda portrayed the Japanese as having adopted the Hitlerian theory of a master race, departing from it only in asserting that they were the chosen ones, not the Germans," he gives the impression that the stories and pictures of Californian units captured on Bataan and Corregidor had been used as propaganda to gain support for the exclusion of all Japanese from the coast. Executive Order 9066 was signed by the president on February 19, 1942, and General DeWitt's exclusion order was issued on March 2nd, while the surrenders on Bataan and Corregidor did not occur until the middle of April. It is difficult to see how stories and pictures of the surrender and of the sufferings and humiliations visited upon the captured could have been used as propaganda before the events occurred. Moreover, when the stories of the surrender and the pictures of the captives in their emaciated condition, sometimes surrendering, under humiliating and even gruesome circumstances, first appeared, they were made public by the Japanese government itself. The Japanese were eager to proclaim to the world, and to the other nations of Asia especially, the crushing nature of their victories and to demonstrate the superiority of the Japanese to the weak and faltering American and British soldiers. Furthermore, the stories were true and the pictures accurate, as has been well established since the war ended.

As for the Japanese belief in the divinity of the emperor and the divine origins of the Japanese race, there can be no doubt. The Japanese soldier demonstrated this belief by both word and deed in every battle in which he fought and the civilian population did the same. On Saipan almost 22,000 Japanese civilians -- two out of three -- perished needlessly. Almost the entire garrison -- at least thirty thousand died. All because of this faith. It took the atom bomb and the express order of the emperor to break it, and even then the country was brought close to revolution by those who persisted in these ideas and were determined that Japan would fight till the last man, woman, and child were dead rather than sue for peace from their racial inferiors. The American newspapers were certainly right in proclaiming that the Japanese had adopted theories of the master race and it can hardly be regarded as propaganda in the deprecatory sense for them to have said so.

X THE ATTORNEY GENERAL'S OFFICE AND THE FRIENDS OF PROGRESS

[Interview 8: April 27, 1972]

Stein: How did the attorney general's office get onto The Friends of Progress in the first place?

Olney: Well, this group, which was headed by Robert Noble and Ellis O. Jones, was operating openly in Los Angeles during the fall of 1941. They were holding meetings two, three times a week at the Embassy Auditorium on Figueroa Street. They were getting sizeable crowds of people, several hundred people.

Along about October or November, they got a good deal of notoriety by putting on a mock trial of the President of the United States on charges of treason. They had various witnesses who appeared at this trial and delivered harangues against the president. They had one called Blighted Youth. They had another, a war mother of some kind, and all sorts of people like that. They also had a man made up to look like President Roosevelt, and even mocked him by having him limp around with a cane, sit in a wheelchair, and things of this kind. All these "witnesses" denounced the president and then the assembly, by shouted vote, convicted him of treason. This particular meeting was covered by Life magazine with both text and pictures of the presidential trial. So we did not "get onto" The Friends of Progress. They were thrust upon us.

This was just before the war started and things were pretty rough even then. This group was openly espousing the Nazi cause. Their meetings were full of praise of Adolph Hitler, whom they referred to as the savior of the world. They were loud in praise of his anti-Semitic program. They urged its adoption in the United States. They asserted that President Roosevelt was a Jew. They didn't talk much about the Japanese prior to Pearl Harbor; this was mostly about the Germans. None of the things that they were doing or saying were violations of any state law. Their activities were beyond our reach as state law officers. We felt if it was anybody's concern, it was the federal government's concern.

Olney: In the two or three days following the Japanese attack on Pearl Harbor, the FBI rounded up all known German, Italian, and Japanese agents all around the United States. Arrested at the same time were the American born leaders of American Nazi and fascist propaganda organizations like The Silver Shirts, the German-American Bund, the Ku Klux Klan, and other groups who were espousing the cause of our enemies and continued to do so after the declaration of war. Among those arrested were a half dozen leaders of The Friends of Progress, including Robert Noble and Ellis O. Jones. The charge that was placed against these people early in December, including Noble and Jones, was sedition, a violation of the federal statutes.

After three or four more days, Francis Biddle, who was the United States Attorney General, ordered the release of a considerable number of the people arrested by the Bureau, including Noble and Jones and the others of their group, on the ground that, in his opinion, they had not violated any law of the United States. However distasteful their pronouncements and conduct may have been, they had not been accompanied by any overt action against the United States. In his opinion, that meant that they were not to be arrested or charged.

Following their release, Noble and Jones and The Friends of Progress went back into action again, same place, same way, except that they were much more vitriolic than they had been before, and much more extreme. This, of course, was days and weeks after the war had been declared. When the press announced that our Far Eastern fleet had been sunk by the Japanese in the Macassar Straits, Robert Noble read the list of sunken ships to an open meeting of The Friends of Progress and the sinking of each ship was loudly cheered and clapped by the assemblage. They made many statements urging support for the Nazi cause. They told their audience that the attack on Pearl Harbor was fully justified because the Japanese had a better right to the Hawaiian Islands than we did, since there were more Japanese in the Islands than there were Americans.

This kind of thing went on over a series of meetings. People in Los Angeles were getting stirred up about it; they didn't like it. Occasionally there would be a sailor or soldier or two who would go into the Embassy Auditorium to one of these meetings. There was danger of some real fights and riots. In February they published in their news sheet a poem entitled "The Boastful Bastards of Bataan" forecasting and exulting in the capture of MacArthur's troops by the Japanese. This was when our soldiers were at their last extremity on the Bataan Peninsula. They accused General MacArthur of personal cowardice and of having deserted his troops under fire and fleeing to Australia to avoid capture.

Olney: Well, to us this seemed pretty extreme, and for the federal government to fail to do anything seemed to us to lead to more trouble. So, we called up the FBI and asked them if they were planning to take any action against this group. We told them that if they were going to act we did not want to get in their way, but if they were not going to act we would take action if we could find any state law that was being violated by these people. The response we got was that the opinion of the attorney general would not permit them to take any action and if we could find any way to lock them up we had their blessing to go ahead.

We got the books down from the shelves and looked them over. There was then a section of the Penal Code defining criminal libel. There's civil libel and criminal libel, and the definitions of the two are different. They're defined in the code. To maliciously and falsely make accusations against another that injure him in his profession and demean him is a violation of the criminal libel and slander statute. Accusing a professional military man, a general, of personal cowardice and deserting his troops under fire is about as tough a statement as you can make about him. If it's made falsely and maliciously, why, it clearly comes under the California statute.

So, we made a little investigation to find out who was responsible for this broadside that had been put out with these statements in it. We developed our evidence and it ran back to Noble and Jones as being responsible for it. One or two of the others had also taken part in its preparation. All of the leaders of The Friends of Progress had taken part in disseminating the literature.

But if we were to file a charge based on a criminal libel against General MacArthur, we had to be prepared to prove our case. That meant we not only had to prove that they had made these charges, but we had to prove that they were false in fact. How were we going to prove that General MacArthur, when he left the Philippines and went to Australia, was not deserting his troops but was acting under orders? We couldn't do it without getting help from the Pentagon.

I telephoned Ed Shattuck, who at that time was general counsel for the Selective Service System under General Hershey--Ed was a California lawyer--and explained the situation. I said, "We're not anxious to get into this case, but the federal authorities feel they can't act because the Attorney General of the United States says these people have not broken any federal law. We have this state criminal libel statute which has been violated by the libel against General MacArthur, but we can't act unless we can prove the case. And that means we have to have somebody to testify that General MacArthur made that move from the Philippines to Australia under orders."

Olney: So, Ed said he'd call us back and he did very shortly. He said, "I talked to General Marshall about this. General Marshall said that if you go ahead with that case, he will guarantee that there will be a witness present to testify that General MacArthur had orders from the President of the United States to go to Australia, and that he did not desert his troops under fire but went under orders." Then he said, "General Marshall thinks some action ought to be taken about these people, and he's willing to do this." I said, "This is all right, but a lot of time can go by between now and the time that we would actually have to call somebody as a witness. Do you know who would be available?" He said General Marshall had told him there were only two persons who could testify to those orders because they were highly secret at the time they were issued. Both were lieutenant colonels, but he said one or the other would be available.

Well, to skip ahead, when we did get around to having the trial, there was only one of these officers available to testify. The other had been sent to Europe. His name was Dwight D. Eisenhower.

Well, with these assurances from the Pentagon, we concluded we should arrest these fellows, which we did, for violating the California criminal libel statute. We put them under bail. This got a lot of publicity in the Los Angeles newspapers. They were out on bail in maybe five or six days, as I recall. And here was the state, prosecuting these people for libeling a United States general in his profession. This apparently got under the hide of the U.S. Attorney General because without saying anything to us, the federal government then went around and arrested them on a federal charge of sedition.

Well, when they made their arrest for sedition, we said to them, "Now, there isn't going to be any pulling and hauling over these fellows. We don't care who tries them as long as they get tried and aren't running around loose uttering this kind of stuff. But since we arrested them, you go ahead and try them and we'll pick up the pieces if there are any to pick up." So they did. They went ahead and tried them. They were in the U.S. District Court in Los Angeles and were convicted.

In the meantime we'd gone farther with our inquiries--

Stein: Can I just interrupt a second here? I read an article in Life magazine which had a very brief chronology of the trials. It said there that in August of '42, Noble was sentenced to five years in federal prison for violating the Wartime Sedition Act. Do you have any idea how they changed their minds from earlier not wanting to prosecute them for sedition?

Olney: No, I do not, excepting that it made them look so darn funny, a state acting upon facts that were primarily of federal concern. That's all I knew about it.

We had, besides these criminal libel charges against Noble and Jones, another layer of the organization that we could indict under a different law. This included a man named F.K. Ferenz, a fellow named James McBride, and two brothers, Van Meter brothers, who were really pretty weird. They liked to play at being storm troopers and used to wear German steel helmets and armbands with swastikas. They had big knives and bayonets with the swastika on them, and they used to sound off in their meetings about the time when they could go into action against all the Jews around town. There were two women also. They'd done work for the organization, they were on the inside of it, and they knew all the plans and everything else. One was Noble's secretary. We couldn't very well leave them out, but we didn't take them very seriously.

We found that we had a statute that had never been used, but it appeared that if it had any application to anybody, it applied to this group. It was a statute passed to hit the communists and it was called the Foreign Agents Registration Act. It had been passed about four or five years before. It provided that any organization which was foreign-controlled or foreign-supported engaging in propaganda had to register with the California secretary of state. There were severe penalties for failing to register. We thought we could connect this group up quite tightly with official Nazi organizations. We developed what we thought was quite adequate proof on that subject. We could show that they consistently had followed the Nazi party line as it varied from one time to another, even on minor details. Then we had in F.K. Ferenz a man who was deeply involved in the German National Socialist party. We had some letters indicating he was registered and carried as a member in Germany of the Nazi party and was a member and leader of The Friends of Progress and kept them supplied with Nazi propaganda materials.

Stein: You mentioned that none of you liked the statute very much. Why was that?

Olney: In the first place, it was pretty vague. In the second place, the whole concept of the statute might be open to question as to whether it was constitutional. Here is a statute that says that if you're a foreign organization, you've got to come in and register as such. In doing that you're providing the very information which may be used to incriminate you. The statute was copied from a federal statute that Senator McCarran and the old Dies Committee dreamed up. Jack Tenney and these Red-baiters up in the California legislature shoved this thing through. There it was on the books, and if it was a valid law it seemed to us it would apply to this group. This was wartime, and we didn't have any long-range objectives to be

Olney: achieved by that statute. We were looking for anything that would make it possible legally to lock these people up, shut them up. We thought that was a desirable end. We had no compunctions about using the Foreign Agents Registration Act, even though if we'd been in the legislature we never would have voted for such a bill.

So, we arrested them and tried them. It was the one and only case ever tried under that statute.

Stein: Was it declared unconstitutional?

Olney: No, it was not. It was a lengthy trial. We started that case about the middle of August and it went every day until the end of October. The evidence that we put on was absolutely fascinating. Not only did we put into the record what had happened when MacArthur went from Bataan to Australia, but we had a background on Nazi organization and their international plans. We had a former president of the Senate of the Free State of Danzig. He testified at length about his conversations with Adolph Hitler, that Hitler had spoken about the program they were going to follow with respect to the United States.

Stein: Was this the high Nazi official that you refer to in your opening statement to the jury?

Olney: Yes, it was.

Stein: Do you remember his name?

Olney: Yes. Hermann Rauschning. Another witness we had was Professor Malbone Graham from UCLA, whose specialty was national socialism. He had made a very extensive trip in Germany and Scandinavia studying national socialism. He had been present in Vienna at the time of the Anschluss and saw the Nazi troops arrive. He was able to describe what took place at the time of the parade in Vienna when Austrian children were rounded up by the Nazis to be shown in the movies throwing flowers to the soldiers. He had witnessed by accident a secret Nazi ceremony in Königsberg Castle when the Nazi gauleiters from Norway, Denmark, Sweden, and Finland were assembled to make the mystical touch of their swastika flags with the blood-soaked banner of the Nazi martyrs. He described in detail the Nazi program for uniting all persons of German blood and descent in the Nazi movement no matter where located or what their citizenship might be.

Olney: We used all that as background and then showed the counterparts in California. We had moving pictures of German Day in Hindenberg Park in Los Angeles in 1938. It was a fascinating movie. At the park entrance were huge heads of General Hindenberg and Adolph Hitler. On the pathway leading to the open-air theater was a large plaque of Hitler with incense burning in front of it. At each side of the theater platform there were two huge banners in the typical Nazi style--a great big banner with a swastika on one and an American eagle on the other. Then the movie showed the storm troopers with swastika armbands, goose-stepping in and taking their places. Then the speakers came on. This was '38 and, of course, the Spanish Civil War was going on. They had a couple of Nazi officers from the Condor Legion in uniform. Although this film did not have a sound track, you could see from their gestures what their speeches were about. With their hands they were demonstrating the maneuvers of their planes. Sitting up there alongside the Nazi officers were Mayor Shaw of Los Angeles, District Attorney Buron Fitts of Los Angeles County, and Herman Schwinn, the western gauleiter of the German-American Bund, who was there in Bund uniform. F.K. Ferenz, later one of the leaders of The Friends of Progress and a defendant in the case, was one of the speakers shown on the platform in the movie film.

We also showed another movie which Ferenz had been showing around to members and anywhere he could get somebody to look at it. This one had a sound track. This was the official Nazi film of the Anschluss. It starts in with the Nazi guards at the Austrian border pulling up the border posts and sweeping the guards aside, then the tanks going across the border and down the roads into Austria, and then these massive fleets of aircraft overhead. Then you see pictures of this joyous welcome. In all the towns they were going through, everybody was out there waving Nazi flags. When they come to Vienna, you never saw such a joyous populace, masses of little children throwing flowers. Dr. Graham, our witness, had seen this and he described where these little children in the picture came from. The Nazis had brought them in from all over the countryside and supplied them with these flowers. They were told to throw the flowers on the soldiers and then they were shipped on home. There wasn't anything spontaneous about it. It was staged for the Nazi cameras.

Stein: I was wondering if they paid the people, or threatened them, or what.

Olney: Oh, no. It was much easier than that. They just dragooned them. This was the movie that the Nazis showed all over Scandinavia and Poland and it scared the hell out of people. It was intended to impress them with Nazi military might, which it surely did.

Olney: These two films we had seized from F.K. Ferenz, and the Nazi activities they showed--one in Los Angeles and the other in Vienna--were remarkably parallel. We showed both these films to the jury, and some of the defendants were emotionally stirred up by the pictures. One broke down and sobbed with apparent joy. Others were obviously thrilled, especially with the pictures of Field Marshal Goering and the Fuehrer, Adolph Hitler.

Well, then we also had some other things that we used against Ferenz that were most remarkable. It was a set of letters. He had been in the United States at the time of World War I and was told to report for the draft but was excused as an Austrian citizen. They were going to put him in an internment camp, but never got around to doing it. But he had a sister who lived in Vienna and he corresponded with her quite regularly all during these years. Like so many Germans, he had never thrown anything away.

Stein: I'm sure he had it stored very neatly away, all labeled.

Olney: Sure was. Here were letters from his sister. He didn't keep copies of the letters he had written, but you could see from what she said what he had written in many instances. They were really fascinating. They're down now in the Hoover Institute of War, Revolution, and Peace at Stanford University. That's where they belong.

She writes to him about the Dolfuss regime and one of her letters said that they'd been hearing in Vienna about this new political party in Germany, the National Socialist party. Then the letters go on, and there are more incidents she relates of riots and trouble, and finally Dolfuss' assassination. She refers to the Nazis more often. Finally she writes him with exultation that she had gotten his letter and rejoices to learn that he, who has been so far away from Europe, from the homeland, for so long, is also a member of the National Socialist party. She writes that she and her husband had been members for a long time, and so was her son. She describes some of their party activities in very guarded language. She sent Ferenz the underground papers that the Nazis were publishing.

She and her husband were running a ferry across the Danube and having a very rough time of it. But she was there at the time of the Anschluss and they went out to see the Nazis arriving. Her old man fell off a ladder and broke a leg. But it didn't dampen their enthusiasm at all. She was just keen for this for about ten days, not longer than that.

And then she wrote and indicated that she thought that the Nazis were going much too far, that they were much too severe. The young men, including her son, had been conscripted for work and were building fortifications. She did not like these preparations for war. She described how they were treating her Jewish friends.

Olney: Some fine old lady that all of them had known and loved--they had her out scrubbing the sidewalk with a toothbrush. There were many, many indignities that she recited. Then she says that the food got worse, not better, under the Nazis. She wrote about the possibility of Ferenz coming home to Vienna. It seems he owned a theater in Los Angeles called the Continental Theater. It was a small cinema showing mostly foreign films. She had the idea that Ferenz could exchange his theater with some Jewish people that they knew who owned a very large theater in Vienna and were trying to get out of the country. She had taken this up with the local gauleiter and was trying to maneuver this exchange of theater properties. It never materialized.

This was the kind of thing that went into evidence in this case. Now, all of the defendants were convicted on all of the charges. An appeal was taken to the district court of appeal. It must have taken a year and a half or two years probably to decide that case. They reversed the convictions of all of them. The court said that the evidence did show that The Friends of Progress were following the Nazi party line and were endeavoring to support the Axis Powers in the war, but that it failed to show that The Friends of Progress were foreign-controlled or dominated or supported, and that that was an essential element. The court held the Foreign Agents Registration Act did not apply to home-grown American Nazis. They reversed it on that ground.

Well, unfortunately, when the case was argued there was nobody in the attorney general's office who'd had anything to do with the case. And with a transcript of that length and intricacy, I don't think they worked it out well. I've always felt that that element was satisfactorily established. We had a chart of the foreign connections of The Friends of Progress as established by the evidence. We did not introduce the chart into evidence. Perhaps we should have. The chart should have been included in the briefs filed with the district court of appeal. We had on the chart at least eight Nazi organizations. Some were party organizations and some were governmental organizations. [shows interviewer the chart] Of course, this chart is nothing but spaces, but for every one of these spaces we had live testimony and documents establishing the connection of the defendants that we had with these groups. So, we thought we had them. It really doesn't matter, because by the time the case was reversed, the menace or the danger that these people posed had long since passed. The war was over and the Axis Powers had been defeated. So that's the story of the case and how we got into the thing.

Stein: Was the civil liberties argument ever raised anywhere along the line?

Olney: Well, it may be that it was made; if it was, I don't know. You see, I was chief counsel in the trial of that case. There were four lawyers for the prosecution, three from the attorney general's office: Lou Drucker, who was later superior court judge in Los Angeles, and Sherrill Halbert, who became a United States district judge in Sacramento, and I. Then there was Otis Babcock, district attorney of Sacramento County. The case was over in October of '42, and I went into the marine corps only two weeks later and didn't know what happened to the case after that. There were no complaints from the civil liberties people about that case that I know of.

Stein: One of the reasons I ask is that Bob Kenny, in a manuscript of his that we have at the office, said that he raised objections to the bill when it first came up in the legislature. He was then a senator. He voted against it as being unconstitutional. By the time the case was appealed, he was attorney general. His office was forced to argue the case assuming the law was constitutional. He didn't comment on it any more than that; he just said that in his view it was fortunate that the appellate court reversed, but that it wasn't reversed on constitutional grounds.

Olney: Well, I would agree with him. In the first place, what he says is absolutely accurate, of course. It was not a good precedent at all, and it could well be that the judges on the district court of appeal felt that it was a case that had to be reversed and it was better to do it on evidentiary grounds than it was on constitutional grounds. If that's the way they felt, I wouldn't quarrel with that either.

Stein: Is this law still on the books, presumably?

Olney: As far as I know. But I haven't looked at the California Penal Code for years. It's still there, as far as I know.

Stein: I don't know if it's ever been used, but I just wondered if it was still sitting there.

Olney: Well, I can't imagine that it's been used since, because there is this federal statute, Foreign Agents Registration Law, which is being used from time to time. So, if there is any occasion to have such a prosecution, I'd expect it under the federal law. I can recall, for example, that when I was in the U.S. Department of Justice, we convicted a fellow named Frank for being an unregistered foreign agent of Trujillo, the San Dominican dictator.

Olney: The whole idea of that statute gives me the creeps and there haven't been many prosecutions under it, and sooner or later it is going to have to undergo real thorough scrutiny. I have the same feeling Bob Kenny does, that in all probability it is not constitutional.

Stein: Who were the defense attorneys in the case? Do you remember?

Olney: They were appointed by the court. They were Sacramento lawyers. One of them was a former state senator. There were at least four of them. They were there in the local bar--

Stein: I'm surprised that they didn't find friendly attorneys that were willing to take the case. I wondered if perhaps they had people in the organization who were attorneys.

Olney: Not that I know of. There were few people friendly to The Friends of Progress and certainly no attorneys.

Stein: The one last question I have is that you gave some indication of the size of the meetings and I wonder if you can remember now about how large a number of people you were dealing with in Friends of Progress and the related organizations.

Olney: That was a very loose sort of thing indeed. They would rent this auditorium and try to get as many people as possible to come in from the street to listen to harangues and programs and so forth. With the mock trial, they were filling the place. After their arrest and then their release and their diatribes against the United States and the Allies, and praise of Hitler and Japan, the meetings were nowhere near as large. They were big enough--I don't know--five or six hundred, something like that, as I recall. I didn't attend any.

Stein: Did you have agents from the attorney general's office attending the meetings?

Olney: We had no agents in any of the meetings and we had no paid informants. The people we used as witnesses to establish what had been going on, what had been said and by whom--most of them we got from the American Legion post. The American Legion got concerned with this group and they got a number of people together. I remember a man and his wife in particular; she was a very able secretary indeed. They went to these meetings regularly and then promptly went home and wrote up an account of what had transpired at the meeting. They didn't try to take notes during the meeting; they did it afterwards. The notes were very thorough and evidently they were very exact because at the trial there was never any dispute about who had said what. It was conceded that these things had indeed been said. The defense was sort of "so what?"

XI THE WIRE SERVICES CASES

State Border Disputes

Stein: I have a couple of questions, to shift gears a bit, about the Annenberg case, which I don't think we've talked about yet. I think most of the story is on the tapes with Warren. A couple of questions I have concern parts that you played in the story. In Leo Katcher's book on Warren*, he mentions that in investigating this case you found some maps that indicated that all of Lake Tahoe is in California. Do you remember that?

Olney: He's wrong about that if he said that. The maps that I came up with are maps that showed that practically all of State Line Point was in California. That's where these gambling places are at the northern part of the lake. Not all of the lake; heavens, no.

The basis of it is very simple. The boundary line that is described in the California constitution and the Nevada constitution, and the territorial act that created Nevada and Utah territories before statehood, and in every act of the United States referring to such things, is an astronomical line. It's the 120th meridian, starting at the intersection with the 42nd degree of latitude at the northern end of the state, running due south down that meridian to the 39th parallel of latitude, which was about in the middle of the lake; that's where the intersection would be. And then it goes at an angle in a southeasterly direction in a straight line to the point where the 35th parallel of latitude intersects the Colorado River.

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*Leo Katcher, Earl Warren: A Political Biography (New York, 1967).

Olney: Well, the question is: where is the 120th meridian on the ground as it runs north and south through Lake Tahoe? There has been a whole series of surveys, most of which were way off. I won't go through the whole series of them, but there was one in 1871 and 1872, the von Schmidt Survey. That one was monumented, and the old boys who located the place where the line was supposed to hit the shore of Lake Tahoe, the north shore, set up this monument, a big iron monument that's still there right on the tip of State Line Point. But that survey was not official and was not accepted by either state.

Later, about 1898, the USGS [United States Geodetic Survey] made a survey at the request of both state legislatures. They located the meridian, the location of the true meridian. Both legislatures passed statutes accepting that as the true boundary. If you get a USGS map today, you will find two lines on it. One of them is the true meridian located by the 1898 survey coming down, and then they've got this old one, the von Schmidt Survey, that they indicate on there too, simply because it's been monumented on the ground and people have been paying attention to it.

But you can make a very, very strong case indeed that the land that lies west of the true meridian as shown on the USGS map is in the state of California. This would include--well, I had a list of them once--at least a dozen major casinos up there. There was only one at the time we got interested in the boundary location. This was Cal-Neva. They had a batch of telephones in there that were servicing bookies all over California. They wouldn't take them out and we couldn't get the telephone company to do much about it, so I decided we might as well give them the treatment. We worked up our case, which proved that they were actually located on the California side of the true state line. Not only did they have the telephones for the bookies and the gambling games, but they were also running bars and selling liquor in what was really California territory without paying any state liquor taxes or having any licenses. There were statutory penalties for that. So, we thought, "Well, maybe the thing to do is to organize a raid and just grab everything in the darn place, hit them with the works." So, I took this notion to the attorney general--or was he governor then?

Stein: No, I think Warren was attorney general then.

Olney: I guess he was attorney general, if you say he was. He laughed and he said, "Well, maybe you think you got a bright idea, but you couldn't bring it up at a worse moment." He said, "The State of California has got troubles, interstate troubles, particularly over water from the Colorado River. All the states in the Colorado River basin are against us excepting the State of Nevada. Nevada is the only friend we've got. This is no time for us to start biting a piece off the State of Nevada." He said, "Come around twenty years from now."

Olney: I still don't know how matters have been worked out. When you go up that way, you can see that Nevada paves up to the old von Schmidt line, which is really in California. Everything is operated on this old unofficial boundary line. There was a time when divorces were hard to get in this state while they were easy in Nevada. But you had to reside in Nevada to get a Nevada divorce. One of the advertised attractions of Cal-Neva was that if you lived in the buildings on the Nevada side of the line, you were residing in Nevada, and many divorces were awarded based on such residence. But these buildings, and indeed all of Cal-Neva, were west of the true boundary as located by the official survey of 1898, which had been recognized by both states.

Stein: Oscar Jahnsen was helping you on that, wasn't he?

Olney: Yes, Oscar was helping us try to get rid of the telephones. He did not make up the maps or try to conduct any surveys.

Stein: He had some recollection of the maps in his interview. I've just been going over it, and he mentions that map story. So, I wondered if he helped you on the map. He also asked me to check the story out with you to make sure he'd gotten it right.

Olney: Yes. Well, he didn't dig up the maps; I did that. I went up there and took a bunch of photographs of these monuments in their then location. Joe Schoales went up there with me; no, it was John Hansen. It was later; it was later that I did that. That was during the Crime Commission period. Anyway, I've kept up my interest in this. I've got a file at home that's got all the maps in it, all the surveyor's notes, and everything else. It's an interesting point.

Stein: You seem to have specialized in points of boundaries, with offshore boundaries and the California-Nevada line.

Olney: You'd think that a state boundary would be as certain and as well determined as any line you could find. But it isn't so. It's strange, the uncertainties that still persist. I told you about the one in Yuma, I'm sure.

Stein: I don't remember that story.

Olney: The piece of the city of Yuma that's in California? Well, this was in connection with the Annenberg case. There was a big telephone installation over in Yuma that was supplying bookmakers in California after their direct lines had been all discontinued. One of the main relay points for that service was in Bakersfield. And the fellow who was tied in with the Continental News Service from Chicago, who was in charge of the whole southwestern part of the country, was making his headquarters in Phoenix.

Olney: Well, he'd come down to Yuma from time to time to oversee his telephone operation. Then he went to Bakersfield one time and got together with the bookmakers there and made their plans for working this thing out. Well, this was a conspiracy. We indicted them, all of them, including this fellow from the wire service, for conspiracy. He had gone back to Arizona and we tried to extradite him and were unsuccessful because the governor just wouldn't sign the papers. We had a big time trying to get him out of there without success.

Then I remembered a matter that I had read about in the California Historical Society Quarterly. The author was Francis Seely Foote, a professor at the University of California at Berkeley. He had written a small article--"Notes" is what it was--for the California Historical Society Quarterly, pointing out this peculiar quirk in the boundary in the southern part of the state. The line in question had been an international boundary between the U.S. and Mexico prior to the Gadsden Purchase. It was a part of the line that had been surveyed by the commissioners from the United States and Mexico following the Treaty of Guadalupe Hidalgo. The survey was run and actually monumented on the ground. The monuments are still there. Since the Gadsden Purchase, the line marks the boundary between California and Arizona instead of that between the U.S. and Mexico. There's a piece of the city of Yuma which is on the California side of that line. The reason for that is that the boundary line between the United States and Mexico (which is now the California-Arizona line) is described as running southwest down the center of the Colorado River to its intersection with the Gila River, and from the point where the center of Colorado intersects with the center of the Gila River the boundary runs in a straight line westerly to a point which is one marine league south of the southernmost end of San Diego Bay. Undoubtably the assumption was that the Colorado River was running from the northeast to the southwest. The fact is that it does that in general. But when it comes down to the mouth of the Gila River, it makes a bend and it goes north for quite a distance, a mile and a half, something like that, maybe more. Then it loops down and goes on down towards the southwest. The boundary line cuts across that loop. Yuma is right there, at the mouth of those two rivers. The part of the town that is in the loop is cut off from Arizona by the line and lies in California.

Well, I had read this thing, and knowing by experience how very uncertain these lines are, and that one state can't get title against another state by adverse possession, I made some inquiries. I sent one of the boys from the attorney general's office over to Yuma to ask questions. He went over there and the first thing that he asked about was whether the city hall knew anything about this. "Why, sure, everybody knows about it," and they took him out and showed him the line. The international markers are right there, still, to this day. As a matter of fact, the Yuma city hall is on the north or California side of that line.

Olney: Well, we got to wondering if we could make any use of these circumstances. We looked at the telephone room too, where this man used to come, but it unfortunately was on the Arizona side of the line. But anyway, I sent our fellows down there with a warrant because they knew they could work with the Yuma police. One day when this character was over at the telephone room, why, the Yuma police called him up and asked him if he wouldn't come down to the city hall. He said, "Sure." So he came down to the city hall and he was greeted on the steps by our boys with a warrant. They promptly took him into custody and threw him into an automobile, and you could hear him holler for blocks around. He claimed he was being kidnaped. They took him across the bridge and brought him into Bakersfield. He got a lawyer and they made a complaint to the FBI that he'd been kidnaped across the state line. We showed Foote's article about the boundary to the court and we went ahead and tried and convicted him. They never raised the point in court; it was not adjudicated in the court.

Another time when we used that same boundary point was on the telephone company. It concerned the same telephone room. Mountain States Telephone Company provides service in Arizona. They were providing the phone service for this room. I asked the counsel for the Pacific Telephone Company here if they wouldn't ask Mountain States to close down that telephone room, because it was serving no purpose except to violate the laws of the State of California. They would have been fully justified legally in discontinuing the service. Well, when Sam Wright, a lawyer representing Pacific Telephone with whom I had been talking, reported back, he said he had talked with Mountain States about it and he said, "They said they aren't going to do a darn thing about it, that they don't operate in the state of California, and it's none of our business what they do in Arizona."

I said, "What do you mean they don't operate in California?" He said, "They don't, you know. Southern California Telephone Company owns the wires and operates the service in that area right up to the line, and then Mountain States takes over." I said, "Where's the line?" He said, "Out there. It's the middle of the Colorado River. Southern California Telephone Company owns the wires right up the middle of the river and Mountain States owns the lines on the other side." I said, "Mountain States is providing service at the Yuma city hall, aren't they, that area around there?" "Oh, sure." "Well," I said, "the fact is they are thereby providing service in the state of California. They are doing that, you know, without a certificate of public convenience and necessity from our Public Utilities Commission. There's a $2,500 civil penalty provided in the statute for every day of operation. How long have they been there?"

Olney: Well, Sam thought I was kidding, and I said, "Sam, I'm serious. There's a part of Yuma that's in the state of California." "Oh," he said, "that can't be the case. I drew those contracts myself." I said, "Well, maybe you did, but did you really research the boundary in that area?" "No, I didn't." "Well," I said, "part of the city of Yuma is on the north side of that former international boundary, and what is on the north side of that line is in the state of California." I brought this article of Foote's out and he read it. I thought he was going to fall off his chair. He said, "Give me twenty-four hours, will you?" I said, "Sure."

In less than that, he called me up and he said, "I just want to tell you that that telephone room isn't operating any more." I don't know what they did about it, but it really bothered them enough to cause them to close down that telephone room.

Prosecuting the Wire Services

Stein: You told me at some point the story about how you and Warren went to Chicago to testify at the federal trial of the Annenbergs, and how the U.S. Attorney, whose name was Bill Campbell, was very impressed with that. I wondered if you could just tell that story briefly because I don't think we have that on tape.

Olney: Well, this happened about November of '39, right after the gambling ship litigation came to an end. I remember it very vividly because I had been worked to a frazzle and my wife and I took a little trip up to the Calaveras Grove of Big Trees. It was cold as can be, beautiful though.

When we came back, Earl said to me, "We've got to do something about the wire service and the bookmakers in our state. I think the moment has come because the federal government is making very extensive moves against Annenberg and his Nationwide News Service in Chicago. If these people are really in earnest, now is the time for us to strike a blow in our own state." He said that he had received a request from the United States Attorney in Chicago--

Stein: Was this Bill Campbell?

Olney: Yes, this was Bill Campbell, the Honorable William J. Campbell, United States Attorney for the Northern District of Illinois. The request was for a statement from Earl Warren, as attorney general of California, about the wire service and the bookmaking racket as it existed in California. The statement was to be presented to the court in connection with the sentencing of Moses Annenberg. They had a number of indictments against Annenberg.

Olney: They had a lottery indictment, an antitrust indictment, and an income tax indictment. He plead guilty to the income tax indictment and the government was very anxious to get a jail sentence. To do that they wanted to get before the judge the manner in which this money involved in the tax evasion had been made. It was a true racket, with all the violence and bloodshed and everything else that goes along with it.

So, Campbell had sent requests to all the attorneys general and district attorneys, I guess. The only two that I'm sure about, though, are Earl Warren and Tom Dewey of New York. But anyway, Earl said that he had decided that he was going to go in person, that he wasn't going to write any statement, because he wanted to be sure this thing was really on the up and up. He took me with him.

We left from the Oakland airport here in a DC3 that was a sleeper plane. If you've never been in a sleeper plane, it was fixed up with berths, upper and lower berths, just like a railroad car. When the berth was up, you'd sit opposite each other like you did on a railroad car. Then a berth would come down from above, making an upper and lower berth. When you got into bed, they'd put a great big strap around you. You had to sleep under this strap. Those DC3's, you know--when they land the tail goes way down, so that you were practically half standing up in this bed. It was a long, long flight. They stopped at Reno, Salt Lake, North Platt and, I guess, other places. We had our dinner on the plane and it was seven o'clock the next morning before we got into Chicago. That was my first night flight.

We went into the federal court without announcing ourselves to see what was going on and to watch the proceedings when the Annenberg case was called. We saw enough of it to convince Earl that that this was a good-faith prosecution and was a genuine effort to clean up this racket. So, he made himself known to Bill Campbell and Campbell put him on the witness stand and had him testify about the racket as it existed and he'd encountered it in California. Campbell had received a statement of only two or three lines from Tom Dewey and no other response from anyone else. Earl Warren's trouble to appear personally made a tremendous impression on Bill Campbell.

A huge amount of work had been done by federal agents on the wire service at that time. They had a man named Samuel Klaus who was in charge of it, all around the country. He was a Treasury agent--a Treasury lawyer, I should say--and an investigator. He had worked out all the relationships in the organization of Nationwide News Service and the identity of these people. He gave us

Olney: great encouragement about going ahead on our own against the racket in California and offered every assistance if we would move against the wire service here, which we did.

We didn't expect litigation because our relations with the telephone company were very, very different than they were between federal and state law enforcement agencies and telephone companies elsewhere. Our telephone company was never resistant about getting rid of the wire service. They would say, "We don't want to be giving service to a bunch of stinking racketeers, but we're obliged to serve the public in general. If you can give us any excuse, any valid legal protection so that we can deny service, you don't have to sue us; we'll go ahead and do it," which they did. They took out all lines without compulsion if we could provide them with adequate evidence of their unlawful use. The litigation they got into was litigation by the wire service and the bookies to try to get the service back, reinstalled, and that was a long, long story. We eventually filed that big injunction suit, and all the descriptions in there of what the wire service was nationally we got from Sam Klaus and from the work that the Treasury agents had done. Our contribution was the details of what the wire service was in California.*

That case was reversed and thrown out by the California Supreme Court, as the Chief [Earl Warren] remembered.** And, you know, I thought he was mistaken about that. But he's right and I was wrong. The thing that threw me off was because I remember we didn't have any more wire service or bookie operations for some years. But the reason for it was that supreme court decision was in November of 1941, but the Japanese attack and the outbreak of war were just a few weeks later. With hostilities, horse racing was closed down for the duration of the war all over the United States, or nearly everywhere. There was such a demand for communication services, there simply wasn't anything available for anything as stupid as a bunch of bookmakers. That's the reason bookmaking dried up. It wasn't because we won our case, which, as the Chief remembered, we didn't.

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*A copy of the attorney general's petition for injunction and the court's preliminary injunction are on deposit in The Bancroft Library.

**Reference to conferences with Earl Warren. Transcripts are currently in production and will be deposited in The Bancroft Library.

Olney: Bookmaking revived during the 1950s and the time of the crime commission. It was once more a pretty full operation. When Earl Warren was governor, we had more trouble with it, but did succeed in rooting out, once again, all the larger trunk lines. It's destroyed; it doesn't work any more and never will again. The reason for it is that to make that wire service work you have to have a huge nationwide organization of specialized people to do their jobs. You have to have the people at the track capable of smuggling the racing information out in such forms to make it usable. What they used to use were old-time telegraph operators, but they're all dead. They don't have anybody like that. Then you have to have an organization where the information from race tracks all over the country is pooled. And then you have to have a disseminating network to distribute it back to the bookies. You can't organize that way any more.

Stein: Now, just refresh my memory again about the supreme court case. Why did--

Olney: Well, what happened was that we filed this big injunction suit, got an injunction from Judge Wilson in the superior court in Los Angeles, prohibiting Russell Brophy, who was running the wire service there, and Kreling and Cohn, who were running it in San Francisco, from doing certain things, disseminating information and whatnot. They went ahead, in violation of the injunction, and continued to provide service in the manner in which it was prohibited. We could prove sixty or more days of operation.

We charged them with contempt, criminal contempt, for each day of operation that we could prove. They were found guilty and the judge imposed fines and sentences which were cumulative, because they were separate violations, one on top of the other. The results were that the sentences were very substantial, and so were the fines.

They took an appeal to the California Supreme Court and the basic question was, was the original injunction a valid one? The supreme court held that it was not. They conceded that a gambling house was a public nuisance and was both a criminal offense and a civil tort. But they said that it did not follow from that that you could enjoin people who were aiding and abetting the maintenance of the nuisance. That was their theory of our case. So, they threw it out on that ground. It would have done us an awful amount of harm if the war hadn't come along at that very time, but it did. And the Chief is still upset about it; he still thinks that it was a very poor and very unwise decision.

Stein: It sounds very strange to me. I wonder why they decided it that way.

Olney: Well, you'd have to ask them; they put it all in their opinion. No, they didn't put it in their opinion; that's another thing that irks the Chief. They put their major reasoning in an opinion about a gambling house in Monterey, which was just a little Chinese gambling place, in a case which was decided the same day.

Stein: Oh, I remember that. Then they used that--

Olney: But the wire service case, which involved the biggest racket that we had in California, the court disposed of almost summarily and without much of an opinion. I've never known how they got that way; I just don't know. I'm not among those who attribute evil motives to judges that put out decisions I don't agree with. I don't think there's anything crooked about this decision at all. And I have a hunch they may have had second thoughts about it.

Stein: Do you have the injunction that you filed?* It would be useful to include that in the Warren papers in The Bancroft Library.

Olney: Well, perhaps it would, and of course its yours, because you got it. This includes the preliminary injunction on which these contempt proceedings were later based. But it also includes the original complaint. It lists all the defendants and, incidentally, the first defendant was Moses L. Annenberg, who was the president of the Nationwide News Service, the head of this racket. The second one is his son, Walter H. Annenberg, who was the acting head at that time, while Moses was pretty old. In fact, he died before he served out his sentence, and Walter H. Annenberg is now the Ambassador of the United States to Great Britain. Nixon named him as an ambassador.

Stein: Well, that's a success story for you.

Olney: The rest of these are just the darndest bunch of hoodlums you ever saw. Well, here's James M. Ragen, Sr. A little later when he was riding from his office to his home in Chicago, a car came alongside his limousine and up went a curtain and they blasted him with a sawed-off shotgun. Ragen did not die, so they took him to the hospital in a critical condition. When he was reported as getting well, someone got into his room and killed him. Many of these other defendants are gangsters that were killed at a later period.

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*On deposit in The Bancroft Library.

Stein: Did any of them serve time as a result of this case?

Olney: Well, no. This wasn't a criminal case; this was a civil case. Now, on the allegations, as I have explained, the descriptions of the general organization nationally, the Nationwide News Service and wire service, were based on evidence supplied to us by the Treasury agents, particularly Samuel Klaus. Now, when you get to the allegations about California, those were all produced by our own investigations. We have a list of who the heads of the service were, and then we have a list, just as an exhibit, of the addresses by number and street and town and county of all the bookmakers in the state of California that there were at that time. We got that by subpoenaing the records of the telephone company that had the direct wires. These places all had direct wires for the Nationwide News Service; nobody else could use the darn stuff. So that's where that came from, but it was supplemented, of course, by many on-the-spot investigations by our people to make sure these really were bookie joints.

Stein: Well, I think that's all the questions I have.

XII THE CALIFORNIA CRIME STUDY COMMISSION ON ORGANIZED CRIME

[Interview 13: December 6, 1976]*

Setting up the Crime Commission

Administrative Machinery

Stein: Why don't we start with the establishing of the crime commission, and how and why Earl Warren chose to set it up.

Olney: I don't have as much information on that as you might think. At the time, in the fall of 1947, I was practicing law privately in San Francisco. I had a partnership, Olney and Elder. We were in the Alaska Commercial Building. I read about the governor's intention of establishing a crime commission when it was in the papers, but he didn't consult with me and I had no occasion to see him or discuss it with him. There was some legislation that was passed which authorized the creation of these special study commissions on

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*Editor's note: This section, recorded considerably after all the other interviews had been completed, was only lightly reviewed and edited by Mr. Olney before his final illness, and should therefore be used with caution. The reader is referred to the reports of the crime commission, on deposit in The Bancroft Library, which offer a substantive account of the work of the commission. Mr. Olney's recollections in this section add anecdotal and human interest material that should be used in conjunction with the commission reports.

Olney: crime in the Department of Corrections. They were part of the Department of Corrections and under their general auspices. There were some five commissions, the one on organized crime being only one.

Stein: If I could interrupt just a second: why were they put under the Department of Corrections?

Olney: I think for budgetary reasons and administrative reasons. That was the only logical place to put them. But I don't know about that. That legislation was drawn without my having anything to do with it at all.

After the legislation was passed, the governor talked to me about becoming counsel for the commission on organized crime. And he talked to me about some of the members, who he might select, who he could find that would be suitable to serve on the commission. I recall that, but that's really about the only conversation I had with him prior to the beginning of the commission's work, which was on November 1, 1947.

On that day the governor had a large meeting in Sacramento where the membership of all these special crime study commissions met along with as many of their staff members as there were, as well as people from the Department of Corrections and elsewhere. Of course, in the Department of Corrections they were more interested in the commissions on adult procedures and juvenile justice and things of that kind than they were in the commission on organized crime. The meeting was presided over by Richard McGee, who was the director of the Department of Corrections, although the governor was there and got it off to a good start.

My recollection is that that was a two-day meeting. It was not a public meeting, but it was a very large meeting, and besides these people who were to be active I believe that sheriffs, district attorneys, chiefs of police, the attorney general, and the Adult Authority were all present. So it was a discussion of "Where are we?" in dealing with the various facets of the problem of crime; how should we assess the present situation and what plans should we make about the future in these various areas. That's what we were discussing.

I can remember some of the district attorneys who were there and the sheriffs and chiefs of police that I had known formerly before the war when I was in the attorney general's office. But I had never met Fred Howser or any of the people in his office, and neither had I heard anything particularly disquieting about him or them. The governor had told me that he had been hearing very upsetting things about the attorney general's office and what was

CRIME COMMISSION PERSONNEL

First Crime Commission: 11/1/47 - 6/30/50

Commission Members:

Admiral Standley, Chairman - U.S.N., retired. Former U.S. ambassador to Russia
Gerald Hagar - attorney; past president, California State Bar
William Jeffers - past president, Union Pacific Railroad; U.S. Rubber Coordinator, W.W. II
Gen. Kenyon A. Joyce - U.S.A., retired; Commanding General, 9th Service Command, W.W. II.
Harvey S. Mudd - president, Pacific Alkali Company; mining engineer

Staff:

Counsel: Warren Olney III
Assistant Counsel: Arthur Sherry (after Jan., 1950)
Investigators: John H. Hanson, Chief 11/5/47 - 11/30/48
H.G. Robinson, Chief 12/1/48 - 6/30/50
Virgil Wolfe
Thomas Judge
Edward Cochran 7/1/48 - 1/31/49
H.R. Van Brunt (after Jan., 1950)

Second Crime Commission: 10/8/51 - 6/3/52

Commission Members:

Gen. LeRoy P. Hunt, Chairman; U.S. Marine Corps, retired
Harley E. Knox, former mayor, City of San Diego
E. Wilson Lyon, president, Pomona College
Edwin J. Owens, Dean of the College of Law, University of Santa Clara
T.M. Storke, president and general manager, Santa Barbara News Press Publishing Company

Staff:

Counsel: Warren Olney III
Assistant Counsel: Alan A. Lindsay
Chief Investigator: H.R. Van Brunt

Olney: happening to law enforcement in the state. He had no way of evaluating it. He didn't know how much of it was true or how much was untrue. But he was fully aware that there were plenty of people who were anxious to make trouble for him and for Howser. He said that he was anything but close to Howser and that Howser had sort of ridden into office on his coattails at the election. But he said he thought that we would probably find out from the people that we knew in local law enforcement what was going on and could check into it and make reports as to what the situation was.

He had already appointed John Hanson as the chief investigator for the crime commission. I think he appointed John before I was appointed. John had been for years the chief special agent in Southern California for the FBI. That was all during the war years, and during that period they weren't moving FBI agents around as they habitually did both before and after. So a man such as Hanson, who had been there for some years, had a tremendous background and personal knowledge of criminal activities in that area.

Stein: I was interested in what you were saying about Howser's background because one of the things I came across in my reading was that his sister had been arrested as a prostitute, but I guess that wasn't until a trifle later in 1949.

Olney: I don't recall that. Now that you speak of it, I do remember there was some sex story, but I don't remember whether anything like that was ever authenticated or not. Certainly I didn't know it at the outset and it never figured to any extent with us because it wasn't our business.

Stein: In setting up the crime commission I gather that, first of all, the commission was not given the power to subpoena. Is that true?

Olney: That's right.

Stein: I was wondering why that power had been denied the commission.

Olney: Well, I can't give you much information on that either because that, of course, was in connection with the legislation which authorized these commissions, and I wasn't consulted about that. My recollection is that the original drafts of the legislation had conferred the subpoena power. I don't know whether it was on all five commissions or just on the one on organized crime. I think that they had a provision like that in there.

But the subpoena power is a fearsome thing. It's a power that is easy to abuse, and legislators are properly concerned and <u>should</u> be concerned about to whom they're going to grant that power. To

Olney: take an ad hoc commission of appointees of the governor when they didn't even know who the people were going to be and confer that power on them--I think it's understandable that some of them would have considerable reluctance, and would not be willing to do it without a clear demonstration that it was necessary.

As a matter of fact, it wasn't necessary. The second commission did get subpoena power, but it wasn't through any request of ours or any feeling--I take that back; we may have requested it, at that. The one use that the subpoena power did have for us was that in obtaining documents and records, especially bank records or other business records, a company like that is reluctant to just reveal records on a request; but they may be very willing to give the information, copies of the documents, under a subpoena because it gives them a valid reason for doing that with the people who may be involved in the records. We have found that it would have been helpful and useful to have subpoena power on the first commission for that kind of thing, although we had virtually no problems getting records.

When the second commission got subpoena power, the newspapers thought that we were going to hold public hearings and subpoena witnesses and bring them in and grill them, as their term is, cross-examine them and that kind of thing. We didn't do that with anybody, for several reasons. The first one was that it wouldn't have served any useful purpose for us to do it. We wouldn't have gotten anything we didn't have anyhow. Another thing is that proceedings like that take a lot of time and they cost a lot of money. You have to have a room and a reporter and all that kind of thing, and we were trying to stay within our budget, so we didn't want it for that reason.

Another controlling reason why we never subpoenaed any unwilling witness, even when we had the subpoena power, was because I entertained very serious doubts as to the constitutionality of the thing. I doubted that a commission of that kind could be given subpoena power, and I was certain that if we ever did try to use it against an unwilling witness and he refused, there would be long drawn-out litigation, and the matter couldn't possibly be decided within the lifetime of the commission. So, it just made no sense to get involved in that kind of a hassle.

Stein: I gather that the commission had its share of opponents in the legislature. Is that a fair assessment?

Olney: Well, they did, yes. But they were the same group of people who would oppose any decent legislation against gamblers or anything else. There wasn't anything extraordinary about them. They were in a minority.

Artie Samish and the Tom Keene Murder

Olney: [referring to interview outline] I see here you're wondering about the role of Artie Samish.

Stein: Yes.

Olney: On that, I just don't know.

Stein: He credits himself, in his autobiography that he wrote with the help of someone else, with getting legislation through. He tells the story fairly early in the book. He says, "I saw to it that the proposal got through the legislature."* And then he talks about what an irony it is because, according to him, if he had known that you were going to be the power that you were on the crime commission he never would have let it get through because of what you did afterwards, which he interpreted as this personal vendetta of yours, that you were out to get him and finally got him all those many years later.

Olney: With respect to the passage of the legislation, I don't know what part, if any, he played in it. I just have no information about it. But it is true that we did eventually question Samish. And when I said that we made no use of that subpoena power, we made some use of it in that particular instance. That was when the second crime commission had virtually completed its work, and we were ready to prepare a report and not have any more commission meetings. In reviewing the situation to see what loose ends there might be, we had this bomb explosion in San Mateo County. What was the name of the man that got killed down there? That dog-race business?

Stein: Tom Keene.

Olney: Yes, Tom Keene. We had an extensive file on the investigation of Tom Keene's murder, and you'll recall that we had very solid information--and it's in our report--that there was this large bookmaking ring at the Olmo stables in San Mateo County which was a layoff center for the whole western part of the country.

Stein: What's that?

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*Arthur H. Samish and Bob Thomas, The Secret Boss of California: The Life and High Times of Art Samish (New York, 1971), p. 14.

Olney: Well, it's a place where the money that bookmakers are afraid to carry can be laid off. An individual bookmaker has to keep his book in reasonable adjustment. The thing that he always has to be afraid of is that he's going to have a lot of money on some horse, a long shot possibly, that may come in and there will be very large amounts that he's got to pay out, maybe more than he can handle.

That thing happens frequently in the bookmaking business. To prevent that, when he thinks he gets loaded up with too much money on one horse, he'll want to lay some of it off with some other bookmaker. It's just the way the insurance people operate with reinsurance in one another's companies. And to do that they had these layoff centers. There were about five or six of them in the United States where certain bookmakers in certain areas could telephone in and lay off these monies, and there would be somebody sitting around the table who would be willing to pick it up.

Now, that takes a lot of money. It takes big money to operate that way. And that's what they were doing at Olmo stables. And Samish was in that up to his ears. He had his men--"Porky" Flynn, and I forget the name of the other one. [Mr. Olney later recalled that the second man's name was Jasper.] They were in and out of there. When we got reports about this we checked up on it by having people go and watch the place, and we saw them going in and out.

We also had our own man who was sitting in there at the table, taking part in this thing. He's mentioned in our report by name. When we came to write this up we had to put his name in there or he would have stuck out like a sore thumb if we hadn't put it in there. So, he's in there. But he was giving us reports of what was going on.

According to him, Tom Keene's murder was discussed at length by them around that table, not in any speculative way, but remarks were made that he only got what was coming to him and that he was a dirty welsher and things of this kind. From conversations he got and reported to us, we actually thought we knew who the man was who put the dynamite in the car, because he had a long record of dynamiting cars in just that fashion. He'd done it before. He was a strong-arm man that they used to use to carry the money.

Besides this business on telephones with the layoff centers, every so often there'd have to be a reckoning where there was an actual exchange of cash. This was done by putting money in a satchel and sending it from San Francisco to Covington, Kentucky--that was one of the main ones--or perhaps to Hot Springs, Arkansas, or wherever the other center might be. A man actually carried it there. This dynamiter used to have that assignment.

Olney: We knew that it was going on because our man on the inside told us what was going to happen, and we saw this fellow come with the satchel; he went down to the bank and got the money out of the bank; he was picked up by an escort of the San Francisco police and escorted to the airport. The police provided him a guard down to the airport. There were many other things that made us have great confidence in this informant we had.

If you took the conversations that he repeated to us literally, if they really occurred the way he said they did, they indicated very strongly that those people not only knew who killed Keene but that they were the ones who were responsible for it because Keene had welshed on something like an eight-thousand-dollar bet and refused to pay. Eight thousand dollars was more money then than it is now.

That was very hot information, indeed, and it involved Samish's two men and involved Samish himself. Samish himself was there at the table sometimes. We never felt we had enough information to present it to a grand jury or anything of that kind. This was hearsay, at best.

But when the commission was about to end, I became very much concerned about what we ought to do with that kind of a thing. I thought, "Suppose we don't do anything; we just fold and go out of existence. Then maybe in a year or so this Keene murder breaks wide open. Then it comes out that the crime commission had all this information pointing in this direction. The commission would be subject to the most terrific kind of public criticism and it would be claimed that they had swept the thing under the rug in order not to bother Mr. Samish with it."

That didn't seem like a fair thing to do to the commission. I felt responsible for giving them some kind of guidance on things like that. So, I persuaded them that before we ended we ought to at least ask Artie Samish if he knew anything about it, and they agreed that we should do it. We could have done it publicly or issued a subpoena; it would have been in every newspaper in the state. So, in fairness to Samish, we sent Harold Robinson, our chief investigator at the time, over to see him. No, it was [H.R.] Van Brunt. Robbie [Robinson] had already gone with the Kefauver Committee.

We told Samish that the commission would like to ask him some questions if he was willing to answer them, that we knew that publicity would be very harmful to him and we would do everything possible to avoid any publicity. We arranged to have the meeting in Boalt Hall [University of California, Berkeley law school] on a Sunday morning, and that's where we did hold it.

Olney: Before we'd gone that far, I thought we ought to do everything possible to check our informant as to whether he was telling us the truth. And although I never had too much confidence in the polygraph, it was in use at that time and there were many people who thought that it was highly successful. I guess in some instances it proved itself to be successful.

Probably the best polygraph operator in the country at the time was Doug Kelly, who was on the faculty at the University of California. He was in the School of Criminlolgy. He was very experienced. He was the psychologist who interviewed Hermann Goering in connection with the Nuremberg trials, so he had great standing and a reputation.

I got a hold of Kelly and told him that we had an informant who had a long account of many events and that we were very concerned to find out whether there was any intentional deception about it, and wondered if he could be of any help. He said, "I can't be of any help to you with a polygraph alone because there are some people who just aren't fit subjects for a polygraph examination. You can get people in a mental state who may be suffering from hallucinations or something of that kind and they'll go ahead and relate the thing, and it won't register on the polygraph because they're doing it in perfect good faith although it has no reality. The machine isn't a lie detector. It's a truth detector, if anything." He said, "The only way I could do that would be to first give him a complete psychiatric examination."

So, we got a hold of our man and said, "What about it? Will you go on the couch?" And he said, "Sure." He went to see Dr. Kelly, or vice versa--I don't know which way we arranged it--and Kelly gave him a very thorough examination. Then ten days later we had him give him a second examination, and when he got through Kelly said, "There's nothing the matter with this man. He's as normal as apple pie. He's perfectly all right. He's a very fit subject." Then Kelly put him on the polygraph, and once again he examined him, I think, on three occasions--two anyway--on the polygraph. He got a completely flat record, which means an indication of a complete absence of any intentional deception.

Stein: You were saying that that didn't necessarily mean that it was accurate.

Olney: Yes, only that there was no deliberate deception involved. Well, it was because of that that we finally felt we were justified in asking Samish to come over and talk to the commission. The commission and I discussed at some length about how this examination was going to be conducted, and we agreed that there was no use in

Olney: asking Mr. Samish if he had anything to do with murdering Tom Keene. He wasn't going to say yes even if he had. The probability was that we wouldn't get any useful information out of him. But perhaps if we asked him questions about the Olmo stables and the bookmaking operation and things of this kind, we'd get some reaction and some indication from him that might throw a little light on it. So we asked him to come and he did. I don't remember whether we had a subpoena or not. If we did, it was because he asked us to. We may have. We may have told him that if it was any comfort to him, we'd give him one.

Well, we had our meeting and the commission left it up to me to question him. They didn't ask him questions. And, of course, I had to fence all over the place to try to get information out of him without giving any clues as to what it was that was in the back of our minds. From his account that you showed me in his book, I can see that worked all right. He never did get any notion of what we were trying to get out of him. There's part of what he has in there, most of it, that's quite correct.

I did question him at long length about this bookmaker friend of his, and he said that man was suffering from cancer, that he thought we were trying to make a case against him even though he was presently dying of cancer. Well, he was dying of cancer; that is correct. And I did badger Samish with all kinds of questions about him. But that isn't what the object was, to try to make a case against him, but to see if anything in the way of corroboration for the story that our man told would come out from Samish.

Nothing did. He answered every question, showed no distress about anything that we asked him, no surprise. He denied knowing anything about the Olmo stables; he said he'd never been there. We knew he had. He denied that "Porky" Flynn and the other man, whose name I can't remember [Jasper], had anything to do with it, although it was his money, his bank roll, that they were handling. But we'd expected answers of that kind.

So that was the only interview that we had with him and under a subpoena. We had no expectation of trapping him into saying something that would make it possible to present it to a grand jury. But we did feel that we would have been negligent, really, if we hadn't even asked him anything after all the information we had in that file. So that's our explanation of the incident.

Stein: Another thing that Artie Samish said is that he started his political career in your father's law office as an errand boy.

Olney: I think that's right. I've heard that from John Parker, who also was an errand boy in the office, and the two were errand boys at the same time. I don't know how long they worked there; it wasn't too long until Samish left. He used to rib these boys about why in the world they stayed in a stuffy old place like that and didn't get out in the world and make some money. John Parker later became one of the senior partners in the firm. He's now dead. But Artie Samish, at one time, worked in the state legislature when he was a young man. And there one of his fellow workers in the legislature was Earl Warren.

Stein: I was just going to ask if they held the same sort of position.

Olney: It was 1919, I guess, right after the war.

Stein: He got around, then.

Olney: Yes.

The Attorney General's Office and Organized Crime

Stein: I wonder if you want to say anything about what the role of the commission was seen as. Its name suggests that it was set up as a study group.

Olney: It was, and that's exactly what we thought we were going to do. There were indications that the rackets were starting to get out of hand. These indications came from people like Sheriff Jack Gleason of Alameda County; Charlie Dullea, who was the chief of police in San Francisco; Mayor [Fletcher] Bowron in Los Angeles; Frank Coakley, district attorney of Alameda County; and others in the District Attorneys Association and other district attorneys that Earl Warren and I had known for years. There were increasing indications of expanding gambling operations.

You can go through a town and pretty well tell just by looking at what's on the street. When you see all these tip sheets out there by the cigar stores and things of that kind, you know perfectly well there's a book right near. That's the only reason tip sheets would be there. And the slot machines were not only reappearing; they were spreading all over the place.

Then there were these rumors that these officers were coming up with that somebody was organizing these characters, and that there was a system of payoffs involved. When that happens, one can be very sure that somewhere along the line there's corruption. You don't know where, but it has to be someplace because otherwise things would be stopped.

Olney: We thought that it was probably weakness in the system in one locality and not in another. Our experience in the thirties had been that law enforcement varied enormously from county to county, depending on the personalities of the sheriff and district attorney, primarily, and that this was probably just the same sort of measles.

But quite early we had this incident in Alameda County of Tony Heller, who was a "commission man." He was a sort of a layoff man and would handle stakes and hold stakes in bets on all kinds of events. He operated in Oakland, and then there were a couple in San Francisco that were bigger. I don't remember their names. Heller had been conducting this operation which was semi-legal, or maybe I should say only semi-illegal. Nobody knew for sure exactly what it was. He wasn't making book in the ordinary sense, and there was no real subterfuge about it. He was constantly quoted in the papers, just as the Las Vegas gamblers are now, on the odds on elections and the odds on this, that, and the other thing.

But he suddenly got thrown in the can, and what had happened was that Buck Caddel, this new man in the attorney general's office, had suddenly appeared from Los Angeles and went down to Heller's place and had a conversation with Heller, as a result of which he immediately arrested him and took him down and booked him. He didn't have any evidence or anything else, and the Oakland police then went around to Heller's place and found enough papers around there so they thought they had a case, and they put a charge against him.

This created real commotion, especially when Heller said that what had happened was that Caddel had come in there and told him that he wasn't going to be permitted to operate unless he paid off at so much a month to the attorney general's office. Frank Coakley and the Oakland Police Department and Sheriff Gleason were really excited about that. I think they ended up by making some kind of a charge against Buck Caddel. I guess they brought him before the grand jury; that was it.

Anyhow, Buck Caddel had to have a lawyer. So his lawyer comes up from Los Angeles to represent him in this case. His lawyer turned out to be Murray Chotiner, who later was such a pal of Richard Nixon's. Chotiner's now dead. Then we found that Caddel had been to Santa Cruz and had hustled the slot machine operators down there around the pier. We began to get more and more concerned and thought there was something really rotten going on in the attorney general's office, and we couldn't ignore it.

Stein: What did you do?

Olney: We had to change our views many times as to what it really showed. There was a period when we thought that Fred Howser himself was the kingpin of the whole thing. Then as we went deeper into it we saw many things indicating that he wasn't at all, that it was beyond his control. We finally concluded that Fred probably knew very little about it. He had been put in just as a front man, and he was satisfied just to be a front man.

Stein: And he had no idea?

Olney: Oh, he had ideas, but he didn't care; he didn't know the details and wasn't taking any active part in it. Whether he ever got any money or not, we never knew. Of course, at first we thought he must, but it never showed up. And it didn't show up after he got out of office, either. His history is a strange one, and if we had known as much about his early history and how he became district attorney in Los Angeles County, we wouldn't have been as surprised by the unimportance of the role that he played.

Buck Caddel was convicted and served a term, and then he got out. One day he was driving in his car in Burbank where John Hanson lived. John was our chief investigator, and he made the case, really. Well, John was out watering his garden, and Buck went by and stopped and came over to talk to him and discussed the whole thing with Hanson at length. He said, "You know, you boys always thought Fred Howser was the kingpin in this thing, but, you know, I don't think I ever talked to Fred Howser more than three or four times in my life. I never took any orders from him. I always took them from [Duke] Bolger." And we had pretty much come to that conclusion before it was confirmed by Caddel himself. Caddel had no animosity at all as far as Hanson was concerned. He knew that John was just doing his job.

Stein: That's interesting. We've gotten on to that whole story by asking if the commission was a study group, and it sounds as though what happened was that you evolved into something that wasn't quite <u>just</u> a study group.

Olney: Well, it <u>wasn't</u>. It became an investigative agency. Our whole staff and our entire effort had to turn into investigation. That's the only way you could get the information that was needed to make any kind of a report or to study or anything else on our subject, which was organized crime. We had to find out what was going on and who was doing it. So that commission followed a very different course than the other four commissions did.

Stein: The other four remained primarily study groups.

Olney: Oh, yes.

The Crime Commission at Work

The Role of the Public Utilities Commission: The Wire Services Cases

Stein: I noticed that early in the report the Public Utilities Commission played a very important cooperative role.

Olney: That was in connection with the wire service. The place where you look for organized crime is where the money is. Organized crime is an awfully vague kind of subject. But there are lots of crimes that can be organized that you wouldn't include within the usual meaning of that phrase. We intended it to refer to the kind of activity that is criminal in nature and is based on greed, and an organization to get rich by criminal means. At this particular time we found out that the place where the most money was, where you could really make money by breaking the law, was in the gambling-prostitution-narcotics areas.

The bookmakers were the biggest of them all, as far as money was concerned. I had been through the wars with Annenberg and the Nationwide News Service before World War II, and when I got into this position with the crime commission I found that following the war, when racing was resumed--it all closed down during the war--but when it was resumed, the bookmaking racket revived along with it. That meant that we better take a good look at the wire service and who was operating and how it was working.

Of course, Bugsy Siegel's murder came along right about that time, which was one of those spectacular assassinations that seemed quite clear that it had grown out of the wire service, out of contests over that money. So we began investigating that. But besides getting the facts, we also wanted to do and have done the things that needed to be done that would bring it to an end.

We had found out years before that the bookie racket cannot operate without that up-to-the-minute news that the wire service alone can provide. We took a look at their communications system. It was all done with the telephone company, and some with Western Union. We had no authority, no subpoena powers or anything else, but we have a Public Utilities Commission and we just went and talked our problems over with them.

Harold Huls was the chairman of the Public Utilities Commission at that time. I had known him, I've forgotten where; I know we were very friendly. But he said that he thought the commission ought to take a position that a telephone company ought not and need not provide service when they knew that the service was simply being used to violate the law.

Olney: The Pacific Telephone Company, unlike those in the East, had always been very cooperative on this, and they had told us, "We don't want to be in the business of serving a lot of racketeers if we don't have to. But we're a public utility and that means we have to offer our service to the public, and we can't refuse anyone without substantial reason. If you'll give us the reason, we'll stop the service."

That's what we did. Then, when they started pulling the telephones out, the wire service and the bookies went before the Public Utilities Commission to try to get orders reinstating the service, without any success. That's a long litigation. The story of it is all in the reports. But there again, to our considerable astonishment, we found ourselves on the opposite side of the thing from the attorney general of California.

Stein: You mean he was arguing for the--

Olney: Yes, for the wire service. And he wouldn't appear and fight this battle before the Utilities Commission; we had to do it. I don't know how many days I spent in trial on that thing, a couple of weeks, I think, because the attorney general wouldn't. I had some authorization from the governor to do it.

Stein: I was going to ask you, were you appearing, then, representing the State of California? Or the crime commission?

Olney: Not the crime commission, no. I really can't remember.

Stein: Well, that's not important. That's easily found by just going back to the records of the trial.

Olney: I don't remember what hat I was supposed to be wearing. [laughter]

Gathering Information

Stein: I guess the next question on all this was how information was gathered. We talked about this coming back from lunch.

Olney: We had a staff of investigators and they were all experienced men. They all had good personal relations with numbers of other regular law enforcement agencies like sheriffs and chiefs of police, or the FBI or the Treasury or whatnot. They went to those offices and were given a great deal of very, very valuable information. My guess would be that about 75 to 80 percent, maybe more than that, of the information we got for the crime commissions came from other law enforcement agencies first.

Olney: But we made a different use of it. We were concerned with the whole state; they were only concerned with a city or a county, as a rule. It was their duty to try to make cases against individuals. We were not in the business of making cases. We were trying to get the picture of what it was in general, its methods and techniques, and, as best we could, information about who was involved.

So our files and records were different from those of the ordinary law enforcement agencies. We had files by counties, and we also had files by subject which included duplicate copies of the county material, so you could go to a subject file and get everything we had in every county on that subject. Or you could go to a county file and get everything we had that was supposed to be going on in that county.

These men were very skillful in their reporting, I thought. They were very careful, meticulous, and extremely thorough. The amount of detail that's in the files and the reports is astonishing. But it proved to be very, very valuable.

I may have stressed our other activities too much at the expense of what we did do in the way of studying, because we took these reports and put the things together and got a picture of the activities of the slot machine racket in all the various parts of the state, and the bookmaking racket, too, from these reports they got. But the basic information and most of the hard investigative work was done by the regular agencies who were interested in helping us.

Maybe people don't realize it, but it is a fact that people engaged in law enforcement work want to be in an honest agency. They don't like to be in a place that's loaded with crooks and that's engaged in corruption, and they resent it very, very much. They feel like they've been betrayed personally when they see these things going on. So to have a central place where this information could be deposited and accumulated and put to some use suited them very well.

Stein: You mentioned that the commission itself never used telephone taps.

Olney: Never.

Stein: Why is that?

Olney: It was against the law by that time. When you interviewed me before about the years when I was in the attorney general's office and in the Alameda and Contra Costa County offices, at that time we were of the view that there was no law that prohibited law officers from tapping telephones in the investigation of crime.

Olney: The wording of the statute, to us, didn't seem to cover it, either the state or the federal statutes. But over the years there was a series of decisions by the United States Supreme Court in particular which changed our views as to what the law was. We were horrified to find that in one case we had a tap on when we read the decision of the Court that they were illegal. We sure got that off in a hurry, and never went back to it.

Stein: You were telling me the story of how the Los Angeles police wired Mickey Cohen's house. That was somehow within the letter of the law?

Olney: Well, all I know about it was this: We had a series of homicides where members of Mickey Cohen's gang were being killed off. Some of them were shot; there was one occasion when one of them was shot along with one of Fred Howser's men who was acting as a bodyguard for him or something that night. Then there were two or three others who just vanished, and the rumor went all over the underworld that they'd been knocked off. Of course, we made inquiries and investigations and became satisfied that they had, indeed, been killed, although their bodies were never found; no trace was ever found of anything. We were making inquiries of that kind and, of course, we were wondering what in the world was going on with Cohen's outfit. They were on the receiving end of this stuff.

One of our investigators knew George White, who was the agent in charge of the Federal Bureau of Narcotics in Northern California. George was a very rough customer, indeed. He was one of the toughest fellows that I have ever encountered. There was a fine young lawyer in Oakland who served with George White in the Burma theater during World War II, and he described George to me and he said, "George would just as soon kill a man as have a steak for breakfast." [laughter]

George was very enthusiastic about his job. He just loved raids. When he'd go on a raid, he'd always go right through the door. He never bothered to open it; he 'd just go right through it. He was an early-day Kojak. [laughter] But he was very friendly with us.

One time he gave us an extensive transcript because of the light that it threw on what was going on in Mickey Cohen's gang. This was a transcript of conversations between Mickey and many of his other hoodlums and hoodlum friends. It was evident that there had been a microphone somewhere. It was pretty plain that it was in his house somewhere. We read it, and our interest in it was in the information, but we did not ask any questions about how it was done. There was nothing that we needed to know for our purposes. I thought the less we knew about it, the better.

Olney: Later on a case came up that was pretty sticky. It involved a man arrested on a narcotics violation in Los Angeles, and he was taken before a magistrate and released on bail. He got in his car and drove across the Tehachapis and up the valley. There was some wild automobile ride that was involved in that. He was chased by the State Highway Patrol and some deputy sheriffs in the valley somewhere. They had a terrific chase at a hundred miles an hour or faster. They finally got him. He had a small amount of narcotics in the car. He threw the stuff out of the car and they were able to find it. That got the state authorities into the thing, as well as the federal.

He was then taken back to Los Angeles, and then he proceeded to unload everything he knew to the law enforcement officers. I think he talked to the state people first and then they turned him over to White and he gave White more information. White wanted to use him before the federal grand jury. They went back to Fresno. This is awfully hard to remember now.

How did we get into it? I know we did because I made a trip down to Bakersfield and I talked to that fellow myself in the Tajon Hotel in Bakersfield. There was some payoff in the state narcotics officers, according to him.

Anyway, he went back to Fresno and was awaiting the federal grand jury hearing. One Sunday afternoon he was snoozing on the couch in the living room. He was alone--his mother and father were in the other end of the house--and somebody came into the house and shot him right through the head and killed him while he was asleep, and got away. It was to keep him from testifying.

It was in that connection that these transcripts became of more interest than they had originally. I don't remember why, but they did. After that occasion, there was some reason for George White telling me where he got the transcripts. I thought it was something they had done; it wasn't.

He told me that he had gotten them from the Los Angeles police, and that the story of it was that when Mickey Cohen had built a new house out in Beverly Hills someplace, the Los Angeles police had learned that the house was under construction. So they went in there while it was being built and put in wires, as you said, right along with the plumbing, so that the whole house was wired from inside the walls on this thing and they could listen to anything that was going on in the house. That's where these transcripts came from. You asked me if it was against the law, and I suppose it was. I don't know. We didn't do anything about it, didn't feel that we had to.

Stein: Was this fellow you mentioned that was shot through the head in Fresno--was that Abraham Davidian?

Olney: That's it. Davidian. I guess that's described in our report.

Stein: Yes, it is.

Olney: I'm afraid my memory is very hazy. I haven't read the thing recently.

Attorney General Howser

Stein: I'd like to talk a little bit about Attorney General Howser. It seems to me he's a fairly large feature in some of your investigations. Do I have it correctly that shortly after the commission was organized, at least his initial response was to give support to the commission?

Olney: Yes. He was there at that initial meeting on the first of November in 1947 and made some remarks welcoming the commission and offering full cooperation in every way. I hadn't heard all these rumors at all. I took it at face value. I thought we were going to have a good relationship.

Stein: Then I think it was Arthur Sherry who said in his interview that at some time after that, when you became aware of what was going on in his office, at any rate, Governor Warren called him back to Sacramento for a meeting that, I believe, you were at.

Olney: When he called Howser?

Stein: Yes.

Olney: No. I did not attend any meeting with Fred Howser and the governor. But the governor did what he had done many times before in dealing with this kind of situation. He called Fred Howser in and told him that he was getting these awful stories about bribery and corruption and the organization of rackets in his office, and that it was very distressing and causing him great concern, and that as governor he couldn't permit things like that to continue on. He said that he didn't know whether Howser had ever heard any of these things or not, but he wanted him to know that they were being said, there did seem to be some substance to some of it, and that he hoped that he would take every step to put an end to it. But I doubt that there was anyone else present. What Earl Warren did was to treat Howser just as he had treated Sheriff [Burton] Becker in Alameda County when he first had to deal with him.

Stein: But I gather that Howser did absolutely nothing.

Olney: Of course, he said he was horrified at all this and didn't know it and couldn't believe this kind of thing would go on, and he'd make sure that anything like that would be stopped. But nothing was stopped.

Stein: Was that before or after the prosecutions in Mendocino County?

Olney: Before.

Stein: I found clippings in the San Francisco Examiner or the Oakland Tribune. Howser launched a full-scale attack on you in about June of 1948. I copied down some of them. On June 16, 1948, the Examiner reported that you, in a telegram, had indicated that you had evidence that Buck Caddel lied and was implicated in the Mendocino bribery and shakedown, and that there had been some falsifying of some records that involved Caddel. Howser, in response, sent a telegram saying, "I'm through being pushed around. The telegrams Olney and I exchanged today mean open warfare. Olney is a man who is misleading the crime commission and he should be unmasked." Your response, said the Examiner, was to laugh and say that you had no comment.

Olney: [laughter] I remember. That's correct.

Stein: That was followed a couple of weeks later by a press statement, I guess, a five-hundred-word blistering attack by Walter Lentz, who accused you of machinations and conniving, personal aggrandizement, and of being a political gnat trying to swell himself into public importance. He called you "a former political errandboy dropped from the attorney general's payroll who has a new state payroll job and developed into a political lawyer satiated with a desire for cheap publicity and an overweening ambition for personal aggrandizement over what he hopes may become the political victims of his uncontrolled character assassinations."

Olney: [laughter] Yes, I remember reading that. Some of my friends used to accuse me of putting Walter Lentz up to that particular statement. They told me that that would have cost $100,000 to get that from some publicity agent, and here I was getting it free. [laughter] I'm sure you didn't find any rejoinder from me to that.

Stein: No, actually the Trib said that you were on a two-week camping trip in the High Sierra and you could not be reached for comment.

Olney: Well, that was right. I was.

Stein: I gather that the climax of that little dispute was that Howser then declared your job illegal and chopped you off the payroll?

Olney: It wasn't anything crude like that. Somebody in his office wrote him an opinion that indicated my position was illegal and so I shouldn't be paid. And he expressed reluctance with having to go along with the opinion on it. This made Governor Warren very indignant and he said that he'd pay me out of his own pocket if he had to.*

Stein: Did it ever come to that?

Olney: No. It produced a very bad reaction. It backfired on Howser. I don't know whether they recalled the opinion or reversed it or what, but they finally concluded that I was entitled to draw a check.

Stein: I guess it was during that feud that this rumor was started that what you were aiming at in all of this was the attorney generalship.

Olney: Yes, that's right.

Stein: The defense attorneys in the Mendocino prosecution in their closing argument, according to the newspapers, charged that the case was a political scheme to smear Howser, and that the motivating factor, presumably, was your ambition to take his place as the state attorney general.

Olney: Yes, I know that that was said. I didn't recall that it was said at that trial; I guess it was. Incidentally, I didn't attend the trial. I went up in connection with the investigations sometimes, but I was not present any time during the trial. But there were many, many statements made, not just by Lentz and Howser, but by others indicating that they thought I was getting ready to run for attorney general. The reason for it was because I was getting all this free publicity. I was in the headlines day after day after day. These boys were kicking me there and they were even spelling my name right [laughter], so I had all the makings of a politician's publicity.

It gave me some concern as to what the commission members would think about this, because they didn't know one another very well and they didn't know me at all except in our acquaintance in this commission work. They were not politicians themselves. I felt they must be wondering, "Is this fellow really aiming to use us as a springboard to become attorney general?"

I finally decided that I just better put it right on top of the table with them. In one of the meetings, I referred to all these statements and said that I thought they might wonder about it and I

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*See Appendix D.

Olney: wanted them to know what my intentions were, and that is that I was not going to run for any public office because of this activity. The reason was that I felt that if I did, it would be thought in many areas that I had just used the commission and that would degrade the public regard for the commission and for its work. So I said, "They can print anything they want, of course, but I want to tell you I'm not going to run for attorney general or any other job." So it did bother me to that extent.

Stein: Howser reiterated the theme that he was being persecuted by the crime commission in his address to the Union Square Optimists Club at the Sir Francis Drake Hotel in May of 1949. He said that the crime commission was appointed, in his opinion, "by Governor Warren for personal attacks upon me and upon the attorney general's office." But he made a couple of other allegations in that speech that interested me. One was that he charged that the crime commission had no evidence, that all the evidence was hearsay. I wondered if that was just a smear campaign.

Olney: Well, I don't know what he was referring to there because that speech was after Caddel's conviction. I don't know how to describe that. We did have an awful lot of hearsay, of course. But we weren't publishing that; we weren't using that. The things that we published were hard and factual, and we were satisfied they were very good evidence and would stand up in court. We were never even challenged on it.

Stein: He also made a statement, and I've seen this elsewhere and it confused me: he claimed that two members of the crime commission had connections with the Santa Anita race track.

Olney: Yes, I saw that. When I read that statement of his over this morning, I saw he made that statement, and I'm not sure I know who he would be referring to.

Stein: He was referring to [William] Jeffers and [Harvey] Mudd.

Olney: It may be that they were on the Santa Anita board. I guess they must have been. Jeffers, of course, was former president of Union Pacific and was the rubber coordinator during the war. Harvey Mudd was president of the Pacific Alkali Company but also of Cyprus Copper Mines; he was a mining engineer particularly, and those big Cyprus Copper Mines were one of the companies with which he was associated. I don't know whether he was the president of the company or what. And men like that are the kind of people they like to get on a board of directors of nearly anything. I guess they both liked horses. I don't think they had much taste for bookmakers. [laughter]

Stein: I wouldn't suspect so if they were sitting on the crime commission. But Howser's statement confused me. I gather that at one point there was an abortive attempt to recall Howser. Do you remember that?

Olney: No, I don't.

Stein: A recall campaign?

Olney: Oh, you had a statement marked in there that was made by a couple of San Francisco lawyers, members of the bar, criticizing Howser for neglect of duty and things of this kind?

Stein: Yes, I think that was the one.

Olney: I don't know anything about that. I never knew those two men, never met them either before or afterwards. I don't think anything ever came of that. I don't remember any effort to have him recalled.

Drew Pearson and Ralph Allen

Stein: Two things I wanted to ask you about before we get onto the bookmaking are Howser's libel suit against Drew Pearson and Ralph Allen, and then who Duke Bolger was and what he did. I don't know if you want to get into Ralph Allen, since we've discovered that he wasn't the person we were thinking he was.

Olney: Ralph Allen was very much involved with Drew Pearson. Does Pearson mention him in his book? He must.

Stein: I think he does, yes.*

Olney: I can put our dealings with Ralph Allen right in a nutshell. He got in touch with us and claimed that he had been working for a bookmaker in the years that Fred Howser was city attorney for the City of Long Beach. Under their charter, the city attorney prosecutes criminal cases, which isn't the usual situation.

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*See Tyler Abell, ed., Drew Pearson: Diaries 1949-1959 (New York, 1974).

Olney: Allen claimed that the bookmakers were paying off in cash to Fred Howser. I don't remember whether it was only for campaign purposes or not. I think it was just regular payoffs. Anyhow, he said that he himself had taken money from this particular bookmaker whom he named--it was a place of business we knew all about--and had given it to Fred Howser himself. If true, the information was important, but it happened a long time back and it was difficult to see how we could get corroboration for it or how we could disprove it. But we tried.

We talked to the man a long time and he was playing a cagey game with us. He wanted to get paid, and the more I talked with him and the more he told us about what he would be able to supply, the plainer it was that he was trying to tell us things that he thought we wanted to hear. It's difficult to deal with people like that. You can't just throw them out because sometimes they do know things. So we told him that we were not going to put him on the payroll, that we couldn't do that; but he had this long story to tell and if he would go to the time and trouble to put it in writing so that we could write it up and have it in usable form, we would pay him for it. He agreed to do that and he did. I think he made a seventeen-page statement. But the statement contained no information that gave us any way of leading into any corroborative evidence. We were just as badly off as we were before. So we paid him and thanked him and said we couldn't make any further use of him, and he went on his way.

Apparently he got in touch with Drew Pearson and I think he must have sent Pearson a copy of the statement that he'd given to us, because later on during the time of the preparation of the trial between Howser and Pearson, my recollection is that Pearson's attorney had a copy of that statement which he must have gotten from Allen. Pearson asked me once about Ralph Allen, when we were having dinner in the St. Francis Hotel in San Francisco, and again over the telephone; and Jack Anderson, who was also working for Pearson at the time, also asked me about him.

I told him that we had taken the statement from Ralph Allen to find out what his story was but that we had been utterly unable to find any corroboration for it at all; that we were very suspicious that Allen was trying to tell us what we wanted to hear because we knew that he wanted to go on the payroll; and that we intended to make no use whatever of the story because we didn't think it could be supported with any proof. Pearson went ahead and used it in one of his broadcasts, some part of it, and it brought this libel suit.

Stein: And you were saying earlier that that was finally settled?

Olney: The libel suit was filed by Fred Howser in the District of Columbia. He could have filed it in California and probably got service on Pearson; I don't know. It was always a little strange that it was filed three thousand miles away from his own base.

But the case was tried. Roger Robb, who is now a judge on the United States Court of Appeals, represented Howser; and William P. Rogers, who was later deputy attorney general of the United States, then attorney general, and later secretary of state, represented Pearson. The case was tried, submitted to a jury, and the jury found for the defendant.

Stein: Pearson was also involved in a federal suit that you mentioned at lunch, a federal case against Walter Lentz.

Olney: Yes, he was. I knew a great deal about that, most of which I've forgotten. There was some other witness. I think his name was [James T.] Mulloy. I guess it had to do with the Guarantee Finance Company, which was a bookmaking operation that the crime commission had exposed.

The federal government took an interest in it--I think it was because of the unpaid income tax aspects of it--and wanted to call Mulloy before the federal grand jury. They took a statement from him. He gave testimony that was incriminating, not only to the Guarantee Finance people, but, I think, to Walter Lentz too. I may be wrong about that.

Anyway, Lentz then got in touch with this witness, Mulloy, and got him to change his story. This upset the U.S. Attorney, Ernie Tolin, considerably. So they got a hold of Mulloy, and Mulloy switched once more and went back to his original story, and then told them about Lentz's importuning him on his testimony. The government filed a case against Lentz--I guess it was an indictment against Lentz, I believe when he was in Fresno. He was tried there.

Pearson was very active in that and I can't remember exactly why. His son-in-law, George Arnold, was very active in helping him in that case. And I was friendly with George. I tried to help George. My recollection is that the case was eventually tried and Walter Lentz was acquitted.

Stein: Do you want to say a couple of words about Duke Bolger?

Olney: Well, I don't think anything more than I have. Let me stop and think. I don't want to be repeating stuff that's in here.

Stein: I'm not sure that there is much in here.

Olney: I guess there isn't. There's that whole gory affair of Bolger's dropping dead there, and then the money. Incidentally, the two San Francisco detectives who were handling it were later Kefauver's men.

Stein: I think you may have told that story already. Is there anything else we need to say about bookmaking?

Olney: I don't think so.

Stein: How about slot machines?

Olney: No, I think that's covered completely in our reports. And you asked me something about that before.

Stein: I did have one question. I think that you made recommendations in your report of legislation that could be passed to curb slot machines, and legislation was passed in 1949, and I wondered if there was any direct correlation.

Olney: Yes, indeed. It was our recommendation that did it.

Stein: I see. Did any of you actually appear before the legislature?

Olney: No, only our report.

The George Rochester Suit

Stein: I think gang violence is probably covered fairly thoroughly in your reports. The only thing that maybe isn't covered is the suit by George Rochester, who sued you in 1950. It was in March of 1950.

Olney: Was that when it was filed, or is that when it was tried?

Stein: I think that's when it was filed, so it may have not been tried until 1952. But at any rate, he sued you for libel in connection with charges that he had accepted checks from Jack Dragna.

Olney: That's right. This grew out of a press conference that I held. Jack Dragna was a true Mafia type and he was the big Mafia man in Southern California at that moment. One of the things that they operated was the wire service for the bookmakers down there. He had a company, the name of which has slipped my mind, but it had a bank account in which the printed name of the company would be on the checks and by so-and-so, an officer. That was the company that operated the wire service and leased all the lines and everything else. That was the operation that the crime commission was quite interested in and hoping to stop.

Olney: The Los Angeles police made a raid that had nothing to do with the bookmakers or the gambling. I think it had to do with Joe Sica and one of his violent crimes. Joe was a real killer. Anyhow, they made the raid, which included the office of this outfit that ran the wire service, and there they found cancelled checks for this outfit. There was a check signed by Jack Dragna as the president or secretary or treasurer or something; he was the man authorized to sign checks.

Included in the cancelled checks were two or three checks payable to George Rochester, which were endorsed on the back by him and deposited in his account. I think at that time George Rochester's name was strange to me, although he was well known to other people. He had been a state senator from the south and had practiced law around Los Angeles. He was then made special assistant to the attorney general by Fred Howser, and at the time that these checks were found he was holding that position. I don't remember what his duties were supposed to be. Do you want me to find out?

Stein: Only if you think it's important.

Olney: My recollection is that it had something to do with law enforcement.

Stein: Actually, that's probably in the newspapers. That's fairly easy for someone to check.

Olney: Somebody on the staff brought my attention to who George Rochester was. I guess it was the LAPD [Los Angeles Police Department] that sent us photostatic copies of the checks and their endorsements which they had found. They knew who George Rochester was, that he was in the attorney general's office, and that this wire service was a matter of interest to us. When I got the photostats of the checks, I checked back with the LAPD to make sure that they were genuine, that there wasn't any mistake about them, and that the Rochester that was on those checks was the same fellow who was in the attorney general's office. Sometimes you get fooled with the identity of names. We found out it was the same person all right.

So then I called the newspapermen and told them that I had a story if they wanted to come around and get it and I gave them an hour when they could come. I think it was the next day sometime. Half a dozen or so of them showed up and I'd had duplicates made of these photostats. I reminded them of the commission's interest in the wire service and who Jack Dragna was, and said that we had come into possession of copies of these photostats of these checks which were of interest to me and they certainly might be of interest to them. I gave them the photostats.

Olney: They, of course, at once asked me what the checks were for. I told them I hadn't the faintest idea. I didn't know what it was for. Maybe they could find out what it was for.

That hit the front page, as you might imagine, in big letters, and the men who took that story were all good reporters. I got to know them pretty well. I've got a lot of respect for them, for their accuracy. They submit their stories and then they're re-edited or edited; and then their rewrite men go to work on some of them; and then there are these fellows that write the headlines.

The headlines they put on those things were just outrageous. They were flat accusations of bribery by George Rochester for acceptance of these checks from Jack Dragna, the head of the wire service. I never said anything about bribery to the newspaper reporters and I don't believe there was anything of that sort in their articles. This got in a lot of papers.

Rochester was outraged and said that the checks had nothing to do with the wire service at all or with his duties in the attorney general's office, and he said that he was going to bring a suit for libel; that what I had done was absolutely unjustifiable and that one or the other of us ought to be forced out of the profession; and that he was going to bring a suit. He did.

I think someone in Los Angeles drew the complaint for him, but they filed the suit in Alameda County because that was my residence and I could remove it there anyway, and served me. But they also enjoined the newspapers. They enjoined the Chronicle, the San Francisco Daily News--is that what they called it? It was the Scripps-Howard paper. And the Hearst paper. I don't think they include the Oakland Tribune or the Los Angeles Times; I'm not sure. I don't think so.

The suit had to be defended. I had a terrible time figuring out what to do. The law provided that under ordinary circumstances, when working for the state in that capacity that I was in and there is a suit for damages brought against me, I would be entitled to be defended by the state; but my defense would be provided by the attorney general. I didn't want to have Fred Howser defending me in a suit brought by one of his own special assistants. I talked with the governor about it and he said, "Go ahead and get private counsel of your own and we'll get you paid." So I did.

I got Sam Berry in Oakland to represent me and he had some associates who were going to represent me, too. But not long before the trial, Sam came down with the shingles, a bad case of shingles. So I had to get another lawyer. The one that I thought

Olney: would do a really good job for me was Sam Wright in San Francisco. He was with the firm of Pillsbury, Madison, and Sutro. He worked for them; he was not a partner. I'd known Sam for many years. Sam was counsel to the telephone company, too. Or I mean by that, he did Pillsbury and Madison's work for the telephone company. As a result, he knew all about the bookmakers and the bookmaking racket, and those things used to interest him. He was much more interested in that than he was in drawing contracts and wills or damage suits, so I knew he'd have a good time with it, and he agreed to represent me.

Then Rochester changed counsel. Mel Belli came and he represented Rochester. Mel made his usual flourish in the press and said he was going to represent Rochester free of charge. He only wanted to see justice done. Belli, you know, had never forgotten or forgiven us for hanging his client in the Gosden case. He's never forgotten that. So he volunteered to take this on. But he also made what I've always thought was a very gross strategic error when he dismissed the newspapers and left the suit against me alone. It's true that I couldn't get a free ride as far as counsel was concerned. With the newspapers in there, I might have gotten a free ride for legal defense.

But when it came to the trial, the newspaper reporters were the very best witnesses I could possible get, and their papers weren't in the case. They weren't defendants in the case. They were in the position of not being parties to the case. They reported exactly what had happened, that I had simply given them the photostats. And they'd asked me what the checks were for, and I had told them I didn't know. I didn't have any idea. But these headlines that were so damaging to Rochester had never originated in anything that I'd said.

The case was a lengthy one. It must have lasted, maybe, three weeks. It got into all kinds of details, for reasons that I really don't remember. But even the Davidian matter got into that. I had to testify about talking to Davidian down there in Bakersfield and things of this kind. I don't remember how that got in there. We were all over the landscape, but the jury returned the verdict for the defendant. It was a unanimous verdict, and it didn't take long.

So that ended it, excepting paying my lawyers. I had a chance to go over the statutes thoroughly and realized that, in spite of what the governor said, the governor lacked any authority whatever to spend state money defending a private person in a private lawsuit. You can't do that with public money. So I went to Pillsbury, Madison, and Sutro and asked them to send me a bill. I said, "I'm not going to permit you to do this for nothing, so don't try to tell

Olney: me it's pro bono publico or something. I want you to give me a bill." Which they did. Which I paid. It was more than a year's salary that I had to account for. [laughter] So they managed to stick me with a year's salary in attorney's fees.

Stein: And you were never reimbursed for that? That was simply out of your bank account?

Olney: Yes.

Stein: Besides all the time that you lost sitting at the trial.

Olney: Yes, we spent a lot of time on it. But in working with Sam Wright on the case I had a good time too.

Stein: I guess coming at the end of the crime commission's work, it was a good chance to review the whole picture, especially if you were going all over the landscape.

Olney: It was.

Stein: It was your own final report.

Olney: Yes, that's right. I really hadn't thought of it that way, but there's something to that.

Federal Intervention

Stein: I gather that shortly after the commission closed up shop you became somewhat embroiled with the federal grand jury. Is it true that they subpoenaed the whole commission?

Olney: Yes.

Stein: What was the story there?

Olney: In the final report of the commission in 1950--it was published November 15, 1950--we included a part three, Taxation of Organized Crime. It's some twenty pages in the report. The gist of it is that these racketeers were making an awful lot of money in personal income, and we cited cases like Sam Termini down in San Mateo County. We had a great deal of information on their personal expenditures, so that we could take their personal expenditures and figure what the income would have to be to cover that, and we got some pretty staggering figures. We were able to put in the report the fact that the Internal Revenue Service did not have a tax case jacketed against a single racketeer in California.

Olney: We got that information out of the Internal Revenue itself. In fact, there was great indignation by the men in the Internal Revenue Service that that had happened. They were ashamed of it and tried to help us in every way they could when we were going to write this up.

The gist of our report was that the state also was being gypped on its income tax because at that time the state had no facilities for making their own investigations. They simply relied on the federal government. If the federal government would make a case, then they'd follow and make a case against the same person. But they didn't do anything independently.

We recommended that they not do that. If the federal government wasn't going to do anything about the racketeers, we thought the state ought to. And, incidentally, they did enact the legislation, which we recommended, and set up an agency to do it. And they have their own agency now. That became public in 1950, the time that the Truman administration was coming under a great deal of public criticism because of corruption in the Internal Revenue Service. [J.W.] Snyder was the secretary of the treasury, and the Congress had been investigating charges of the fixing of tax cases in various parts of the country.

This was a very hot subject politically as well as from an ordinary point of view of publicity. There were also some scandals, bad ones, in the office of the collector of internal revenue in San Francisco and some in Southern California, as well, that were going on. And all of that made the top Treasury people very, very sensitive. It seems that this report outraged John Snyder, and he made a demand on the Attorney General of the United States that the Justice Department do something about it and that they take us on in some way or another.

The first we knew about that was when we got word that the federal grand jury in Los Angeles was about to issue subpoenas for Admiral Standley and all the members of the crime commission, as well as for me and John Hanson. When I heard about that, the various members of the crime commission, of course, kept calling me on the telephone, saying, "What's cooking? Are we going down to the grand jury, and what <u>for</u>?" [laughter]

So, of course, I called Ernie Tolin, who was the United States Attorney, whom I knew, and asked him about this. He said, "Yes, we've gotten orders from Washington that we've got to present this thing to the grand jury. Of course, I don't think anything is going to come of it, but we want to have you tell the grand jury whatever information or whatever evidence you've got that indicates that there's any wrongdoing."

Olney: I told him that that was fine, but it was certainly not necessary to subpoena the members of the commission. I said, "You know how a commission of this kind works. Admiral Standley and others don't go around digging out the evidence. It's done by staff. They have no information about it excepting hearsay from our reports. If you want to get that, I'll appear and so will John Hanson."

He finally said it made sense to him, but he'd have to check. He said they were sending some man out from Washington to handle it. But he called me back and said they had agreed that it was not necessary for the members of the commission to appear, excepting Admiral Standley as chairman. They would like to have him appear and explain what the commission was. They knew he didn't have any personal information about these matters. So the admiral and I did appear before the grand jury in Los Angeles.

We went in there and, to my amazement, the foreman of the grand jury then told Ernie Tolin, the United States Attorney, that they wanted to talk to us in private and they asked him to leave. He demurred at first, but they were insistent. So he did leave. We must have spent an hour and a half in there talking with the grand jury without any U.S. Attorney present, and there wasn't any formal record being made either.

They were no more responsible for the subpoena than Tolin. They were wondering what in the hell we were doing there. But they were interested in hearing how the crime commission worked--they read about it in the paper--and what our methods were. They were particularly interested in this section and wanted to know what we based it on. [They asked] if we had any idea that there was criminal conduct going on in the federal service down there. We told them no, that we had no evidence of that and no reason to assert that that was the case. Perhaps it was merely a matter of policy. We only knew it was a fact that none of those hoodlums were paying a nickel in taxes when all the rest of us were bleeding at the pores. We thought then--we just didn't know. [laughter] That was all there was to our appearance. We had these general discussions with them. They thanked us and said we'd given them an interesting morning and we went on out and came on home.

I didn't have any occasion to discuss it with Ernie Tolin at that time because I didn't know what they were getting at and I'm sure he didn't want to talk to me about it. He was embarrassed by the whole business. But he'd gotten his orders that he was to do this.

The amusing thing about this: there <u>was</u> a man sent from Washington out there. In 1953 I became Assistant Attorney General of the United States in charge of the criminal division. I knew that if

Olney: someone had been sent out from the Justice Department on the grand jury inquiry that called Admiral Standley and me, it must have been somebody from the criminal division who went out there.

In due course I got the time to check back in the files and, sure enough, I found a file in the Justice Department about this with this terrific wail and blast from John Snyder to the attorney general, and then the assignment of a lawyer in the criminal division, who was still there, to go out to Los Angeles. He'd gone out there.

His name was Rufus McLean. I'd been there long enough to get to know him quite well. We were having some turnovers in the office. I've forgotten the section that he was in; I think it was general crimes. Anyway, I had to get a new section chief and I thought McLean was a good man for it. He was well qualified and I thought he'd be a good man for it.

So, knowing his past history, I thought I would have some fun with him. I sent for him and I had the file on my desk, and he came in and sat down, and I thumbed through this file. I said, "Rufus, I was looking at this about your last trip to California. Apparently you had quite a time out there." He got all red and very much concerned. I said, "Did you ever get those hoodlums that you subpoenaed before the grand jury?" [laughter]

He didn't know what to say. I finally said to him, "Well, I've got something that I want to tell you. I want to make some changes around here. I want to find out if you'd be the chief of the section," which was a promotion. He thought at first I was kidding, but then he realized that I wasn't kidding. So the man who was supposed to indict us became the chief of one of our sections later on.

Stein: Did anything happen in the Internal Revenue Service as a result of your testimony or the report?

Olney: That's a little hard to say. The collector in San Francisco was indicted and tried. But by 1953 the regime had changed. We prosecuted and convicted fourteen or fifteen in the Internal Revenue Service for taking bribes from racketeers for fixing cases, including the director of the Internal Revenue Service himself. We convicted the two top men. They served terms, and all the rest of these did too. But we didn't mention specific cases; we weren't talking about that. We talked about some of these expenditures where there was no investigation jacketed. I know there was a burst of activity, but just what it resulted in later on, I don't know.

Stein: Did you ever find out why they sent Ernie Tolin out of the room?

Olney: Yes. They weren't interested in trying to indict us or anything of the sort. They didn't know what Ernie had in his mind, and they wanted to find out from us what the score was, what we thought this was all about, why we were there, why they were supposed to be listening to us. And they didn't want to have somebody there with the usual question-and-answer thing as though they were trying to develop a case.

Grand juries can run their own procedures if they want to. In the case of the collector of the Internal Revenue Service in San Francisco, they returned that indictment almost over the dead body of the U.S. Attorney. He was very much against it. They had a big row in the district attorney's office; one of the deputies resigned because the U.S. Attorney wouldn't go for the indictment. Well, that's the story of our appearance before the grand jury.

Cooperation with Other Crime Commissions

Olney: [referring to interview outline] One other thing: I see you've got the Kefauver Commission mentioned down here. I don't recall exactly when it was that the Kefauver Commission was created, but it was during the period of our last crime commission when Harold Robinson was our chief investigator. John Hanson was the investigator for the first commission, and he had known Robinson because they were both FBI men.

Robinson had done his FBI work in the East. He was an accountant by profession, not a lawyer, and he came to Santa Rosa and went into private work as an accountant. It was in connection with, I guess, the Mendocino case that we first used Harold Robinson because he was conveniently located in Santa Rosa and also his accounting background was very useful to us on some aspects of this thing. We used him more and more often until we finally got to a position where he took a full-time job with us as an investigator. And he was very good. I found that when Harry Truman was chairman of that war frauds investigating committee for the U.S. Senate following World War II, Harold Robinson had been his chief investigator.

Stein: So he went back pretty far.

Olney: Yes. And he'd done an excellent job. The Truman Committee's job was a very fine one, a good job. So Robbie was very able and very experienced, and we were glad to have him. We were nearly through, getting along in our work on the second commission, and by that time John had left and Robbie was the chief investigator at my request.

Olney: One day I got a phone call from Senator Kefauver and he told me that he was contemplating setting up a Senate committee to investigate organized crime. He was going to be the chairman of it and it had been authorized and they had their appropriation and were trying to put together a staff. He said that he was quite familiar with the work that we had done and he praised our work and said that he was trying to do pretty much the same thing for the country that we were doing in California.

He wanted to know whether I would give him permission to ask Robinson if he would become the chief investigator for the Senate committee. He said, "I know that your matters may be in such a state that it would throw you into a tailspin and make too much difficulty." I said, "Well, I don't think it would. I know what you're planning to do and it's important, probably more important than what we're doing. We're nearly through, anyway. I think we could get along without Robbie." So he went along and asked Robbie, and Robbie did become the chief investigator for the Kefauver Committee.

That meant that Robbie carried in his head an awful lot about organized crime in California, and it also meant that when the committee came out here and wanted to make any inquiries, they not only knew what Robbie had in his head, but we made sure that they had access to the files that we had so they could read all our stuff.

Stein: What about the Chicago Crime Commission, which was operating at the time?

Olney: The Chicago Crime Commission was an entirely different arrangement. That is a private organization, not supported by public funds. It is supported by donations from citizens of Chicago, corporations and others who are interested in reducing the crime rate. It's been going a long, long time. It's a permanent organization. I think it must have come into being in the 1930s. I'm sure it was that far back. Virgil Peterson was the director, and he must have been the director for a quarter of a century, anyway, maybe longer.

They had the same system of filing of information and making reports as we did. Their principal interest, of course, was the Chicago hoodlums--the Capone gang and people like that. But they also had a wealth of information about the Purple Gang in Detroit and the rackets in Los Angeles and all over the country. They had far more information about rackets and racketeers than the FBI has <u>ever</u> had.

Olney: During this period, I went back to Chicago and saw Peterson several times, and we had a regular exchange of information. He was constantly supplying us with information. If we'd get a name of somebody we thought was an out-of-state hoodlum of some sort, we'd just call him on the phone and ask him if they had anything on him and we'd get back voluminous reports on him. Our last report, of the second commission, has got a great deal of information about Palm Springs and about these out-of-state racketeers who were moving in there. A great deal of that information came from the Chicago Crime Commission, from Virgil Peterson, who gave us the background of all these people. His reports were full of detail, exactness. dates, when, where, and all the rest, so they were usable and you could base statements on them and know that you were on sound ground.

When the Kefauver Committee finally got to the point of taking testimony, they began in Washington, D.C. The first witness to testify in those hearings was Virgil Peterson. And I was the second witness on it. So we had very good relations with Peterson and the Chicago Crime Commission.

Stein: How long did you testify before the Kefauver Committee?

Olney: One afternoon and most of the next day, I guess.

Stein: And that was mostly on California?

Olney: Yes. They wanted me to summarize some of the same sorts of things you've been asking about, only more in detail. I could do it then. I had the names and dates and places and things at hand.

Stein: If those were public hearings, there would be a record of that.

Olney: Oh, yes. I had a full set of Kefauver reports. There must be twenty volumes. It takes up about that much space on the book shelf. [gestures to indicate a length of five feet] And it concludes with an index, a name index, so that every name that's in there you can locate. I took that to Washington with me and they used it when I was in the Department of Justice because, as I said, there's more information in there about hoodlums around the country than you can get out of the FBI.

The FBI would ignore these things. Hoover would tell you that there wasn't any such thing as a Mafia, that that was just a pipe dream from the Bureau of Narcotics. The reason these rackets got as big and powerful as they did is because the FBI just ignored them. They felt they weren't in their field and they didn't know how to crack them.

An Assessment of the Crime Commission's Work

Stein: Is there anything else that we ought to say about your work with the crime commission?

Olney: I don't think so.

Stein: You were saying at lunch how successful you thought it was. I just thought we ought to get that on tape.

Olney: Well, I think in evaluating it you have to start in with what you expect to achieve. In this kind of activity there is no possibility of doing anything that's permanent. A lawyer or an investigator or anybody concerned with trying to achieve something in this area can never be like an engineer who can build a dam or build a bridge and then have something he can look at for the next fifty years, if it doesn't fall down. All that one can hope to do by decent law enforcement is to get it as decent and keep it as decent for as long as you can, knowing full well that people change, people come, people go, everything is different, the rackets themselves change, old ones go out and new ones come in. In that sense there never can be any permanent achievement or accomplishment. But if you have done your stuff and there has been an improvement, a holding of the line or an improvement in government, I think you can feel it's been successful for that period. And that's all you can expect.

That's all we ever did. If it had not been for the crime commission, I think that the gambling rackets and prostitution and everything else that goes along with it and general corruption would have just spread like a disease all through the state, and it penetrates all the avenues of government once you have it anywhere. And I think as a result of the crime commission's activities that was stopped for the time being.

We had Pat Brown following as an attorney general who was an honest man and gave the office and the state a decent administration. What happens at the top is so vitally important to everybody else. It sets a standard and they want to live up to it and do. If the standard at the top is bad, everything goes bad.

So I think the money was well spent and the effort was put in. I think we did as well as could have been expected. We didn't expect what we got into. But I think it had some accomplishments. If we hadn't had our commission, I don't think there ever would have been a Kefauver Committee inquiry. I doubt it. Kefauver has told us there wouldn't.

Stein: That's interesting.

Olney: And he told me that long after he was trying to get any investigators away from me. He had me on the witness stand when I was assistant attorney general. There was a to-do in the Tennessee Valley Authority about the Dixon-Yates contracts. It was some kind of contest. The contest was between public and private power, who was going to develop what. The administration had been on the side of the private power people, and Kefauver was interested in public power. There was something that came up; I can't remember what it was. But the Senator thought he could make some headway by trying to embarrass me and the administration as to why we hadn't prosecuted somebody in connection with these Dixon-Yates letters. He cross-examined me for a day or so about why I hadn't taken criminal action in these matters. I hadn't because I didn't think it deserved it. We were always very friendly in spite of scuffles like that.

Stein: And that was when he told you that--

Olney: Yes, that was when he told us that he never would have had that commission if we hadn't had ours.

Stein: I think that about wraps it up.

Olney: Very good.

Relations with Commission Members and Preparation of Reports

[Interview 14: December 7, 1976]

Olney: I think I ought to say a word about how the reports of the Special Crime Study Commission on Organized Crime were put together and what our relations were in preparing the reports with the members of the commission. When I was first asked to become counsel for the commission by Governor Warren, he talked to me at considerable length about what my relations ought to be with the members of the commission, emphasizing the importance of treating them properly. The way we proceeded was simply following his advice as to what we should do. The members of both commissions were all eminent men. They were busy men; some were retired, but they were busy, nevertheless. They lived in different parts of the state. Most of them were not lawyers. On the first commission the only lawyer was Gerald Hagar.

The governor warned me that efforts would be made by some people to try to undermine the staff with the committee members by people on the outside, and that the only way of meeting that was to be as close as possible to the members of the commission and to bring them

Olney: in on all of the staff's activities so that they didn't have any feeling that the staff was going off on its own and running its own inquiries and investigations without even consulting them, and that they were just being used to sign papers that were prepared by the staff over which they had no knowledge.

As a result of this, I made every effort to go and see members of the commission whenever I was in their vicinity. I made innumerable calls on those in Southern California when I was down there and other places. I didn't always succeed in seeing them, but I always reported in some way so that they knew that I had been there. Then when I did see them, I often brought along various memoranda that had been prepared, investigative reports and things of that kind, that I thought might be of interest to them and might be revealing to them. They would read them and we would discuss them from time to time.

With our general lines of investigation, we didn't undertake any of them without discussing it with the commission first. There would be a few things that would crop up very suddenly that we would inquire into where there wasn't any opportunity of consulting; but we made a decision at the outset that we'd better begin with the bookmaking racket, and that was based on a general discussion at a commission meeting with all the members present and a review of what had been said by law enforcement officers in various places as to what the more serious rackets were in the state and where the big money was for these underworld characters.

So we tried to keep them, and <u>did</u> keep them, just as current as possible on what was going on. Sometimes when something unexpected and sensational would happen, we would make special trips to see them to tell them what the facts really were. They'd read about things in the newspapers and sometimes the accounts were a little bit garbled, but more often than not they were quite incomplete of necessity. So we would go out and see them and give them a complete fill-in.

When it came to preparing the reports, those, of course, had to be prepared by the staff and they relied very largely on the counsel--our legal assistants like Arthur Sherry and Alan Lindsay--to write them up. But we would prepare a draft and then discuss it with the commission members usually. More often than not we'd be able to discuss only a part at one time.

Jerry Hagar was here in Oakland and available and a lawyer. The other members of the commission looked to him to go over our work very carefully and satisfy himself that it would stand up. They wanted to be very sure that anything they were putting their names on was true, correct, and provable. They thought that he was well

Olney: qualified to do this, which he surely was. He spent literally hours with us on our reports, not only reviewing the facts, but assisting us in drafting parts of it to make sure that the statements were precise and that we weren't slopping over with loose generalizations and things of this kind.

His contribution to the report would be difficult to exaggerate. He had a great deal to do with its organization, with the kind of language that was used, and with the content, in that he was very careful to screen out anything that seemed to be doubtful when it came to proof. Not every member of the commission was in a position to do that. But when we would get the thing in final shape and it had been gone over and put together in this fashion with Jerry's watchful eye on it, at the meetings there would be a discussion and Jerry would describe some of the things that were not being included and why they weren't being included.

Stein: What sort of things would those be?

Olney: There were things in connection with the slot machine investigation and with the bookmakers, too, where we had pretty strong evidence that would be good enough to submit to a court, I would say, and let somebody make up his mind as to whether our sources were truthful or not. But in a report you can't very well do that. You need to be sure that your source is truthful. The other side doesn't get a chance to cross-examine him or anything of that kind.

There were details in there about methods that they had used, various telephone taps and things of that kind that the wire service people were putting on each other; and we had pretty good, sound information, but he didn't think that the sources were good enough to be dignified with statements by a commission such as this, based on those sources. So we'd take that kind of thing out.

There was no editing, of course, of our drafts from the point of view of taking things out that might displease someone; there weren't any sacred cows or anything of that kind. I don't suggest that for a second. This was merely to make them sharper, clearer, and more pointed and more thorough, more difficult to attack. So much for how these reports were put together and the work of the members of the commission on it. Their part was, indeed, a lot more than just signing documents that had been prepared by a staff.

Stein: I have one question about the report. Arthur Sherry tells the story that with one of the reports he had to rewrite it himself because there had been an unfortunate experience with a newspaperman or an ex-newspaperman who had been hired to help write the report, and the report got leaked to the Los Angeles Times before it was supposed to be.

Olney: That's completely gone out of my mind. I just had forgotten that entirely. Do you know who the newspaperman was?

Stein: I could find out. His interview ought to be down here. Do you want me to go find out?

Olney: All right, because I just don't remember that at all.

Stein: Let me go find it.

[Pause while Mr. Olney reviews p. 121 of Arthur Sherry, "The Alameda County District Attorney's Office and the California Crime Commission," Regional Oral History Office, The Bancroft Library, University of California, Berkeley, 1976.]

Stein: Well, you don't have any recollection of that, then?

Olney: I have no recollection of it. It probably occurred. If Art said it did occur and he remembers it, I have no doubt that it did. But even reading that account, I still don't recall it at all. Part of the report that I do recall the boys writing, with which I had very little to do, was the final report of the second commission. Alan Lindsay prepared most of that. The reason was that by the time the report was being drafted, I had gone to Washington as assistant attorney general, so I wasn't here.

Stein: That's right. That would be in 1953.

Olney: Yes. That came out in May, and I went to Washington in January.

The Commission Staff

Olney: About our staff: Their names are all listed in the reports. They were an unusual group, I thought, of very able men. Arthur Sherry was just simply invaluable. I'm sure that he described how he was drawn into the work of the commission by the necessity of our getting somebody to try the case in Mendocino County. Then he continued to help us. We worked together on everything there was. The organization wasn't big enough to require much separation of function. We all did everything there was to do.

With the second commission, Alan Lindsay became assistant counsel. He had a background of experience in the district attorney's office in Alameda County, but I had not known him until he expressed an interest in working on the commission staff. I needed someone and

Olney: took him on, and it was probably one of the wisest things I ever did. He was just a superb assistant in every respect. He could do everything for the commission that I could do.

At the same time that I was there to counsel with that commission I was also a professor in the [University of California] law school and was supposed to be teaching a full load. One of the things about these investigative operations is that things are always unexpected; you can't plan them and you have to be available and you have to act, so that sudden absences from the classroom were fairly common. But I found that Alan was quite capable of doubling for me in the classroom just as well, or better, as well as on the commission work. He did almost as much teaching, I think, that year as I did.

When the commission work was over, these men went various places. Harold Robinson had already gone to the Kefauver Committee and had become their chief investigator. Tom Judge, who, I think, was on the staff of both commissions, went to the state of Washington where they had a state crime commission somewhat similar to ours. I guess it was a state senate committee inquiry that they had. He went up there. Van Brunt went back to his home town in Ontario, California, and he became mayor or councilman or something down there. Virgil Wolfe eventually joined me in Washington in the criminal division.

One of the things that I tried to set up in the criminal division was a new section to deal with organized crime. I put Virgil in charge of that and he had a good background and a good fund of information. He was a former FBI man, but he had just as much difficulty in getting cooperation out of the FBI as all the rest of us did. It wasn't successful.

Stein: Was that simply a jurisdictional dispute?

Olney: No, no. It was temperamental. It came directly from Hoover. He simply was not willing to share information or share responsibility for investigations with anyone. His policy was to simply present cases to the lawyers in the Department of Justice--that includes the U.S. Attorneys as well as those in Washington--for prosecution and develop the cases. But he didn't think it was any function of the lawyers to have anything to do with investigations, with studies, with plans of campaign and things of this kind.

Alan Lindsay also came to Washington and he became one of my assistants and was just as valuable to me in the Department of Justice as he had been on the crime commission. Then he returned to California and now he's a superior court judge in Alameda County.

Stein: Oh, yes. I think his name appears periodically in the newspaper.

Olney: Yes. Presently he has before him that case that involves the Harrises who were embroiled with Patty Hearst.

Stein: Yes, that's where I saw his name. It sounds like several of the investigators had been associated with the FBI.

Olney: Oh, yes.

Stein: How had you known them?

Olney: I didn't. And I didn't recruit them personally. John Hanson recruited some when he was chief investigator and then Harold Robinson recruited others when he was chief investigator. They, of course, were all interviewed by me and were subject to my approval. But they knew the investigators in the field much better than I did.

Fred Grange and the Mendocino Trial

Stein: You were telling me earlier about Fred Grange. This is a story that grew out of the Mendocino prosecution?

Olney: Yes, this involves a man who turned out to be the key witness. The first intimation of anything serious in Mendocino County that we had was having Sheriff Broaddus of the county walk in and tell us that he had been approached by a man who had offered to pay him cash in return for freedom to operate slot machines up there at a particular place on the Redwood Highway. I've forgotten the name of it. He wanted to know what to do. He had gone first to Jack Gleason, the sheriff in Alameda County, and Jack brought him over to see us.

We agreed the thing to do was to go ahead with the deal and we would watch it and cover it and see who it was and what happened. Sheriff Broaddus did that and he made arrangements to meet this man and to have the money paid. We took moving pictures of him meeting the sheriff and handing him the envelope; the envelope contained money.

Of course, the man was arrested. That man was named Fred Grange. I had run into Fred Grange before. This was in connection with Tony Cornero's gambling ship, the Rex, before the war. Grange was the bookkeeper and financial manager of the Rex.

Olney: It seems that Grange had gone to the University of California at Davis and graduated in 1925. He was raising wine grapes up in Napa County on a ranch called Staggs Leap Manor, which belonged to his mother. His mother was well acquainted with Mrs. Stralla, who was Tony Cornero's mother, also engaged in raising grapes up in the Napa Valley.

When Tony got involved in these gambling ship operations, he had great trouble because he was being stolen blind by the people who were working for him. He didn't have any proper set of books to keep track of things. Mrs. Grange heard about this from Mrs. Stralla and suggested to Mrs. Stralla that Tony ought to employ Fred. So he did. Fred went down there and he made the place honest, if you can imagine an honest gambling place. The result was that he became very good friends with Tony Cornero, and we encountered him on our raids on the gambling ship in connection with the money and things of this kind.

When Sheriff Broaddus had this man arrested who was passing money, it turned out to be Fred Grange. The resort where they were talking about putting these machines was in the name of Tony's brother, Stralla, who was the mayor of St. Helena at the time, Louie Stralla. Then we were very sure that what we were hitting was another Cornero operation, this time on slot machines. Fred Grange was really quite a trophy to pick up actually passing money to the sheriff.

We went ahead with the preparation of the case, expecting Fred Grange to be the major defendant. But sometime after the indictment was returned, I got a long distance telephone call from Los Angeles. It was a Los Angeles lawyer named Sammy Rummel, who was a smart, able lawyer, but had devoted his life and efforts to defending people in the underworld. He was a real hoodlum mouthpiece, and known as that. He called me on the phone and told me that he had something very important that he wanted to talk with me about and that he would come up to San Francisco to see me. He gave me no clue at all as to what it was about excepting that it was important and that he wanted to see me privately.

I said, "Well, I'm here in the office and you can come in any time you want." "No," he said, "I can't come to your office. I've got to see you somewhere else. I'll get a hotel room and phone you and you come over and see me in the hotel room." I was very reluctant to do this, not knowing what this was about or what I would be getting into. But knowing Rummel, I knew that it must be something important because he wouldn't be fooling around with me or playing games. So I agreed to do it and arranged with John Hanson and others so that when I went over to the hotel, they'd cover me.

Olney: In due course, a day or so later, I got a phone call from Rummel and he said he was in San Francisco and he was in a hotel up on Post Street someplace and would I come and see him. So I went up to see him. He had come up from Los Angeles just for that purpose.

He said, "I came to see you about this Mendocino County case. I know you boys think you've got a pretty clear idea what happened, what this was all about. But I'll tell you right now, you're wrong. It's a completely different picture. Fred Grange isn't the important figure in this that you people think he is, and I want to tell you that Fred is willing to tell you the full story, everything he knows about it."

"Well," I said, "are you representing Grange?" He said, "No, I'm not. But I'll tell you who I'm representing, and this will explain why I can't come to your office. This has got to be secret. It must be kept secret. I was sent up here by Tony Cornero." I knew that he'd represented Cornero from time to time.

He said, "Tony Cornero has told Fred Grange he must go to you and tell you the whole story, and he'll do it. He'll plead guilty to his attempt to fix the sheriff. The only thing that he wants in return for the story is that he not go to prison. He's got that Staggs Leap Manor and his mother and his wife and three children, and there's nobody to run the place. If he can't take care of it, it isn't going to be taken care of and they'll lose it and they'll all be in a terrible mess."

"Well," I said, "that's a big order and, of course, I don't know what his story is."

"Well," he said, "you'll find it's an interesting one."

I said, "I'm not going to make any agreement with you or with Fred without knowing what the story is, of course, and we are not going to buy any pig in a poke. We will agree that if Fred wants to talk to us and tell us truthfully and fully everything that has happened, we will not use anything that he said against him at the trial or in any other way. But that's the best we could do. And as far as making any recommendations for his going to jail or not, of course, that's not up to us; it's up to the judge and what he's going to do. The most we could do would be to make a recommendation, and if Fred performs something that we thought was a service we might make a recommendation, but not otherwise."

He said, "I think that he'll talk to you on that basis. I'll arrange to have him come in."

Olney: I said, "What's Tony Cornero got to do with this? What did he send you up here for?"

"Well," he said, "Cornero's known Grange all these years--you know he has--and when Grange got into trouble the first thing he did was to go south to see Tony. As a matter of fact, they had a meeting out at Tony's house. Caddel and Lentz and others from the Howser office were there, as well as Grange, and they were all commiserating with Grange that he'd gotten knocked off in this fashion and were feeling very sorry for him. But when they left and Tony was there with Grange alone, Tony said to him, 'Fred, these fellows aren't going to do anything for you. They won't give you a nickel. Not one of them offered even to assist you in your defense. The thing you need to do is go up and tell Warren Olney what happened, and don't worry about these fellows. Take care of <u>yourself</u>.'"

Well, this is what the man said, so I waited to see what would happen next. In due course, Fred did come up from the south and we made arrangements to talk to him. We interviewed him for a day or two with a court reporter while he told us all about his involvement in this, how he got into it and the part that these others played. It was evident that, if his story was true, Buck Caddel and Mulligan and all these others were deeply involved. This was a part of a scheme to set up a protection system all over the state. It was quite evident that Tony Cornero and Louie Stralla had nothing to do with this.

We took this story from Fred Grange in great detail, thinking that we could find some corroboration for his story. But we checked everything out; everything that we checked was consistent with his story. He spoke of staying in various hotels, and various phone calls, and things of this kind, and all of that checked out. We found the registrations, we got the telephone records and they were consistent with his story, everything of that kind.

But that isn't corroboration. To get corroboration, you need to have something that also shows not mere involvement in the actions, but shows a consciousness of wrongdoing on some person's part. And that was lacking. We couldn't find any corroborating evidence. I had told Rummel that if we couldn't find any corroboration, we weren't going to use Fred as a witness. It would have to be corroborated. And after weeks of thorough investigation and the date of the trial getting close, we had no corroboration.

Finally I realized that I must tell Rummel and Fred that he was just going to have to stand trial and tell any story on the witness stand he wanted to tell. We wouldn't use what he'd told us against him, but we couldn't use him as a witness without corroboration.

Olney: I had a difficult time in getting a hold of Rummel. He was a man who had innumerable irons in the fire, and I finally tracked him down in Las Vegas. So I flew all the way to Las Vegas in a thunderstorm one night to meet him at the airport in Las Vegas and tell him that we couldn't find any corroboration and that we weren't going to use Fred as a witness. He was going to have to be a defendant. He was very surprised that we couldn't get corroboration, and at first he thought I was pulling a fast one on him. But I persuaded him that we couldn't. That meant that Fred would have to get a lawyer and it was going to be pretty complicated.

Admiral Standley, who was the commission chairman, was also a director of Pan American Airways, and he had taken a long inspection trip of Pan American's operations in the Pacific and in Hong Kong and places like that. He finally came back. He was due back about this time and we were going to have a commission meeting. I met him at the plane and drove him up to Ukiah; his old home was in Ukiah. He came from there. He'd been gone for months. I hadn't seen him for a long time and he asked me how things were going and what the state was of this case in Mendocino County. I gave him a fill-in.

On the way up, he mentioned to me the experience that he had had with Buck Caddel at the last commission meeting. That took place the very day that Fred Grange was arrested passing this money. We knew that the arrest was going to take place on that day. So we had deliberately called a commission meeting in Los Angeles and we asked Lentz and Caddel and others to appear at that meeting to discuss this slot machine situation. They were there in the meeting at the very time that the arrest happened. We were asking them questions as to whether they knew Grange and whether they knew a lot of other people.

The admiral told me that after that meeting they went down to the men's room and Caddel was down there and so was the admiral. The admiral said to Caddel, "Mr. Caddel, I'm not very experienced with the vocabulary that I've been hearing today. What in the world is a bag man?" Caddel told him that the bag man was the fellow who went around and collected the protection money for officials. He said, "Like Mulligan. Mulligan's the bag man for this operation."

When the admiral told me that I realized we had the corroboration we'd been looking for from none other than the admiral. It was Caddel himself telling Admiral Standley that Mulligan was the bag man for this operation. We couldn't do any better. So I said, "Well, Admiral, would you tell me again just what was said." And he went over it carefully. I said, "Now, this is probably more important than you might think. Are you sure about it?" He said, "I'm positive about it." And I said, "It's so important that you probably ought to be a witness to testify to it." "Well," he said, "I'll testify to it. It happened."

Olney: At the last minute we switched signals and decided that we did have corroboration and we could use Fred Grange with the admiral to corroborate him, and we did. It changed the whole complexion of the trial so that Grange, instead of being the main defendant, was a principal witness.

During this period we got well acquainted with Fred Grange and I talked to him many times about Cornero. He told me this experience that he'd had with Cornero during World War II. The gambling ships, of course, had been shut down just as the war got going, and Fred lost track of Cornero. He went back to the Napa Valley. But they weren't doing anything very much up there, weren't making any money.

Fred got the idea that because you couldn't import champagne from France during the war--the Germans were occupying the area--that if you could import French champagne from Cuba, you could make a killing. He had some contacts and arrangements that convinced him that he could go to Cuba and be able to buy French champagne and ship it in. So he started off to make his trip and he got as far as Miami, Florida.

He was by himself and he went out to a restaurant somewhere to eat and who did he run into but Tony Cornero. Tony was glad to see him and patted him on the back and said, "Let's go out and have a time," and they went out to some Florida gambling place out there. Tony moved into his hotel and took the next room and they proceeded to spend the next few days going all over Florida, looking at the Florida gambling operations [laughter], until Fred got just completely fed up with it and decided he wasn't making any progress on his deal, and he told Tony that he was going to leave the next day for Havana. Tony said, "Well, Fred, I'm going to go with you." And he did.

The two of them went to Havana together. They went to a hotel in Havana and got rooms together and then proceeded to look the town over. During the daytime Fred was trying to make his negotiations for the champagne and at night they'd go out and look at the gambling houses in Havana.

One night they went to a very, very plush gambling house. The gentlemen were all in evening clothes and the ladies in long dresses and it was a very plush joint. Tony was in there feeling no pain, and they visited the bars all the way along the line, and he got very vociferous and critical of the operation. He remarked in loud tones that they didn't know how to run a place and that this might be fancy but it was a jerk joint and you couldn't make any money in that kind of an operation, and derogatory remarks of that sort, with the result that a man came over, dressed in his evening clothes, and said, "Mr. Cornero, I've been listening with interest to your comments

Olney: on the inadequacies of our operation. And it does occur to me that maybe you have a point. I own this place. Perhaps you might like to buy it." After some more boasting around, Tony agreed to buy the damn thing and they entered an agreement right then and there to purchase it.

The next morning when Fred and Tony woke up and they realized what they'd done, he said, "My god, I've got to take possession of that place in five days! Fred, you've got to help me! I want you there as my manager. You've got to help me on this thing." Fred said, "How can I help you? I can't speak Spanish." And Tony said, "Well, you've got to. You've got to learn. You've got to do something."

They went down to breakfast and they were talking about where Fred could learn Spanish. Not knowing where else to ask, they asked their waitress where he could learn to speak Spanish. She spoke English well and she said, "Well, if you really want lessons, I can give you Spanish lessons." So they signed up. She undertook to teach Fred Spanish. In five days she did teach him to count, anyway.

They took possession of this place and then Tony proceeded to run it in his fashion. His philosophy was that you made far more money out of a mass gambling operation than anything else. The two- or three-dollar bet was what he liked, not these big heavy bets. So they opened it up and had huge crowds of people coming in and out and made quite a success out of it.

Meanwhile, Fred was trying to learn more and more Spanish. He was taking lessons from this waitress-teacher all this time. He got pretty proficient with his Spanish.

They operated that thing for about two years and put it on a very well-paying basis. Then one night, just out of the dark, you might say, a gentleman appeared. It was the same man who'd sold them the place in the first place. He was [Cuban President Fulgencio] Batista's chief of police in Havana. He said, "Mr. Cornero, Mr. Grange, I've got a couple of tickets here for you. You're due to take the next plane for Miami. You'll be leaving in an hour and a half." [laughter] And that's all they had, an hour and a half. Then the police chief put them on the plane and shot them back to Florida without time to get anything. They'd made enough money so that they weren't out of pocket. But they had turned the thing into a real profitable operation, so he just took it back.

When Fred got to Florida, in due course he got a letter from his waitress-Spanish teacher reminding him that he had promised her that if he ever went back to the United States, he would do everything he could so that <u>she</u> could come to the United States. She

Olney: wanted to come to the United States. Fred says this was a strictly platonic relationship that they had, and he did make inquiry because he had given her these assurances. But he couldn't find any way in which a Cuban woman could come into the United States during the war, unless she got married to an American citizen. So he wrote her this and he got a letter back.

She was in great distress because she'd really been looking forward to coming to the United States. This upset him considerably, so he wrote and said, "Well, if you really want to come and the only way you can do it is to get married, maybe you can get married by proxy and come as the wife of an American citizen." She agreed she would do that. So Fred was the proxy, and they got married by a telephone or cable or something.

She came to the United States and she had no place to go, and he had had to claim responsibility for her. He sent for her and sent her up to his mother's ranch, Staggs Leap Manor. She was there as his wife, and she hadn't been there more than about ten days or two weeks and she came downstairs one day in tears. She didn't like the United States. It was too cold and the people just run around and are so busy and no time for anything and she didn't like it. She wanted to go home. So he shipped her back to Cuba.

About two weeks after that he got a letter from her in which she changed her mind entirely and said Cuba was just awful. It's so sleepy and dull and nothing ever happens, and she wanted to come back to the United States. So he brought her back to the United States. Then he decided, "We're married, so why don't we <u>be</u> married." So they went to living together up at Staggs Leap Manor and, at the time that he was telling me this story, she had three children.

Stein: So that was the wife, then, on whose behalf Rummel was appealing.

Olney: Yes, that was his wife. Fred testified and after the case was over, when it came to his being sentenced, we gave the full story to the judge, and he put him on probation for something like four years, and Fred was able to keep the ranch going and keep it together. But he had an awfully hard time because everybody took advantage of him. They knew he was on probation and he just got cheated right and left all the time. There's no doubt that happened, and it was a very rough experience, indeed.

After about two or three years of that, we went with him before the judge and gave him, again, the full story of what happened to Fred, and the judge terminated the probation to the period he'd

Olney: already served. But later he died. I don't remember whether it was tuberculosis or cancer, one or the other. And I don't know what's happened to the Cuban.

Stein: For all we know, she might still be up there in Napa Valley.

A Postscript on Two Underworld Figures

Olney: The other part of it was that shortly after this, Rummel--he had a house up in that canyon back of Hollywood; it's the main road that goes through the canyon through the hills back of Hollywood--he had a very nice house up in there. He was representing some captains in the Los Angeles Police Department that the grand jury was investigating, as well as his usual run of cases: gamblers and whatnot. He also was a lawyer for some of these Las Vegas gambling outfits. Late one night, after a session with the grand jury when his men had been down there, he came home to his house and was going up the steps and there was somebody in the bushes who blasted him with a sawed-off shotgun, threw the gun down, and vanished. It was a paid assassination. The gun was untraceable. No one was ever arrested for it, and really no one was suspected because Rummel had so many underworld contacts. There were so many people who had motives that you couldn't settle on anything.

Then, not long after that, Tony Cornero, who was still in Beverly Hills, had his doorbell ring and there was a man with a box of flowers to present to him, only the box had a gun in it and he shot him right through the belly. It didn't kill him, but they had to take most of his insides out and he never was the same again. Life was tough for him.

After that he got the idea of building a night club up in Las Vegas, and he had one built which is called the Stardust, I think. Once again, it was on other people's money. Tony never put up money of his own. It was always other people he got to put up the money. But the Stardust was finally constructed and it was getting ready to open, and they had retained Morton Downey, the singer, for the opening night. It was to be a big event. A night or two before it was to open up, Tony was in Las Vegas and he went across the street to the Dunes Club, I think it was, early in the morning and got into a crap game. He threw the dice out on the table and he toppled over on the table dead. Died of a heart attack right there at the gaming table.

Stein: That's an appropriate end for him.

Olney: Yes. Then they had a funeral. They removed his body to Beverly Hills and had a funeral at his home which was really quite an affair. It was attended by gamblers and hoodlums from all over the United States. Of course, it was well attended by police as well. They were taking down everybody's license number and identifying the people who were there and all that kind of thing. Morton Downey took part in the funeral. This was reported in the paper. This is where I get my information on this. At the funeral he was to sing Tony Cornero's favorite hymn; they described it as a hymn. But the song that he sang was none other than "The Wabash Cannonball." [laughter] So he really came to an appropriate end, considering the kind of life he'd led.

XIII THE DEPARTMENT OF JUSTICE

[Interview 9: March 25, 1974]

Teaching at Boalt Hall

Stein: One of the things that I was curious about was that you mentioned that you were teaching at the University of California's Boalt Hall [law school] and at the School of Criminology before you got the call to come to Washington, and I wondered what you were teaching.

Olney: Criminal law in both places. There was a course in the general principles and background of criminal law which I gave for the School of Criminology. O.W. Wilson was the dean at the time. And then I taught the initial course in the law school--when I say "initial," I mean it was always a first-year course in criminal law.

Stein: An introductory course. That sounds something like the courses that Arthur Sherry teaches now in both places.

Olney: That's right. I also had another course. This was a seminar that I gave on organized crime. I had to limit that to keep it a seminar to something like, I think it was, fifteen students. I had those three courses.

Stein: I guess by that time you were quite an expert on organized crime.

Olney: I was familiar with some parts of it to say the least. Although I was a full professor and this was supposed to be a full teaching load, I was also still counsel for the second crime commission. I had Alan Lindsay helping me with the crime commission. Alan, I found, could also double for me in my courses.

Olney: If it had not been for Alan, I don't think I could have kept things together, because the demands of the crime commission were very sudden, and I couldn't refuse them; I had to take care of them when the necessity arose. By having Alan working on both things with me, it made it possible to keep the courses going and still be counsel. I really think he was a better teacher than I, and I think the students did all right.

Stein: Did you enjoy teaching?

Olney: Well, I enjoyed the seminar very much, but I was very much disappointed with the law school, with teaching the course there, because the class was so large--it was something over one hundred students--and this meant that I could not use the case book method of instruction, where you assign cases to be studied and then have a dialogue about them during the classroom hours, calling on one student after another. With that kind of a method, I couldn't possibly get around the class in the course of a whole year.

So, I had to revert to lectures. I didn't know what else to revert to, how else to do it. This was disappointing. It meant that I was doing all the talking, and it also meant that I did not get acquainted with the students in my class. I don't know now who they were. Every once in a while I'll run across someone who says that he took that course, but I wouldn't have known it.

Another thing about the school that surprised me very much, and I still don't regard it with approval, was the lack of any kind of plan or overview of what was being taught or how it was being taught.

I had never done any teaching before I was asked to take on this position. I thought that of course there would be some sort of indoctrination course for new professors, new people who were undertaking teaching, about methods, about lectures, about case books that were accepted, but particularly about examinations, which was a difficult thing to do, how to prepare proper examinations and how to evaluate them when you got the results. When I made inquiry about this, I was regarded as--I don't know whether to say as an idiot, or somebody who was absolutely subversive. They thought that this infringed on academic freedom and it was simply against all precedent for one professor to make the slightest suggestion to another about how he might do this or might do that in conducting his courses.

Well, no professor ever came in and listened to my courses to see how I was doing, and I realized that it would be out of order for me to go and sit in their courses and try to pick up something in the way of technique. Frankly, I don't think that was a good

Olney: attitude. I don't know whether it still prevails or not, but I think it's ridiculous to talk about assists in teaching methods as being infringements on academic freedom. Well, so much for that. [telephone interruption]

Anyway, when I did decide to take this appointment in Washington, Arthur Sherry is the one who succeeded me. He took over my courses and finished them. He and Alan had both been working on our final report for the crime commission, so that the final report went ahead and was put out and edited by Arthur and by Alan Lindsay.

Coming to Washington

[Subsequent to this portion of the interview, Mr. Olney wrote an account of why he joined the Justice Department. Since this account was more complete than the tape-recorded interview, it has been substituted here for the relevant portion of the interview transcript.]

Why I Joined the Department of Justice

Olney: During these years of the Watergate scandals in the Nixon administration with their unsavory revelations of subservience, dishonesty, and malfeasance of many of the principal men in authority in the Department of Justice, I have been asked, delicately but nonetheless pointedly, by children, grandchildren, and friends who know that I served from 1953 to 1957 as assistant attorney general in charge of the criminal division, how I ever got into such a can of worms as the Justice Department.*

If the Department of Justice can be called "a can of worms" now, it is also true that in 1952, and for some years before, the reputation of the department for honesty and integrity, and of the Truman administration generally, had been sinking lower and lower. Congressional investigations had revealed widespread influence peddling, strong suspicions of wholesale fixing of income tax cases, and other acts of malfeasance. President Truman had been forced to fire his attorney general, former Senator Howard McGrath of Rhode Island, because of his refusal to disclose his own sources of income or the sources of income of his assistants in the Justice Department to a special appointee of the president's charged with the duty of investigating allegations of graft in the department. These and many other occurrences had badly shaken public confidence in the department. The general reputation of the department in 1952 was,

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*See Appendix E.

Olney: in my opinion, about as low as it has been during Richard Nixon's last years in office. Nevertheless, in January, 1953, I accepted appointment as assistant attorney general in charge of the criminal division. What follows is my explanation of what induced me to undertake that responsibility.

By the spring of 1952 the active work of the second Special Crime Study Commission on Organized Crime of the State of California, for which I had been chief counsel, was nearly at an end. I had resumed my full-time teaching activities on the Berkeley campus of the University of California in the School of Law and in the School of Criminology. At the same time the final report of the commission was being prepared and in this work I was being assisted by Alan A. Lindsay and Arthur Sherry, both of whom had been very active in the commission's work and knew it thoroughly.

The commission's report would, of course, be drafted by the staff, submitted by the commission to the director of the Department of Corrections, and through him to Governor Earl Warren.

1952 was an election year. As early as the spring it seemed probable that Governor Earl Warren would be a candidate for the presidency of the United States. I believed the governor would make a fine president, but I was in no position to take an active part in his campaign. During the summer the party conventions were held, the Democrats nominating Governor Adlai Stevenson of Illinois, and the Republicans General Dwight D. Eisenhower. Neither candidate filled me with any very strong enthusiasm. It was true that Adlai Stevenson had a good record as governor of Illinois and was experienced in civil government and domestic politics, which is an important qualification for a president. During the campaign, Governor Stevenson did not make a very good impression on me, at least. He seemed to be brilliant and witty, but somehow uncertain and indecisive as to his objectives and even as to whether he wanted to be president at all. While General Eisenhower had never held a domestic public office, nor taken any part in domestic politics, he had had a most extraordinary background of experience in Europe, dealing with all kinds of different people and different nations. His record seemed to indicate that he had real powers of leadership and the ability to make decisions.

During the campaign Elizabeth, my wife, and I vacillated between these candidates, although we both ended up voting for General Eisenhower.

There were two incidents in the campaign that caused me to have misgivings about the general. The first was the general's reaction or, rather, lack of reaction to a speech made by Senator Joseph McCarthy of Wisconsin, in which he referred to General George

Olney: Marshall as a "traitor." General Marshall, in my opinion, was one of the great men of the age and as fine, true, and loyal an American as our country has ever produced. He was the author of the famous Marshall Plan which saved Europe from anarchy after World War II and he had been President Truman's secretary of state. Furthermore, Eisenhower was deeply obligated to General Marshall because it was General Marshall who had given Eisenhower his opportunities of command from the time he was only a lieutenant colonel and who had finally been instrumental in selecting General Eisenhower as the Commander in Chief for the Allied Armies in Europe. Yet, when Senator McCarthy made his outrageous accusation against General Marshall, General Eisenhower remained silent. Indeed, during the campaign he even appeared on one occasion in Wisconsin on the same platform with Senator McCarthy. To me this did not seem to show the moral courage to be expected of a President of the United States.

The second incident of the campaign that gave me misgivings about General Eisenhower as a future president was his treatment of his running mate for the vice-presidency, Richard Nixon. During the campaign it came to light that Richard Nixon, while serving in the United States Senate, had been the recipient and beneficiary of a large slush fund contributed by a group of rich men in Los Angeles, the money having apparently been used by Nixon to pay travel and other personal expenses. This had all been done in secrecy. The public reaction was most unfavorable and there were demands from many fellow Republicans that his name be removed from the ticket. Nixon announced that he would go on television and make a public explanation of the slush fund. The result was what is usually called the "Checkers Speech," Checkers being the name of the Nixon family dog. The gist of Nixon's explanation of the slush fund was that he needed the money, but he accompanied this with an intolerable amount of corn about Mrs. Nixon's Republican cloth coat, in contrast to the mink coats of the Truman administration, and with tear-jerking remarks about the family dog, Checkers. After hearing the speech I thought there was no doubt that Nixon would be removed from the ticket, so I was very surprised to see on TV the next day General Eisenhower put his arm around Nixon and say, "Dick, you're my boy." Notwithstanding all this, I did vote for General Eisenhower.

In November of 1952, General Eisenhower was elected President of the United States to take office in January, 1953. I had no expectation that this election would affect me personally. Because of the extensive publicity I had received in my work for the crime commission, there was speculation in the press that the new administration might appoint me United States Attorney for the Northern District of California. This was no more than speculation and I did nothing to pursue it, although I admit I would have considered such an appointment seriously. Shortly after the election the newspapers reported that President-elect Eisenhower intended to

Olney: nominate Herbert Brownell, Jr. Attorney General of the United States and William P. Rogers as deupty attorney general. I had never met Mr. Brownell and only knew that he had been General Eisenhower's campaign manager and was an old friend and political associate of Governor Thomas Dewey of New York. I did know Mr. Rogers, however, who was to be deputy attorney general. The circumstances are rather curious and are as follows.

A year or two before, when the Special Crime Study Commission on Organized Crime was active and was receiving a good deal of publicity, Fred Howser, who was then attorney general of California, filed a libel suit in Washington, D.C. against Drew Pearson, the newspaper columnist, because of an article that Pearson had published in Washington and elsewhere in the United States, stating or at least intimating that he, Howser, had taken bribes from bookmakers some years previously when he was a city prosecutor in Long Beach, California. To represent him in this libel suit, Pearson retained William P. Rogers of Washington, D.C.

Rogers came to California to interview witnesses in preparation for the trial. Pearson's newspaper story was based on a statement he had taken from an informer who had tried to sell the same story to the crime commission before ever talking to Pearson. Rogers interviewed me extensively about this informer and his story and whether we thought it was believable. I told Rogers that we had investigated the informer's story thoroughly but could find no corroboration for his statements. The informer wanted us to put him on the payroll and with this objective we suspected that he was merely telling us what he thought we wanted to hear. I told Mr. Rogers that we could not vouch for the informant's credibility, that we had not accepted his story, although we had not been able to prove that it was untrue.

When the case came to trial, Mr. Rogers asked me to come to Washington to be available as a witness if needed, and this I did, taking Elizabeth with me. Mr. Rogers defended the case successfully without the necessity of having to call me as a witness at all, for which I was very glad.

After the taking of testimony was over, Drew Pearson had a little dinner party at his unique house on Dumbarton Street in Georgetown. There Elizabeth and I met Mr. Rogers' wife, Adele, for the first time. We were both charmed by her and Mr. Rogers as well and I was full of admiration for Mr. Rogers' qualities as a trial lawyer. While I was getting to know Mr. Rogers, he was becoming equally familiar with the work of the Special Crime Study Commission on Organized Crime in California and with my work as its chief counsel, but I had no thought that this would affect my future.

Olney: On a day in early December, 1952, I was in my office in the law school with Elizabeth, who was helping me with some of my personal files. The telephone rang and I asked her to answer it. I heard a voice open the conversation by saying to her, "Elizabeth, this is Bill Rogers in Washington. How would you like to come here to live?" There was quite a long pause and then, "Bill, now that you ask, I really do not think I would like to live in Washington." "Oh yes, you would," he said, "You would just love it here." After some more of the same, he asked to speak to me.

When I got on the telephone he asked me if I knew that General Eisenhower intended to nominate Herbert Brownell to be attorney general and that he, Rogers, was to be nominated as deputy attorney general. I told him I had read about it in the newspapers. "Well," he said, "we want you to be an assistant attorney general and to take charge of the criminal division."

I'm not going to try to repeat any more of the conversation. I was taken utterly by surprise. I do recall expressing my gratification and appreciation of the suggested appointment and I know that I was most emphatic that I did not want to leave California or the University, and did not believe that it was necessary for me to change my life and the life of my family so drastically.

Mr. Rogers did not attempt to persuade me over the telephone to change my mind, but he did tell me that Mr. Brownell was requesting specifically that I come to New York to talk with him about the position. He made it clear that I would not be committing myself to any extent by making this trip. He made the point that the offer of a presidential appointment is usually regarded as an honor and that a decent respect for the honor and proper regard for the man offering it would indicate that at least I should talk the matter over with Mr. Brownell when he asked to see me and not reject an appointment as important as this right out of hand. I couldn't resist this line of argument and accordingly agreed to make the trip.

Mr. Brownell was in New York City and according to Mr. Rogers I could see him in Mr. Brownell's law office just as soon as I could get there. When I agreed to go I reminded Mr. Rogers that with the Korean War in progress I had no priority on the airlines and would therefore have to make the trip by railroad train.

A day or so later I succeeded in getting a compartment on the Southern Pacific's City of San Francisco as far as Chicago. I had made my first transcontinental railroad trip at the age of twelve and I had made a good many thereafter. This trip to see Mr. Brownell was over the same route and I thought it would probably

Olney: be my last transcontinental trip on a railroad train. I took a good look at the scenery which had become fairly familiar over the years. Because of the war conditions, it was impossible to make an advance reservation to travel from Chicago to New York. It was with very great difficulty that I finally succeeded in getting space on the Pennsylvania and finally arrived in New York. I notified Mr. Brownell of my arrival and at his request called upon him at number 25 Broadway in the law offices of the firm of Lord, Day and Lord.

I thought I was well prepared for my interview with Mr. Brownell. On the train on the way to New York I had had plenty of time to marshal all the arguments against disrupting my academic life in California. I knew that I did not want to go to Washington under any circumstances or for any position. I entered Mr. Brownell's office with the confident expectation of convincing him of the validity and sincerity of my reasons. In any case, after expressing my thanks for the confidence and honor he had done me, I would decline any appointment in Washington. I had discussed this at length with Elizabeth before leaving Berkeley and had assured her that this was the position I expected to take.

It turned out that I was not prepared for Mr. Brownell. The press of the day liked to picture him as an astute, slick political type. I had had too much experience with the press to assume that this picture was true, but it is evident that I did not know exactly what to expect. Accordingly, it was with surprise that I found myself encountering a man who was obviously friendly, natural, and easy, who seemed utterly free of affectation and yet possessed a great personal dignity. He seemed to exhibit integrity in both manner and speech. Obviously he was highly intelligent and he seemed on first impression to be a man with powers of decision and one well qualified to run a large law office or administer a large governmental department.

Mr. Brownell was not impatient with the reasons I advanced for wanting to continue my life in California and, indeed, showed understanding and sympathy for my position. He parried my personal arguments by describing the extraordinary opportunity for public service in the Department of Justice under the then existing circumstances. The proper administration of justice, he believed, was the most important single function of government. Neither the legislative not executive branches of government could function effectively and attain their true ends excepting on a foundation of justice. To attain justice, the laws, both civil and criminal, in his opinion, must be applied humanely and intelligently to everyone alike without regard for race or religion or politics or economic power. Mr. Brownell said that as of that time, the Department of Justice was not well regarded by the public. There had been so many scandals

June 5, 1976, 50th wedding anniversary of Elizabeth and Warren Olney III, with children Elizabeth Olney Anderson, Warren Olney IV, and Margaret Olney.

Elizabeth and Warren Olney III departing from the Oakland Airport for President Eisenhower's inaugural ceremonies and his new post as assistant U.S. Attorney General and chief of the Justice Department crimes division, January 1953.

Olney: that the public had lost confidence, not only in the department but in the courts as well. He regarded this as a very serious matter and one which must be changed for the best interest of the country. He believed that the new administration had a great opportunity to make such a change and it was the hope of attaining this goal--restoring public confidence in the administration of justice--that had led him to accept appointment as attorney general. This was the work he hoped I would assist and share.

Mr. Brownell said he thought the criminal division was of first importance. Because criminal cases always draw so much publicity, the public tended to judge the whole department according to how fairly and efficiently they felt the criminal law was being administered. In view of this he said that he felt he should have an assistant in charge of the criminal division in whom he could have sufficient confidence to delegate practically all the major decisions. This was necessary, he explained, because the department was so very large with so many intricate matters that no attorney general could expect to decide all important matters himself. He told me that if I were to accept the position, he would delegate to me full responsibility for deciding the matters that came across my desk. There would be, of course, occasions when I would want to consult with him or when he would want to be consulted before action was taken, but these would be decisions reached by consultation and not marching orders. He said there would be no interference in criminal cases from above, either from him or from any other department or agency or even from the White House, although he trusted that when I did take action I would always let him know in advance what to expect so that he would not be taken by surprise and would try to avoid giving offense elsewhere unnecessarily. He spoke of my past experience with organized crime and racketeers and expressed the hope that I would make good use of this experience and would develop more effective methods for dealing with the rackets at the federal level than had been used up to that time. He told me that this was one of the reasons he regarded me as particularly well qualified to take on the criminal division.

As Mr. Brownell described his concept of what the Department of Justice could and should be, I heard him putting my own ideals into words. As he described the importance and urgency of the work to be done, I realized it was a conviction which I shared. And as he described what he thought should be done in the criminal division, I realized as I had not before that the work he was asking me to do was directly in line with and a logical development from the work I had been doing in California. Furthermore, as I watched him and listened to him, the conviction came to me that here was a man to whom I could be loyal and who would be loyal to me and who would support me as long as I was trying to carry out the kind of programs and concepts that he was describing. I began to realize that when asked, I could not in good conscience refuse to take part in such an important and worthwhile effort.

Olney: I do not know how long we talked, but at the end I found myself, to my surprise, agreeing to serve. "Fine," said Mr. Brownell, "Now I want to take you to meet General Eisenhower." We went to the general's suite in the Commodore Hotel. There I was introduced to the general by Mr. Brownell, who told him I had agreed to take charge of the criminal division. The general expressed his gratification, said he was sure the task would not be easy or simple, and he expressed his confidence in my ability to perform.

Following this brief interview with General Eisenhower, I left Mr. Brownell and went back to my hotel wondering about the consequences of what I had done. I have never regretted the decision. The experience of the following years has shown that the impression of Mr. Brownell that I formed at the first meeting was a true one. In my work in the criminal division he supported me without fail on everything that could be regarded as a moral or ethical issue. On lesser matters when his views differed from mine, he was always reasonable, he always explained his reasons, more often than not he ended convincing me that he was right, and even if he didn't, I was always able to retain full confidence in his motivation and judgment.

I did not consult with anyone about accepting this appointment. It would have been most natural for me to advise with Governor Earl Warren, who had been my friend for so long, but I did not do so because when I left California I fully expected to decline the offer. I changed my mind and made the decision to alter the whole direction of my career on the basis solely of those few minutes when I first met with Mr. Brownell.

I am not the only one who so responded to Mr. Brownell's personality and leadership. Judge Stanley Barnes is another case in point. For some weeks or even months Mr. Brownell had difficulty in finding a man with what he regarded as proper qualifications to take on the antitrust division. He wanted someone with integrity and courage, with broad trial experience and recognized standing in the profession, but who had not been a representative of the big business interests that are the main target of the antitrust laws. Finally the name of Stanley Barnes was suggested. At that time, Stanley Barnes was chief judge of the largest trial court in the world, the Superior Court of Los Angeles County, a position of much importance and good potential future prospects for anyone interested in a career on the bench.

I had known "Stan" Barnes for years and one day he dropped into my office in Washington. He asked me how I liked being in the Department of Justice and then told me that he had been called back to Washington by Mr. Brownell, who had offered to recommend his appointment as the assistant attorney general in charge of the antitrust division.

Olney: "Of course, I feel flattered and honored," he told me, "but I had to tell Mr. Brownell that I could not possibly consider it. I am very happy where I am and do not want to leave California."

I made no comment about this and we went on to other things. However, when Stan got up to leave I said, "I am looking forward to seeing you again shortly."

"What do you mean?" he said as he reached the door.

"I think you will find that Mr. Brownell is a very persuasive man," I said, and Stanley left.

Only a week or so later Stan was back in Washington and the first thing he said to me was, "You are indeed right. Herbert Brownell can be a very persuasive man." Stan had accepted appointment to the antitrust division.

I do not happen to know the circumstances of the appointment of Mr. Brownell's other assistants, but I do know that he succeeded in bringing into the department to head the several divisions as fine a group of men and lawyers as I have ever known. They included John V. Lindsay, executive assistant to the attorney general; William P. Rogers, deputy attorney general; Simon Soboloff, solicitor general; J. Lee Rankin, office of legal counsel; Stanley N. Barnes, antitrust division; H. Brian Holland, tax division; Warren E. Burger, civil division; Perry W. Morton, lands division; and Dallas Townsend, office of alien property. The character and ability of these men under Mr. Brownell's leadership restored discipline and morale within the department and respect and good name outside the department. When Mr. Brownell resigned in 1957, the Department of Justice was no can of worms. It was an honest, well administered public law office of good repute.

At the time I went to New York City to see Mr. Brownell, my daughter Margaret was studying in the Quaker School at Pendle Hill. Following my interviews with Mr. Brownell and General Eisenhower, she went to dinner with me and then we went to see the musical, "The King and I." It was Christmas Eve. The next morning, Christmas Day, I set out for home. At this time I was able to get air transportation on one of TWA's Constellations. There was no trouble about reservations. Indeed, on Christmas Day I had the plane practically to myself. The flight was unusually scenic. The Middle West and the Rocky Mountains were covered solid with snow. The visibility was unbelievably good. As we crossed the Mississippi and were flying over Iowa, the thought occurred to me that somewhere on the ground that was within the range of my eyesight was the place where my grandfather had lived with his parents only one hundred years before in a little one-room cabin with no shoes for his feet,

Olney: no school, no money, as he has related in the account of his life that he started for his grandchildren. Here was I, the grandson whom he had known, on an incredible flight over what had been such a primitive backwoods only a hundred years ago.

I arrived home in due course and on Christmas night announced to the assembled family that contrary to all the declarations I had made on departing for New York, I had accepted appointment as Assistant Attorney General of the United States and that we were going to move to Washington, D.C. This was probably not the most welcome Christmas present for Elizabeth. She was enjoying University life. Yet, she uttered no word of complaint but immediately began planning for the move.

[the interview transcript resumes]

Olney: Now, it was about Christmas that I had told Mr. Brownell that I would accept this appointment. The inauguration was on January 20, so we had to make arrangements to leave Berkeley and go to Washington. We kept our home here in Berkeley deliberately. The reason was that I was of the view that I wouldn't last long.

The criminal division is the most explosive division in the department, and the political life of an assistant in charge of the criminal division is notoriously short. I was convinced that mine would be too, not because of disagreements or things of that kind that might arise between me and the attorney general--I didn't think that would happen, and it never did--but the cases and the matters that get into the criminal division are so often front-page matters and there are circumstances connected with them that are outside of anybody's control. There are decisions that have to be made, both at the beginning and at the end of these things, where frequently there is no <u>right</u> decision, and you're damned if you do and you're damned if you don't, either way. But you <u>have</u> to make the decision, and you are responsible. Sometimes these decisions can bring on consequences quite unforeseen, or you have to make the decision even if you can foresee them, but the row that is stirred up and the situation that is created may well be such that it just becomes impossible for you to stay in the office, and you have to leave.

Now, I knew that that sort of thing happened with great frequency. I expected it to happen to me, and so we always kept our home here, figuring that it wouldn't be very long until we'd be back.

Stein: Was that something that you had discussed with Brownell?

Olney: No. I'd talked with my wife about it and we decided not to sell the house and not to lease it for any extended period, not longer than a year at the most.

Olney: So we kept our house all the time we were away, and this worked out very conveniently for us because oftentimes the house was vacant during the summer, and we could move in and use it ourselves, and have our children and our grandchildren here just as though we had been living here all along. So it worked out very satisfactorily. We were extremely fortunate in having good tenants most of the time. We only had one unpleasant experience with a tenant and that didn't amount to much. The rest of them were delightful people.

One of them, however--it was amusing because the internal security work that we had included the cases against people in the Department of State. One of them was John Service. McCarthy had been very critical of Service, and there were investigative reports pending. We leased our Berkeley house through an agent who was an old friend. The agent told us that before taking the place, the tenants-to-be wanted to be sure that I knew who they were, and it was none other than John Service. I thought that was a very decent thing, indeed, to make sure that I knew. I sent word back that it made not the slightest difference to me. If he wanted to be my tenant, I was delighted to have him.

Stein: You didn't make your tenants sign a loyalty oath. [laughter]

Olney: No, he didn't have to sign a loyalty oath.

Stein: So with your house taken care of, you were ready to move back East. What happened then?

Olney: We got ready and went back East to take this position. This time I was able to go by air, but I had nobody in the department that I knew, and I certainly wanted to have at least one person going there with me at the beginning that I did know, that I could ask to help out. The man I got for that purpose is Rex Collings.

Rex had been in the law school the first year that I taught. He was on the Law Review. He was not one of my students, but I remembered him because he was a very bright boy and he was a little different from the other students. He was a good deal older. He'd had two or three beginning careers, including the marine corps, before he decided to be a lawyer and entered law school. He had gone from law school to the Department of Justice, and had had a job in the appeals and research section in the criminal division. Then he had been enticed away from there by the Los Angeles firm--it's a very large firm down there--well, Homer Crotty was the well-known lawyer who induced Rex to go with the firm in Los Angeles.

I had not known Rex very well, but my friends on the faculty told me that they thought that he'd be willing to go with me. I got in touch with him and he was.

Olney: When we went to Washington this time, we took American Airlines. That was the fastest. There was no non-stop service then, and the best way of going was to take American in a DC-6, and then we had to change planes in Dallas. There was a plane from Los Angeles to Dallas. We got on that one and that went to Memphis. Then we went from Memphis to Washington. So we got on early in the morning and got off late at night.

We had been able to get a reservation in the Wardman-Park Hotel--it's now the Sheraton-Park--and the place was just loaded with Republicans there for the inauguration. We got a little room which turned out to be right over the entrance, so we were awake all night with banging doors of cars. It was a terrible room.

It was bitter cold and the room had steam heat. The radiator was hotter than anything and you couldn't turn the radiator off, so we had to open the window. So we had all these banging noises, but after that they moved us into a different room. That was sort of a housekeeping setup and we were quite comfortable there.

I was told to check in at Bill Rogers' office, at the firm of which he was a member. Although it was a New York firm, it had a Washington office which Bill had been operating. That made it a good place for us to meet and so forth. Well, I went down there and met Lee Rankin, who was to be the assistant in charge of what we eventually called the office of legal counsel. It had a different name then; I don't remember now what it was. The purpose of that office is advisory. It advises the president and it advises the attorney general.

Lee and Mr. Brownell were very much preoccupied with preparing certain papers for the president-to-be, certain proclamations and things, official papers that needed to be carefully drawn, and they were working on that.

When lunchtime came, I was somewhat at a loss, so I just went outside and went into a coffee shop. I saw a man sitting on a stool about to have a cup of coffee and thought I recognized his picture from what I'd seen in the paper. So I asked him if he was Mr. Holland from Boston. He said he was. This was H. Brian Holland, who was to be the assistant in charge of the tax division.

I introduced myself, so our first meeting was sitting on a stool in a coffee shop having a bit of lunch together. We've become very, very good friends indeed, and so have our wives, too. But that's how I met him.

Olney: Later on--it wasn't that day--my recollection is that we were invited up to one of the minor hotels that had little apartments in it. There I met Warren Burger. This was his room. We also became friends.

One of the things that I might mention is that it turned out that I was older than these other men. I'm older than Mr. Brownell. Although they all had children, I was the only one that had grandchildren at that time. This surprised me, because I had always been associated, in my work, with people who were older than I. Anyway, we all got acquainted.

Stein: What was Warren Burger doing at this time?

Olney: Warren Burger was a partner in the leading law firm in St. Paul, Minnesota. He had never held any public office or been in public work, but he had been very, very active in Republican politics in Minnesota and was a close friend and associate of Harold Stassen's.

During the Republican convention, the principal candidates were Taft, Eisenhower, Stassen, and Warren. There was balloting for a time without any candidate having a majority, and then the Stassen delegation led by Warren Burger finally switched to Eisenhower. That started the bandwagon going, and then more and more delegates switched and Eisenhower became the nominee.

Warren Burger was to be the assistant to take charge of the civil division, although it was then called the claims division. We got to know each other quite well.

About the inauguration, none of us had been through such a thing as that before, and we found that we had to have proper hats. [laughter] Always in inaugurations, up to that time, people wore silk hats, silk plug hats. I had one that fitted me, because I'd worn it at my wedding. I hadn't worn it since, but I could still put it on. But that was not needed. Eisenhower did not want us to have silk hats. He had one of these Homburg hats. So we all had to get Homburgs. There was such a run on Homburgs in Washington that they weren't easy to find.

Stein: I can imagine that every hat store in the city was pretty much wiped out.

Olney: Yes. I did find one. Then we managed to get tickets. There were two sets of tickets. One was to enable us to sit in the stands at the inauguration ceremony on the east side of the capitol, and the other set was for the parade. The ticket for the inauguration was for me only; it did not include Mrs. Olney. She had to fend for herself, and she did right well. She was able to sit right below

Olney: the podium, had a very nice seat with the diplomatic wives. I sat back of the place where the two presidents were, and where the swearing in took place, with other members of the cabinet and so-called junior cabinet. The first assistants to cabinet officers were usually lumped together and they called it the junior cabinet. We were all up there together. I sat next to Ezra Taft Benson, who was to be the secretary of agriculture.

Down below us I saw Earl Warren, as governor of California. The governors were all en banc around there too. We witnessed the giving of the oath to President Eisenhower and left to try to see the parade. Elizabeth and I failed to make connections, with the result that she stood on one side of the parade and I stood on the other side of the parade, neither of us knowing where the other one was, and standing up for its full duration. It was bitter cold. We finally made our way home, separately, and I think it took us hours to thaw out.

Then we found that we had these tickets which were in the stand down around the White House. But we didn't know that and didn't know how to get there anyway.

The Hollands had been in Washington before; Brian had been in the tax division during the Hoover administration. He knew what any inauguration was like, so he and Trudy stayed in their room and watched it on TV [laughter], which was the smart way to do it.

When I left Berkeley I knew that I would need a dark formal overcoat for the inauguration and for other occasions in Washington, so I took the only one I had. It was a tailor-made overcoat that my father had had made by Bullock & Jones in San Francisco. My father died in 1939, so you can see how old it was. I had had no occasion to wear it in Berkeley and only used it for walking the dog on wet rainy nights, so it was known as "the walking the dog" overcoat. We had it cleaned for the inauguration and I wore it. Later I tried to find a new one, but we did not like any that we could find as well as that old one, so Elizabeth had it relined and I wore "the walking the dog" overcoat to the White House and everywhere else that I went in Washington. I still have it and it is as good as ever. I expect to pass it on to my son in due course. What a coat!

After that swearing in on January 20, we were to report for duty, but we did not and could not take over our active work until we had been confirmed by the Senate. The attorney general and Brian Holland and I, as I recall, appeared--no, I'm mistaken. The attorney general and the deputy attorney general appeared before the Senate committee, and they were confirmed right out of hand. Then I believe it was Brian Holland and I who were called before the committee. At that time we had a Republican Congress. The chairman of the committee was Senator Langer of North Dakota, a very strange man, indeed.

Olney: There was no problem about Brian Holland, but they asked me a good many questions. I had supposed there was no problem about me, but Senator Langer told me that he wanted to see me in his chambers after the hearing. So when the hearing was over I went with the Senator, and he said to me in a loud voice which everyone could hear as we went out into the hall--there was a crowd of people around--and into the elevator, "You're going to be the next assistant in charge of the criminal division, are you?" "Well," I said, "Senator, not unless you confirm me." "Oh," he said, "we'll confirm you all right." He said, "You know, I'm an expert on criminal law. I'm the most expert member of the Senate on criminal law, especially on conspiracy." He said, "I'm the only member of the Senate who's ever been indicted and convicted for conspiracy. Sure, they indicted me and they tried me for conspiracy." He said, "I know all about the law." [laughter] With everybody around.

Stein: What had he been tried for?

Olney: Well, he had been tried when he was governor of North Dakota. They played a very rough political game up there, and he had been tried on some charges of conspiring to improperly divert relief funds, something of that sort. He was a pretty high-handed old boy when he was governor. During the Depression, when there were federal funds made available for relief, the funds were given to the state to administer. Well, in North Dakota, Langer took this fund and he put it in the bank, and the name of the account where he put it was the William Langer Relief Fund. So everybody who got relief in North Dakota received a check drawn on the William Langer Relief Fund. Well, this, needless to say, drove the Democrats a little bit nuts, and it was out of troubles like that that this indictment broke forth. But they actually did try him, and he was convicted, but it was reversed on appeal. He made no secret of this.

Well, he took me into his office and he asked me if I had once been a member of the Institute of Pacific Relations. I said, "No, I never was a member of that." I wasn't even too sure what it was. "Well," he said, "I've got some FBI reports here that indicate that you were a member of that thing," And I said, "Well, I never was, Senator, and I don't know what it was. I have a recollection that during my father's lifetime, which would be prior to 1939 (he died that year), somewhere along, I guess, in '35 or '36, the institute was founded by Bishop Parsons and a number of others out here who were friends of my father's and whom he respected. I think that my father may have been a member of it at that time. But that's all I know about it. In recent years I know nothing about it."

"Well," he said, "look at these reports." And he showed me the FBI reports on me. If the Bureau had ever found out that he had let me read their reports about me, they would never have given him

Olney: any more reports. They are never supposed to show reports to the subject. But he showed them to me. They were the funniest things that I had read. They had gotten terribly confused between my father, my grandfather, and me becuase of the identity of names, and then my mother, who sometimes signed her name Mrs. Warren Olney, Jr. They had gotten some kind of mailing list or something of that sort which indicated that copies of the institute's publications, for a time at least, had gone to 2737 Belrose Avenue, which was my mother and father's address here in Berkeley. These mailings were after my father's death, however; although when I was in college I had lived at that address, I had been married since 1926 and hadn't lived there since. So the Senator decided this was a lot of nonsense, but he said that he felt that he ought to satisfy himself in view of what was in the reports.

Well, the net result was that they didn't get around to holding a committee meeting on me for something like three weeks. So that meant I went all that period without any pay.

Stein: When you were hanging in limbo.

Olney: Yes. So I've always felt I had a justified grievance against those erroneous reports that the Bureau had circulating.

Stein: The Bureau must have had a report of some man who was a hundred and fifty years old if it spanned the generations from your grandfather to yourself.

Olney: Well, they didn't have anything about my grandfather in there, as I recall. They had some reference to my father having been mayor of Oakland, which, of course, he never was; it was my grandfather. There were some things like that that indicated that they didn't know very much about our family.

Well, I did get confirmed, eventually, and then Brian Holland and I were sworn in in the Department of Justice in February, the oath being administered to us by Chief Justice Fred Vinson. We were greatly flattered that the chief justice came all the way down to the department to administer that oath to us. Then we were pretty much aboard.

Organization of the Department

Olney: It's worth mentioning somewhing about how Herbert Brownell got us organized. We didn't know one another prior to our appointments. Then there were two other persons, very important in the department, that we didn't know very well either. One of them was J. Edgar

Olney: Hoover, who headed the FBI, and the other was James V. Bennett, who was the director of the Federal Bureau of Prisons, both of those being in the department.

The immigration service was also in the department. But Herb did not fill that position of director of the immigration service until a great deal later, when General Swing was appointed to head it. So there was a vacancy there at that time.

Well, Herbert invited us all to have lunch with him every day. The attorney general's office has a small but adequate dining room attached to the suite of offices that he has and a very small kitchen. And we did, of course, attend every day. This proved to be a very valuable and very wise thing, because as we were all sitting around at lunch we could discuss how we were all confronted with similar problems of secretaries, of trying to get familiar with our divisions, of all the people we were encountering for the first time, of all the new things that we were discovering about our own positions in work that was new. We went through all these experiences together, and it gave us a feeling of all being on the same team, of mutual respect, and an understanding of one another's problems in the other divisions.

This had a continuing effect during the entire time that I was there and that Herbert Brownell was there. There was never any jealousy between assistant attorneys general; there was never any intriguing between the assistants. We were always able to deal frankly and aboveboard, and to discuss our affairs without rancor or difficulty. It contributed a very great deal.

Now, I mention that because those who have been in the department for a very long time will--like Mrs. Salvatore Andretta, better known as Patricia Collins--she has been in the department as a lawyer for forty-one years. She's served under a great many attorneys general. She had her husband have always been Democrats, but she is most outspoken on this subject. She said that this period when Herbert Brownell was attorney general was the only period in her experience where that kind of relationship existed between the assistants.

Well, this made our work very pleasant. We never felt alone at all. We felt we had support.

With respect to my own division, I did have Rex Collings, but he was still quite inexperienced. He had never tried any cases, for example. One of the reasons he came back with me was my assurance that in due course I would make it possible for him to try cases. I don't remember to what section I assigned him when he was first there. But I inherited a first assistant, and a second

Olney: assistant, and section chiefs of various sections. I wasn't very favorably impressed, to be frank about it, although there was nothing against these men.

Stein: What didn't impress you?

Olney: Oh, just their manner and general appearance of capability. I doubted that they were very capable, but maybe they were more so than I thought. But very quickly I had this extraordinary experience with a case that involved Congressman Bramblett.

The Congressman Bramblett Case

Olney: Congressman Bramblett was a Republican from Monterey County, California He had gotten into the newspapers, I think, before the election. Drew Pearson had published stories about him. The gist of it was that Bramblett had put a number of different people on his congressional payroll and then had required that they give him part of their salaries.

Stein: So he was receiving kickbacks?

Olney: Yes, that was the accusation. It had been in the newspapers. I had not been in the office very long, and I asked some questions about the Bramblett case and found that it was indeed pending there in the criminal division. I talked with the chief of the section which had jurisdiction and he told me that they had completed review of the reports--the investigation was complete--and had recommended against prosecution. They didn't think they had a case.

I asked to see the file and it was sent in. I read the file myself from beginning to end. I was no expert in the federal criminal law. I had never tried cases in federal court--my experience had been in the state courts--and I was none too familiar with the federal criminal code. But as I read that file it seemed to me that there was a case there. I thought it was a provable, presentable case, but they had recommended against it. The memorandum which was presented for my signature to close out the case had been endorsed first by the man whose immediate job it was to review all the reports and come to a conclusion, and then the chief of his section had reviewed it. Then my two assistants both had reviewed it and both of them had initialed it, recommending that the case be closed.

Olney: Well, I read it and then returned the file and had it sent back to file, but I did not close the case out. I did not initial it. I just sent it back to the files for the time being, because I didn't want it hanging around on my desk.

A little later I got hold of Rex Collings and asked him to take out the file--I guess I handed him the file, as a matter of fact--and told him not to take a look at the review that had been made in the department, by the department lawyers. I wanted him to read the reports and to read the statutes and to give me a completely independent view as to whether he thought there was a case there or not, which he did.

In due course he came in and said, "I don't understand what the question is. Of course, there's a case. What's the problem?"

I said, "It's been reviewed here in the criminal division, and they say there's no case. They're recommending that we don't prosecute."

"Well," he said, "can I look at their memoranda now?" So I let him do that. He said, "It doesn't convince me. I think they're wrong. I think they're mistaken. This is clearly a legitimate case."

That was the time when I sent the file back to be filed, but unendorsed. I thought about it for a time. After about a week, I asked for the file again. It was sent to me and I looked it over--I'm wrong about that--I asked Rex to get it out. Rex looked it over and came into my office in a great state of excitement. He said, "There's a paper in that file that was not there when I read that case, and it was not there when you read it." He said, "Look at it."

Here it was. This was an explicit order, signed by the attorney general, directing that case be presented to the grand jury. It was signed by Attorney General McGranery, on the nineteenth of January, the very day that he left office. Now, I know that paper was not in the file when I saw it, and it wasn't in there when Rex saw it. But there it was, a flat order. And this closing memorandum had been initialed on dates since then.

Well, I thought about that for a while, and eventually I made up my mind that somebody was trying to fix me up, to get that case closed out and then make a big stink about it, and find out that I'd closed that case out notwithstanding a recommendation or an order from a previous Democratic attorney general that we prosecute it. This man [Bramblett] was a Republican.

Olney: I called in all four of the men who had initialed that closing memorandum--the two assistants, the chief of the section, and the man who had reviewed the case in the first place--and told them at the outset that I was going to have to take an action that might well be quite unjust to three out of the four of them. But I did not know who was responsible for this. I couldn't tell which one it was, but I knew it was one of the four. I went over what had happened. And I said, "This is a frame-up. Somebody is trying to do this. Somebody pulled that sheet out of the file, knowing that we were going to read the file, so that we wouldn't see McGranery's order, and then put the order back in. Obviously, I can't live in peace and quiet if I think I have somebody like that around here. You gentlemen are just going to have to look for employment elsewhere. You have all initialed the recommendation not to prosecute and you thereby have made yourselves responsible. I can't have any of you."

Well, there was an awful to-do about it. But I just wouldn't recede from the position, and they all eventually left without any noise or problem. I had four vacancies as a result.

Personnel

Olney: By that time, I had learned to my astonishment that the criminal division also included internal security work, about which I knew next to nothing, and civil rights, about which I knew even less.

The internal security work bothered me very much, because I knew that it was very important to have a good working relationship with the FBI on those cases. I couldn't have somebody who was a complete stranger to them. So I went in to see Mr. Hoover and told him I had a vacancy as a first assistant and I wanted somebody who had a really good background in internal security work. Did he know any lawyers that fitted that bill? He said he did, and he gave me four or five names. I looked them over, and Walter Yagley was the one that seemed to me to be best qualified. I called him up and had him come in and we had a talk. I checked out on his references, of course, and concluded that he would be good, so I appointed him. He became my first assistant, and it was a good appointment.

Then I needed somebody else and I persuaded Alan Lindsay to come East. He became the second assistant, and a more faithful, loyal, energetic assistant no one ever had. He was tops.

Olney: Then we had another interesting experience with personnel in the office. Herbert Brownell thought that each assistant ought to bring his own stenographer, if possible, because the place was notorious for leaks and things of that kind. He had the idea that it was secretaries that might well do a lot of talking outside of shop. So I did my best to recruit secretaries who had worked for me here on the coast, and there were quite a few of them. I couldn't persuade a one of them. [laughter] They just weren't interested in going three thousand miles and living in Washington.

Of the secretaries that I inherited, there was a number-one and a number-two girl. Both girls were young. The number-one girl was very young, extremely young. Her name was Margaret A. Bailey, but she was known as Marty. I don't recall now how it was that she happened to be in that number-one position. She hadn't had it long; she hadn't had anything very long. She had been in the division for enough years so that she knew everybody and knew what was going on. She'd expected to be replaced, but I couldn't find anybody to replace her.

The longer I kept her, the better satisfied I was with her. Her work was excellent from the start; I never had any complaint about that. I began to have very great confidence in her discretion, because she had worked for two or three of my predecessors--among whom was T. Lamar Caudle, for example--who were the subjects of investigation and eventual prosecution. She was aware of these activities, but never once did Marty ever say one single word about them or about their work or make any comment. I concluded that if she wouldn't talk to me about them, she wasn't going to talk about me to anybody else. So I kept her as long as she wanted to stay, which was quite a few years. Then she up and got married.

My number-two girl was from North Carolina, and she hadn't been there for very long. She really was a hillbilly. I used to ask her if she'd ever worn shoes before she came to Washington. [laughter]

I couldn't understand her. She talked a language that, to me, was almost incomprehensible. And, to my disgust, I found that she couldn't understand me. She didn't think I could speak English. [laughter] We used to get into gales of laughter at one another because we would have an exchange and it would be perfectly plain that neither of us understood the other. But we got used to each other before long, and so I could understand her and she could understand me, and she turned out to be a very fine secretary indeed.

All the years I was in Washington, I had Washington secretaries. I have never seen a collection of better professionals than that group. They were very capable and totally reliable. While

Olney: Washington is notorious as a place for gossip and things of this kind, in my day at least, the leaks were not coming from secretaries at all. And, to the best of my belief, they don't now. So I was never able to get any California secretary, and I used the ones I found there.

The Bramblett Case Concluded

Stein: Were you going to say anything more about the Bramblett case?

Olney: Yes. We then had a complete new review made of the case and decided that it should be presented to the grand jury. It was and an indictment was returned. The case was tried and Bramblett was convicted. It went to the Supreme Court on appeal and it was affirmed, and he served his term. Of course, he lost his position in the Congress.

It also had a bearing on my dealings with Drew Pearson. When I was with the crime commission, the newspapers were always hanging around and trying to get stories. The policy that I always followed with them was to treat all newspapermen alike. I did not have private conferences with different reporters. I called them all in and told them all the same thing and answered the same questions all at once, so that nobody got scooped. And I would try to arrange these conferences at different times of day so that sometimes it would be the morning paper, sometimes it would be the evening paper that would get the stories first. They knew I tried to do this and were quite appreciative of it. But there was one exception that I always made and that was: if a newspaperman came to us and gave us a story or a substantial lead from which a case really developed, I always felt that he was entitled to the first break on that story. I used to tell them, "Give us a story and that's the way it'll be treated. We will see that you get the first shot at it."

Well, Pearson was the one that blew the whistle on Bramblett. This didn't come from anybody else. This thing had been cooking around and he'd almost forgotten about it. Well, when we decided that we had a case, and there was going to be an indictment returned, I called him up and told him that I had a story if he'd care to drop in, which he did. I said, "The reason I'm telling you this is because this originated with you, and I've always gone on this policy, that if you start a story, you're entitled to finish it. We have gone into the Bramblett matter thoroughly and there'll be an indictment returned. We're going to go ahead and try it. I thought you ought to know it."

Olney: Well, he expressed his appreciation for it. He said, "You know, there's something funny about that case. There's an awful lot of talk going on down in Democratic party headquarters about that case. Something happened. They were positive that you were not going to prosecute that case. They were positive you weren't, and they had told me that. I was just sort of waiting to see what was going to happen. But then something happened, and they got into an awful uproar."

Well, I didn't tell him about this sheet being taken out and put back in the file, but I have always thought there was a connection. Anyway, that was the story of the Bramblett case and how I got room to appoint some of my own people in the criminal division.

Stein: Have you seen the account of the Bramblett affair in Drew Pearson's diaries* that have just come out?

Olney: No, I haven't.

Stein: He says, among other things, that there was a rumor going around that Richard Nixon was going to try to stop the prosecution, and that there was a political war going on in California between the Nixon and the Warren forces about whether the case was going to be prosecuted.

Olney: I never heard of that. I don't believe that there's the slightest truth in that. Well, I won't say that there might not have been some such rumor going around in Washington, but I don't think--

Stein: He also says that there was another paper discovered in the file that was a memo from a Washington attorney purporting to be a friend of yours interceding for Bramblett.

Olney: That's true. That's true. Now, that paper was a letter that was in the file and it was written by Edward Bennett Williams, who, at that time, wasn't very well known. He's now, I suppose, the best-known criminal lawyer in Washington. It was a letter, signed by him, that was received after my appointment was announced and before we took office, interceding on Bramblett's behalf, and making some mention that he was a friend of mine. Well, I had never seen the man in my life. He was no friend of mine at all.

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*Tyler Abell, ed., Drew Pearson: Diaries 1949-1959 (New York, 1974).

Olney: I was so put out about that, and so leery of a man who would do that, that I would never permit Williams in my office. He never came into my office, ever. I wouldn't let him in the place, nor Murray Chotiner; I wouldn't let him in the place either, and neither would Bill Rogers.

Stein: Why? What had Chotiner done?

Olney: Well, Chotiner was nothing but a two-bit crook. He was a very close associate of Fred Howser and those racketeers in Southern California, and had been right along. He was all mixed up in politics. He'd gotten on the vice-president's train. Bill Rogers had some very unpleasant experience with him. I don't remember what.

It was shortly after we took office that we heard that Murray Chotiner was running around making representations that he could square cases. Bill Rogers put out a memorandum to every assistant in the department that Murray Chotiner was not to be allowed in the place, not to let him come into your office, or talk to him. That's the way he was regarded

[tape recorder off while Mr. Olney reads relevant portions of Drew Pearson's Diaries.]

Olney: Well, our accounts of this thing are reasonably similar.

Where are we now?

The Investigation of Tom Clark

Stein: You mentioned in your outline the Tom Clark investigation.

Olney: Oh, yes. To my surprise, I discovered that in the general crimes section they had a very extensive investigation of Tom Clark underway. This goes back to the days when he was attorney general and there had been a number of ringleaders of what was known as the Capone mob who had been convicted and then paroled. There was a great scandal about the parole of some of those Capone mobsters. As a matter of fact, that incident was mentioned in one of our California crime commission reports. I don't remember now exactly what it was, but I know that we had mentioned it and it was a notorious affair.

Well, I found out that when McGranery had become attorney general in August of '53, he had instituted this investigation of Tom Clark on the circumstances of this parole. The parole board was in the

Olney: Department of Justice and they had two lawyers working on that case. I went into the room and talked with them about the case. There were stacks of FBI reports. I would have thought that they were about four feet high. They said that the investigation wasn't concluded, so I said, "Without going any further, would you write me a summary of what you have to date: what the allegations are, and what, roughly, you think is shown by the reports, and the general direction that you think further investigation might go."

They did summarize the thing for me. I concluded that it was just a mare's nest, and that there was nothing worth investigating. They were going round and round; there were no solid allegations for inquiry. Clark's connection with the parole was not close; it was quite remote. There was nothing solid to investigate. So I closed the case out. I mention this because there was this very considerable number of cases that had been started by Attorney General McGranery, some of which seemed to have merit and some of which didn't, which were underway when we got there. And that was one of them that I closed out.

It was always a difficult thing for me to close out a case without there being very solid reasons for doing it. I felt I had to have as solid grounds for stopping the investigation as I would have for returning an indictment. If I didn't, those things always get out and I knew that I might well be called to account somewhere for the action taken. I felt that I simply had to have solid ground for every one. So, with some of these better-known defendants we had it was not an easy thing to close them out. But with this one I did.

Internal Security Work

Budget Problems

Olney: Perhaps now we might go to the internal security matters?

Stein: Do you want to do that first, or your initial experiences with the budget?

Olney: Oh, yes. Well, the two things fit together pretty well.

It seems to me it was about the week after I was sworn in that the hearings on the budget came up. I found that I was supposed to appear before the subcommittee of the House Appropriations Committee to justify the appropriations for the criminal division. The chairman of that subcommittee was John Rooney of New York.

Olney: Well, I appeared, and we had an elaborate budget. The budget had been prepared, of course, by the administrative section in my division. The committee knew that I was not personally familiar with it, and they were very kind and reasonable in their treatment of me at that particular hearing. Each of the sections of the criminal division had its own activities and the supporting material for the budget described what the activities in the past year of the sections had been, how many cases they'd handled, how many lawyers they had, what they expected in the coming year, how much money they were likely to need, and so forth.

In presenting this, I learned for the first time that I had an extraordinary number of lawyers engaged in internal security work. It seems to me that there were more lawyers in that section than in the rest of the division taken altogether. They had reported a fantastic number of cases that were serious. [refers to the Annual Report of the Attorney General of the United States, 1953] The statement was that during the fiscal year they had received and processed 18,000 new cases involving violations of the laws relating to internal security, as well as 23,116 new cases of reported violations of the selective service law. Well, the selective service cases didn't bother me much, but those 18,000 internal security section cases certainly did, because I wasn't aware of any such large number of cases.

Well, when I made inquiry after the hearings, when I first learned of this, I found the answer to it was in the way that they defined a case. I had supposed that when they were talking about cases they meant either cases that were actually in court or cases that were under preparation or investigation with an idea of presenting them to court. But not so. They were counting as cases every separate matter that came to the attention of the section, whether it was by casual correspondence or a phone call or whatnot. And this was, of course, building up a statistical total which made it possible to put out a figure like that for appropriation purposes. It also, of course, brought to my attention the very large number of lawyers in that section. I might say that when I took the position, I did not realize that these cases, or at least so many of them, would be in my division. I hadn't really thought about it.

So I began making inquiries into what these lawyers were doing. I found that they were reviewing FBI reports on individuals, evaluating the reports, and putting these individuals' names on lists according to whether they felt they were more or less security risks and dangerous.

Well, learning this from the work, I also learned from sitting around the luncheon table with Mr. Hoover and Mr. [James] Bennett that the civil defense program--and this is Harry Truman's civil

Olney: defense program we're talking about--included planning in case of attack not merely for shelters for people to pop into, but eliminating all possible domestic threats and enemies. This had been carried out to the extent of making definite plans in a state of emergency for actually picking up suspected people and putting them into camps. Hoover and Bennett would discuss where these camps would be and how many could they handle at various places.

Mr. Bennett--who took a very dim view of the whole program, I might say--was having to consider rehabilitating old prisoner of war camps that had been used in World War I. Well, the people they were going to put in there were the people who were on these lists that the lawyers in my division were evaluating.

Stein: Could I interrupt a moment? I know the McCarran Act in 1950 authorized the establishment of internment camps, but were these camps even before that?

Olney: Oh, no, no. We're talking about 1954, after the McCarran Act was passed. Yes, I think it authorized something like that, but I never believed that there was anything like this going on.

What was occurring was that the FBI would get information here, there, and the other place, and some of the information would suggest that the person might be a possible security risk. Maybe he belonged to an organization that was supposed to be made up of "baddies," or maybe his sister-in-law did, or something like that. And they would make an investigation and prepare a report. Now, Mr. Hoover always took the position that the Bureau would never evaluate those reports or any reports, that that was a job for the lawyers. The Bureau would get information, but it was up to the lawyers to decide if it meant anything or not and what the consequences should be. The lawyers who had to do this were the ones in the internal security section of the criminal division.

And here were these lawyers sitting there, reviewing reports and trying to evaluate them, making decisions as to whether this name should go on the "Most Dangerous" list or the "Least Dangerous" list or something, or whether it shouldn't go on any list at all. The lists were huge.

At that time, it's only fair to recall, we were in the Korean War. Eisenhower had promised to make a trip to Korea to try to bring the fighting to an end. The shooting was still going on. He did make the trip. It took a long time to get it to an end. There was always apprehension of not only intervention by the Chinese, as there was in Korea itself, but by the Russians also. There were all sorts of plans to meet a possible nuclear attack, civil defense plans that we were going through, so it was not so extraordinary

Olney: that people like the Bureau, who were charged with that responsibility, were thinking in terms of what were they going to do about picking up potential enemies in the event of an attack. But I didn't like to see all this responsibility thrown on the lawyers in my division who were not equipped to evaluate things like this.

Stein: About how many names were on these lists?

Olney: I don't know, but they ran into thousands.

I didn't feel in a position to challenge the program that was going on. I thought it was useless, wasteful, and was being carried to an unnecessary extreme. So what I did was to discourage the program whenever the opportunity arose. When we would get vacancies--and there was always a considerable turnover of lawyers in that section, as you can imagine; they couldn't stand sitting there just evaluating these things for very long--I gave instructions not to fill the vacancies. And then as many as possible of the good lawyers that we had in there, we transferred to other sections where their services were of some use. So the number of persons actually working on those cases became fewer and fewer. Although the reports kept coming in, my instructions were to just let them come and let them stack up. And that's what we did.

I feel very sure that it wouldn't take long for the FBI to figure out what was happening. But they didn't make an issue of it. It was never brought up with me. I know that they were very, very glad when, about after a year or so, the internal security work was set up in a brand new division, with a new assistant in charge. [laughter]

Incidentally, an amusing thing happened, speaking of the budget and the statistics. While I still had the internal security work and had found this lack of definition of a case, I decided we had better have a definition of a case and make it run clear across all the sections in the criminal division. We defined a case as meaning a proceeding either in court or one where court proceedings were contemplated, and everything else was counted as "matters." It meant that the next time the budget was presented, we had a tremendous reduction in the number of cases reported for the internal security section, and this had to be explained to the Appropriations Committee subcommittee.

Stein: How did they take that?

Olney: Well, they took it very well, asked no real questions about it, and accepted my explanation, the reason being that the internal security work was so strongly supported by the FBI, and Mr. Rooney, the subcommittee chairman, was a very, very strong supporter of the Bureau. So, he was not about to cut down the appropriation for internal security work, no matter what we reported.

Olney: When the internal security division was created--that was on July 9, 1954--and it absorbed, of course, all the work that had been in the criminal division, they reported, to my amusement, that at the beginning of the fiscal year 1955 there were 50,460 office cases pending in the internal security division foreign agents' registration section. The new cases received during the year totaled 13,228, or 728 less than the previous year, the number of cases handled totaling 63,688 cases, representing an increase of 7,169. [laughter] Well, there just weren't that many subversives in the country. Those were "matters" and those figures were decorations for Appropriations Committee hearings.

Stein: I imagine that if that were true, there'd be a subversive behind every bush.

Olney: I should say.

Stein: I just have one more question about the budget. You mentioned when you spoke to Mort Schwartz and Mrs. Fry that you brought John Airhart in to help you with the budget, and that he was an enormous help. I wondered if you could tell me a little bit about what he did.

Olney: Well, yes, indeed, I can. The chief of the administrative section whom I inherited walked in on me one day and told me, "Goodbye," to my amazement. He was retiring. I didn't even know that he was eligible. But he retired and said he wouldn't be there next week. Came in on a Friday--I never saw him again.

Stein: Nothing like short notice!

Olney: So I had to get an administrative man. I made inquiry around and Walter Yagley was helpful to me on that. He told me about John Airhart, who was not a lawyer, but he had been an administrative man in the RFC [Reconstruction Finance Corporation]. He had handled all the administrative work for the legal staff of the RFC, which was a very large staff indeed, with the usual problems of lawyers. I got in touch with Airhart. The RFC was being reduced to next to nothing.

He came with us, and I put him in charge of the administrative section and it was a very, very good choice indeed. He was a true professional. He had had years of experience with lawyers and knew that they were professional men, and that you had to handle them differently than you do most personnel. He knew all about budgets. He had prepared many of them. And he knew what the committees expected.

John always prepared our budget in such a way that there was always room for the committee to cut. When we would talk with the committee members outside of hearings, they would insist on emphasizing the fact that the object of the committee was to cut the budget

Olney: as much as to appropriate money. They expected us to have something in there that they could cut. If we didn't have something in there that they could cut, we'd get cut anyhow. I could never see where it was, but John always had room in there so they could cut us and we could still go ahead.

Without him I don't know what I would have done, because I'm not a budget man and couldn't have put the budget together or hoped to justify it without his skillful preparation.

Stein: That sounds like quite a political game to know how much to add on that can be cut out that will look good.

Olney: Just like musical chairs. It is a game. I always detested it. Budget hearings are the things that I liked least about life in Washington, in large part because they are so dishonest. It's just fakery to a large extent.

The usual thing is to have the hearing and then afterwards to give the committee clerk a list of the things that can be cut without doing any damage. And that's what's done. The thing is that nobody gets fooled by that excepting the public. But that's the way Mr. Rooney always ran it, and we always had him all the time I was in the Department of Justice. I also had to appear before the same subcommittee including Mr. Rooney all the time I was director of the administrative office of the courts. So it was simply the same old story year after year.

Stein: When was the internal security division made a separate division?

Olney: Well, the internal security section of the criminal division became a separate division with an assistant attorney general in charge of it in, I believe, 1954. I can tell you exactly if my recollection here is correct. [refers to the Annual Report of the Attorney General of the United States, 1955]

Yes, it was created as a new division on July 9, 1954. It absorbed all the functions of the department relating to internal security other than those assigned to the Federal Bureau of Investigation and the Immigration and Naturalization Service. The entire personnel of the internal security section of the criminal division, together with all the duties and responsibilities assigned to that section, were transferred to the new division.

Stein: So after that you weren't directly concerned yourself with internal security.

Olney: No.

Stein: One of the other things I was wondering was, when you decided to reduce the amount of activity of the criminal division on the lists of subversives, the work of assessing the FBI reports to see who belonged on which lists, was there any opposition within the department to what you did?

Olney: No, there was none. I didn't have occasion to consult with anybody about it because we needed the men and we needed the positions in other sections in the division. So I just went ahead and transferred those positions to other sections when vacancies would occur and as they were needed, and I just never mentioned the fact that the net effect was to reduce the number of people in the section. I did not consult with Mr. Brownell, although I think it is likely that he knew what I was doing and why. I did not consult him because I felt that if there was trouble, I should bear the onus. I was prepared to take the blame and did not want to involve him if it could be avoided.

Now, I think we've covered the budget, haven't we?

Stein: Yes, I think so. Now we can move on to internal security.

The Rosenberg Case

Olney: Well, maybe I should mention the Rosenberg case first of all. The Rosenbergs were tried and convicted of violating the espionage law and, as you know, were executed. The case was tried and the sentence imposed before we took office, and, indeed, the conviction had been affirmed on appeal before we took office. There was some kind of application made to the United States Supreme Court for a stay and a chance to argue some new point which did occur after we were in office.

Stein: Was that the one where the defense got Justice Douglas to issue a stay?

Olney: Yes, that was a little later. I don't remember who argued the matter of the stay in the Supreme Court, but my recollection is that it was the same government lawyers who had handled the appeal all the way through. They knew the case and we didn't.

So the date of execution was set. Just before the execution, the defense attorneys made the usual rounds asking each individual justice for a stay, on some new point. They were turned down by everybody excepting Douglas. This was during the summer when the Court had disbanded and was on vacation. Douglas granted a stay.

Olney: Well, when Chief Justice Vinson heard about this, he promptly ordered the Court to reassemble, notwithstanding that the term had ended, in order to hear the matter at once. And they did, on a very short notice, just a very few days notice. The Court convened and a hearing was had on the morning of the day that had been set for execution. The argument was brief. The Court made its ruling right from the bench, denied the motion, and so, of course, the stay was lifted.

That meant the execution was supposed to be carried out that very day. Well, the responsibility for carrying out that execution rested on James V. Bennett as director of the Bureau of Prisons. But federal executions were carried out according to the law of the state where the conviction had taken place. In this case they had been convicted in the state of New York, and New York had electrocution as their means of carrying out a death sentence. So these people were to be electrocuted.

Well, the federal people had no executioner; they always used the state executioners. And it turns out that executioners are hard to come by. It isn't everybody who is willing to be an executioner. New York had had difficulty in getting one, but they had one. Arrangements had been made by Mr. Bennett prior to the stay by Bill Douglas, but when the stay was granted Bennett had not anticipated the speed with which Chief Justice Vinson would act and that the execution might go ahead. So when the stay was dissolved he had to scurry around and find the executioner to perform his duties that evening.

Well, the executioner had gone trout fishing, and nobody knew exactly where he was. They had a terrible time finding him. The search, considering its purpose, was really kind of gruesome. They finally did locate him in upstate New York, in the mountains somewhere. They flew him out by helicopter down to Sing Sing. The execution was to take place, as I recall, at nine o'clock in the evening.

Not knowing whether there were going to be more stays or other delays or something of that kind, we had to be prepared for any kind of emergency that might take place. This meant that we assembled in the Department of Justice building, and we made the mistake of doing it in J. Edgar Hoover's office. I think we'd have been better somewhere else. Hoover was there, and Mr. Bennett and I and the attorney general and the deputy attorney general. I don't remember whether other assistants were there or not. But we had to sit there in that room, with open telephone lines to Sing Sing to be in touch while time marched on.

Olney: Now, what they were doing up at Sing Sing was doing their utmost to persuade the Rosenbergs to make confessions and tell the full story of what their espionage activities had been. They were hopeful that they could persuade them, hopeful right to the last. But they never did succeed.

Well, a more gruesome experience I'd never had in my life. It was perfectly ghastly. And then we got word that no, there was no intervention, and the time had come. They threw the switch and Julius Rosenberg died with the very first application, but Mrs. Rosenberg didn't. The doctor had to go and listen to her chest and her heart was still beating and so they gave her another jolt. It was just horrible, terrible.

But that was the Rosenberg case. There wasn't anything we could do about it; we had no responsibility for it, you know, one way or the other. But we had to be spectators and participants to an extent in this thing.

There was a good deal of agitation about the case. Judge Irving Kaufman had tried the case and he got a lot of mean and nasty letters and had to have a guard for a time, things of that kind. It was a very unpleasant experience, but a memorable one.

Stein: I have a couple of questions about arguments in the case. In the television documentary on PBS* one of the assistants to the defense attorneys said that in her opinion the case never would have gotten to first base if it had been tried in the New York State court, but because it was tried in federal court there were different rules governing the admissibility of evidence in a conspiracy case. I wonder if you could explain that, because it wasn't clear to me.

Olney: Well, I think that what she's talking about must be the accomplice rule. In New York State, and many states, there is a rule of evidence that a defendant cannot be convicted on the testimony of an accomplice alone unless it is corroborated by other evidence, or unless there are at least two accomplices who testify. But the testimony of one accomplice is not enough without corroborating evidence. There's no such federal statute. That's what I think she was talking about.

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*"The Unquiet Death of Julius and Ethel Rosenberg," PBS, March 15, 1974.

Olney: I saw the TV show, too, and it had certain merits. They stuck very closely to the transcript and to the exhibits. But it had some very serious demerits, in my opinion. I think the reason that the thing was put together was because of the conviction on the part of the people who did it that the Rosenbergs were innocent and they wanted to make a documentary that would prove that. And that's what the show was about. So that's the slant that it takes. I wouldn't attempt to argue the Rosenberg case, but I do think it's a very dangerous thing to rely upon a movie film if you want to arrive at true conclusions, to base them on that kind of a documentary.

There were some things about it that I thought were quite obvious sham. They spoke of the jury and indicated that they felt that it was a hand-picked jury of people who all came from the same walks of life and read the same papers and all this sort of thing. There's no justification for that. They didn't go into any detail. You'll notice when the camera went across the jury panel they skipped right over the black juror. They didn't even mention him.

The inference was that the jury was prejudiced because there weren't any Jews on it. Well, there were Jews all over that case. The judge was a Jew. The two prosecutors were Jews. The clerk of the court was a Jew. I don't know how you could have a case that had more Jews in it. I don't know whether there were Jews on the jury or not. But I don't think that the panel was subject to that criticism; I don't believe it was hand-picked.

Another thing that they did was make the flat accusation that Gold's registration in the hotel in Albuquerque was a forgery, and that it must be a forgery committed by the FBI. Well, I don't hold a brief for the Bureau or its agents, but I do not believe at <u>all</u> that Bureau agents indulge in forgeries. I don't believe that's the case. I don't think the thing was a forgery, or, if it was, that the Bureau had anything to do with it.

It reminded me, as I think I mentioned to you before, of the play that was put out about Tom Mooney by people who wanted to get over the point to the public that Tom Mooney was innocent of the bombing of the Preparedness Day parade in San Francisco, back in 1916. If you went to the play, sure, you'd come to that conclusion. But if you listened to the evidence in the case, it was another story.

The Joseph Weinberg Case

Olney: Now, I do think that it's worth talking about the Joseph Weinberg case following the Rosenberg case.

Olney: The espionage that the Rosenbergs are alleged to have committed was after the Japanese and German surrenders, after the atomic bomb had been exploded in Japan and the open fighting had stopped. It was at a very crucial period, however, when the United States was doing its utmost to try to reach international agreement, including the Russians, for a pooling of all information about nuclear fission, so that we would not have an arms race in the nuclear field, so that we could avoid the horrors of a nuclear war.

At the time, it was the Russians who were the most reluctant to take part in this. The reason was that they didn't want to enter into any such arrangements when they themselves didn't know how to make an atomic bomb. They were doing their best to try to find out how to explode an atomic bomb, and we were doing our best to keep it secret, for the time being at least. Everybody knew that it was only a question of time until scientists in any country or in every country would be able to do it. But you couldn't do it quickly. It was estimated that it would take the Russians something like six or seven years, I believe, to work this out.

But they did explode their bomb very much sooner than anybody expected. It became very evident that this was the result of espionage. Klaus Fuchs was arrested in England and made a complete confession of all the information that he had supplied to them about the work at Los Alamos. It was in that connection that the Rosenbergs became involved.

Well, in sitting around having lunch in the Department of Justice, as I described before, one day J. Edgar Hoover regaled us with how the FBI had first learned of the Manhattan Project, which, as you know, is the project that first developed the atom bomb. It seems that the Bureau was not informed at the outset that there was any such project, and knew nothing about it.

According to Mr. Hoover's story, they were very apprehensive about Russian espionage. They did know that work was going on at the Atomic Energy Center at the [University of California at] Berkeley campus, that it was highly classified, very secret work, and that the work did have some weapon possibility in connection with it. They were keeping close tabs on everybody in this vicinity that they regarded as a Russian agent. Among those was a leading organizer for the Communist party, a fellow named Nelson.

Stein: Was this Steve Nelson?

Olney: Steve Nelson, yes. He was living in San Francisco and was a member of the party and a party organizer. Mr. Hoover told us that there had been a "bug" placed on Steve Nelson's telephone at home. The

Olney: "bug" was not an ordinary telephone tap, but was in the base of the telephone itself, so that it would pick up not only what went on over the telephone, but also conversations in the room.

He said that one day when they heard the telephone ring, Mrs. Nelson had answered and the man asked for Steve and said that it was important that he see him. Mrs. Nelson said that he wasn't there, that he was attending a meeting. He'd be home before very long. The man said, "It's very important that I see him, and so I'm coming right over," indicating that he was across the Bay. The agents did not recognize the voice, but as you can imagine, there was a reception committee for him when he appeared at the house. They did not recognize him when they saw him go in. He told Mrs. Nelson, as they got it over the "bug," that he must see Steve, and he would wait there for him.

Well, Steve came in in due course, and Mrs. Nelson left them alone. The man told Steve that he had some extremely important information that he must pass on, and that it was in the nature of a formula that he wanted him to write down, as he didn't want to give him the paper on which he had it. So he dictated this formula. It was a complicated kind of formula, and Nelson had to ask him to repeat parts of it to get it right. This all came out over the "bug" and it was recorded and made available to the agents.

After Nelson got the formula down, the man left. He was tailed, of course, across the Bay to Berkeley and they found out that he was Joseph W. Weinberg, a scientist employed at the Atomic Energy Project on the hill in Berkeley.

Stein: At the Lawrence Radiation Laboratory?

Olney: The radiation laboratory, yes.

They also watched Nelson's house to see what he did. They saw him leave the house, and tailed him--well, they heard him make a phone call over to the Russian consulate first. There were some cryptic remarks evidently making arrangements to meet, because Nelson left his house and went to a park where he met a man who had come from the Russian consulate. The two of them talked, the agents saw Nelson hand a paper to the man, the man went back to the embassy, and Nelson went home.

Well, the FBI agents were mystified by this formula. It made no sense to them; they had no idea what it was. They made discreet inquiries of various scientists whom they thought might know, but they were unable to find anybody who had any idea what this was

Olney: until finally they hit one man--they got a tremendous reaction from him--who just jumped up in the air with excitement and demanded to know where they got it. He knew what it was. It was some essential part of the work that was being done at the radiation laboratories as a part of the Manhattan Project.

Well, then, of course, the Bureau was informed that there was this Manhattan Project, and it was super-secret and so forth.

This incident took place long before the Rosenberg incident. This took place long before the bomb was exploded, when the experimental work was still going on. We were in active warfare against both Germany and Japan at that time. The delivery of this information by Weinberg seemed to me to be a far more serious offense than the one committed by the Rosenbergs, who had been executed.

So after Mr. Hoover had related this, which was only by way of casual information over lunch, I went up to his office to see him and asked him about it. I said, "That story about Weinberg, is that provable?" And he said, "Yes, I think it is provable." I said, "It seems to me it's far more serious than the Rosenberg offense." He said, "I think it is too." I said, "There's no statute of limitations on treason. And, if the evidence is available, is there any reason that you know why Weinberg shouldn't be prosecuted?" He said, "No."

Stein: You mean all this time he hadn't been prosecuted?

Olney: No, no. I asked him about that, why Weinberg hadn't been arrested and prosecuted, and he gave me a very good answer, which was that the work being done on the bomb was super-secret. They couldn't possibly prosecute Weinberg without revealing the existence of the Manhattan Project and the general nature of what the work was which was still underway. They just had to accept that they couldn't charge him at that time. But it did seem to me that they could have charged him later, after the bomb was exploded. But they didn't.

He never gave me any further explanation. But in reading this book on Oppenheimer and Lawrence*, I do believe the explanation is there.

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*Nuel P. Davis, Lawrence and Oppenheimer (New York, 1968).

Olney: It's quite apparent from that book that there were two lines of approach toward the development of the atomic bomb. Lawrence had one with the radiation laboratory, in which the basic idea was bigger and better cyclotrons and a process that Lawrence thought would produce the bomb, but which actually never did. Oppenheimer had a somewhat different theory and a different approach which was being developed at Los Alamos, [New Mexico], which actually did produce.

Well, Weinberg's information was about the nonproductive radiation lab process, and there would have been good reason for hoping that the Russians would pursue the thinking that that was the process that had produced the workable bomb, instead of pursuing the Los Alamos thing, which they did through Fuchs and the Rosenbergs. So that may well be one of the reasons.

At any rate, I thought the fellow ought to be prosecuted, if possible. We called for all of the old reports from the FBI and were going to review it with the idea of presenting it to the grand jury, but we never did get the essential reports. Of course, we would have had to have the record of the notes, at least, of what was taken down from the "bug." At that time the decisions on the Supreme Court on the use of telephone taps and "bugs" were nowhere near as stringent as they are now. I was quite prepared to go into court and present that evidence, notwithstanding the way in which it was gathered. In such a case I still think that we would have won it if we'd been able to prove it.

But Mr. Hoover told me eventually that the evidence simply wasn't available. Many of the agents had left the service, and they couldn't find the original notes. And then it turned out that it wasn't the FBI that had put in the "bug" anyhow. It was naval intelligence that had made the installation. This was during the war. Everybody and his uncle had an intelligence unit. And while they tried to work together, the confusion was immense. It was actually naval intelligence that had put in the "bug" and had gotten the formula. Bureau agents were working with them and they picked it up in that fashion, which made it impossible to go back and get the original evidence and the proofs. So we couldn't do anything about it.

But we <u>did</u> have another case against Joseph W. Weinberg. And this was one of those annoying kinds of cases--it was a perjury charge. Weinberg's connection with the communists had gotten out. He was hailed, along with a lot of others, before the Internal Security Committee. I guess it was a Senate committee. He was asked a lot of questions: whether he belonged to the party--he said he did not--and whether he had attended a particular meeting of the Communist party. Now, this meeting was held in a house here in

Olney: Berkeley, when the party members were asked to come together to hear the explanation of why the Russians had signed the non-aggression pact with Adolf Hitler. It took some explaining.

The man who had to make that explanation on behalf of the Communist party was named Paul Crouch. He'd been a communist organizer for years, and a very active member indeed. Crouch had attended this meeting, and was able to fix the date by reason of the pact and so forth, and had given the official reasons for the Russians signing the pact with Hitler at that time.

Now, Crouch, later on, not very long after that, because of the pact, became completely disillusioned with the communists. He just could not swallow that pact with Hitler. And while he always maintained his Marxist beliefs, the Russians and the Stalinist communists became anathema to him. He went to the FBI and told them everything he knew. Among other things, he told them about this meeting of the Communist party here in Berkeley where he'd gone to explain the reasons for the Russo-German pact to the people assembled there. And he said that Joseph W. Weinberg was a member of the party and was there at that meeting.

Well, he didn't know exactly where the meeting was. He said it was in north Berkeley and he'd been taken there by somebody. It was in a residence. He was able to describe the residence, both inside and out, what kind of view they had, the arrangement of rooms, stairs, and all kinds of details. Nobody could figure out where there was a house like that. But the Bureau agents and the Berkeley police and others took Paul Crouch all over north Berkeley for several days and they finally went down here to Eagle Hill, just a few blocks from here. They no sooner got up on top of the hill when Crouch said, "This is the place. That's the house."

This turned out to be a house that had been rented by Oppenheimer. Oppenheimer had been living there at that time. They didn't take Crouch into the house, but they had him describe it again very meticulously, and then they went in and they found that he was describing it with reasonable accuracy. So, they finally took him in and he recognized everything, but there was one thing that he said was different. He said, "There was no partition here; there was a doorway here." They checked back and found out that, sure enough, there had been a doorway there in 1941 that had been closed off later.

Well, he did many things like that that convinced us completely that the man had actually been in the house all right. Otherwise he couldn't have described it in this fashion. We never had any

Olney: reason for disbelieving him anyway. He was there and described this meeting. The other thing was that he also said that Oppenheimer was there at the meeting.

Now, this turned out to be a sticker, because Oppenheimer had what seemed to be an airtight alibi that he was in Los Alamos on the day that this meeting was held. We could fix the date for a certainty. Oppenheimer on that same day had actually been driving his car [in Los Alamos]. He'd bumped a fender or had some minor accident; it didn't amount to a damn, but it was enough that they had to get on the police blotter with the thing, and there was an actual record in the police station of this accident and Oppenheimer's signature was on the report or something there, to say nothing of lots of people whose recollection was that he was there in Los Alamos. We were satisfied from this evidence that Oppenheimer had actually been in Los Alamos both before and after the Berkeley meeting, but we thought he might have gone back and forth on an airplane.

We checked all the airlines, but found out that the schedules were such that he could not have done it on regular scheduled flights. The Bureau thought that maybe he had made it by private plane. They checked all the private airplanes and everything else, but they couldn't find any record that there had been any such private flights.

Meanwhile, the indictment for perjury against Weinberg had been returned in the District of Columbia. Billy Hitts was the assistant U.S. Attorney who was preparing it for trial. A day or so before it was to go to trial, he came down to see me. Well, we discussed the situation because we were faced with this alternative. We had to use Paul Crouch as a witness, of course, and if Paul Crouch was going to testify that Weinberg was there, we were certain that he would have to testify that Oppenheimer was there. That was his recollection. On that we were sure that he must be mistaken. If we went ahead, we would have to say very frankly to the jury, "On that point, we're confident that Crouch is mistaken. Oppenheimer has an alibi that he was in Los Alamos at the time of the Berkeley meeting. We concede that Crouch is mistaken about Oppenheimer's being present, but we are satisfied with the accuracy of the rest of his testimony." We couldn't have taken any other position than that Crouch was mistaken in that particular. Of course, that does obviously weaken his testimony. But nonetheless, in view of who Weinberg was, I just was very, very reluctant to see him escape completely.

But after going over every aspect of it, Billy and I decided to dismiss the indictment. The best thing was not to try to present that case at all. It would have been very, very unfair to Oppenheimer to have put on testimony, by a witness that we were

Olney: vouching for, that he had been at a Communist party meeting of that character, when we ourselves were satisfied with his alibi, because of the publicity he would get. It would be all over the place. So we had to back away, and we dismissed the Weinberg case and Weinberg was never prosecuted or convicted of anything, in spite of the fact that, to this day, I think he was guilty of a far worse offense than the Rosenbergs.

Stein: It seems strange to me that in a case of that magnitude the FBI would have let the records slip away like that.

Olney: I suppose you are now talking about Weinberg's having given the formula to the man from the Russian consulate. Well, I don't know, but that's what happened. The agent who had the most to do with that matter is now a United States District Court judge in St. Louis, Missouri, James H. Meredith. He knew these same facts independently and from firsthand information. So it happened, all right, just the way Hoover said it did.

The Owen Lattimore Case

[Interview 10: April 8, 1974]

Stein: Well, let's go on to Owen Lattimore.

Olney: Well, the Lattimore case was a very unusual one. Owen Lattimore was a well-known writer and authority on China and a traveler in China. He had done a great deal of traveling and writing in years prior to the war. I believe he speaks Chinese. During the period of the warlords he had covered most of China. He used to write articles and books on China, some of which I had read. He was generally regarded as a real authority on China.

But during this period when there were all these charges that our relations in China had been worsened by betrayals from inside our own government, his name got into the hopper along with a lot of others, simply because he was well known, I guess. He was called--I'm doing this entirely from my recollection and I may not be correct on all the details, but I think I remember it well enough in general--my recollection is that he was called before one of the congressional committees (I don't recall whether it was a House or a Senate committee) and questioned at very great length about his acquaintances with people who then turned out to be Chinese communists.

Olney: Of course, before the period of the Great March into northwest China by the Chinese communists, there was lots of doubt in everybody's mind as to just who they were, the reason being that the Chinese were just fighting with each other all the time. There were all kinds of warlords and it was difficult for outsiders to differentiate between one set of warlords and others, and to know whether any one of these armies had any sincerity or any real purpose behind it.

Mao Tse-Tung and his group appeared to be just another bunch of fighters. Lots of people came in contact with them--[Edgar] Snow was one--and finally became impressed with their devotion to principle. This was not just another warlord, but these were, indeed, people who had a completely new approach to what life in China ought to be. They used to call them "farmers" at one time. They were agrarian workers. Well, they were, because they had to raise all their own food, things of this kind. The communists, up until that time, the Russian brand of communists, had always been identified with city workers. These were agriculturalists.

Well, Lattimore and Snow and others visited these people and wrote about them. It was on this basis that Lattimore was questioned in very, very great detail. He answered all of the questions completely. He was also asked questions about his activities more recently--that is, in more recent years--around the city of Washington. And he was asked some questions as to whether he had met somebody from the Russian embassy and had lunch with him at such-and-such a place. Anyway, there were a lot of details of that kind on which he was questioned.

Well, he tried to answer them, did answer them. Then evidence was brought forward showing that some of his answers were incorrect, that he had denied meeting people that he had met, that he had denied being in places where the proof was clear that he had been, and there were counts of perjury brought against him based on his answers to questions of that sort. They were really the kind of thing that anybody could have fallen into, without memoranda and with ordinary failure of memory. If one is questioned very closely and at length by someone who has records and other sources, differences of this kind are bound to appear. Well, the previous administration, for reasons that have never been clear to me, was very anxious to have Owen Lattimore indicted.

Stein: Was this the previous administration of the Justice Department?

Olney: Yes, this would be Attorney General McGranery. Sometime between the elections in November and the Eisenhower administration taking over in January, indictments against Lattimore were returned in Washington, D.C., based on perjury. So, we inherited that case in the form of an indictment already returned.

Olney: Of course, the return of an indictment of this character against a man so well known created a great stir all around the country. There were a great many people in university circles who had known him well and were completely convinced of his innocence and felt this was a gross injustice. There were others who didn't know him so well who were extremely suspicious.

It was within my authority to dismiss that indictment. I read the testimony and I read the reports. If I had been able to read the grand jury testimony and read the reports prior to any action being taken, I would have recommended against an indictment because it didn't seem to me that it was a provable case. There was enough there perhaps to call for as complete an investigation as you could make, on the chance that something more definitive in the way of evidence would show up. But on the basis of what was at hand at that time, it seemed very weak to me.

But I didn't discuss this. I didn't pass the decision on to somebody else. I concluded that I ought to take the load on myself, and I decided that we ought to go ahead and try it. The reasons were: if we dismissed the case, there would be a tremendous commotion, claiming that influential people had stepped in and caused us to dismiss the case against Lattimore, just because he was a well-known and well-connected person. And there would be a great many people who would continue to believe he was guilty and, in fact, would think that that dismissal was just evidence that he was.

On the other hand, if we went ahead and presented the case in public for what it was--one never knows what's going to develop in a trial. Sometimes when cases go to trial, they turn out to be far stronger than the prosecutor thinks at the time he begins, in which case, if he was guilty, then he ought to be convicted. But on the other hand, if the case was as weak as it appeared to be or got weaker, and he was acquitted, then his name would be cleared, to a great extent anyway, by a jury and a court that had heard all the evidence and concluded that he wasn't guilty. So we decided to go ahead with it. That was my own judgment about it.

But I, of course, did not go into the facts of that case to the extent a man would who was going to present it for trial. There you have to interview all the witnesses and examine all the evidence and complete the investigation and things of this kind, and I had no time or opportunity to do that. So I thought we should find an outside special prosecutor who was experienced and who would approach the thing with an open mind to investigate, prepare, and further evaluate the case. We would inform him, when he took it on, that if he concluded that the case was not triable and that the proof was not there, we would dismiss. On the other hand, if he concluded that it was a triable case, and he so recommended, then we would expect <u>him</u> to try the case, and not somebody else.

Olney: Well, it seemed to me that putting the responsibility on him was pretty good insurance that we were going to get an evaluation that was a fair one. We got Leo Rover for the purpose. Now, Leo was no acquaintance of mine, but the deputy attorney general, Bill Rogers, had known him in former years. He, at one time, had been U.S. Attorney in the District of Columbia, I believe, during the Hoover administration. Then he was in private practice and had a broad experience as a trial lawyer. He agreed to take on the Lattimore case under the conditions that I've outlined.

It took him a long time to evaluate the thing and, indeed, we had to spend a good deal of money on that case, an enormous amount of money, in fact, because Leo thought that it was possible to trace the communist line of propaganda in Lattimore's more recent writings, that when the line would change, Lattimore's line would change, and when it would shift to another direction, Lattimore would shift there. To work this all out, we used the Rand Corporation from that "think tank" in Santa Monica. Their experts were quite expensive and they did a great deal of work on this, all of which ended up by convincing Leo Rover that he had a case. So he went ahead and tried it.

I can't recall the details of the trial. I know that there was a motion before Judge Youngdahl early in the case, which was granted by Judge Youngdahl, which ruled out some of the charges that Leo regarded as the major counts in the indictment.

Stein: Yes, I think four of the seven perjury charges were thrown out.

Olney: Well, after those four counts were ruled out by Judge Youngdahl, there wasn't very much left of the case. But Leo went ahead with what there was left, as I recall. I can't remember how that ended, whether the judge gave a directed verdict or what.

Stein: According to the little bit of reading that I did, the case was dismissed.

Olney: Well, that may be. I guess what happened was that we concluded that without those four major counts, the rest of it wasn't worth trying. Somewhere along the line I think there was an appeal on the judge's ruling on those four counts. At any rate, it ended, and to our consternation Leo got so incensed at this adverse ruling that he made a very unwise blast at the judge in public. It got into the papers, and it was very embarrassing to us to have that happen. Of course, it made the judge furious, and his fellow judges also.

It was disastrous for Leo himself. Apparently Leo had some ambition to be a district court judge, but he was never considered for a district court judgeship at any later time, but he was appointed to the municipal court. He undoubtedly would have been

Olney: a district court judge if he hadn't blown his stack and fired off at the judge when he shouldn't have. Well, that was the Lattimore case.

One of the curious things about it was that Lattimore was very much concerned with the Institute of Pacific Relations, and I think there were some of the counts in the indictment that related to his activities in that organization. That Institute of Pacific Relations is the same institute that showed up in the FBI reports on me that I referred to earlier. [laughter]

Stein: So you might have found yourself in the same web.

According to one account I read, in 1952 Lattimore was questioned by the McCarran Committee, the Senate Internal Security Subcommittee, and Senator McCarran, according to this author, "hounded the Justice Department relentlessly for months, demanding that it indict Lattimore for perjury, and so eventually it did." I wondered if you knew if that was accurate.

Olney: I can't say that it was accurate, because the Justice Department they're talking about is the Democratic one. That's Attorney General McGranery, and that may well explain why the indictment occurred.

That would be typical of Senator McCarran. He was, in my opinion, far more vicious than Senator McCarthy, and very much smarter, a thoroughly dangerous man in the Senate. He was the chairman of that subcommittee, and he was also chairman of the Senate Judiciary Committee.

Herbert Brownell had not been attorney general very long when we had a judicial vacancy to fill. Bill Rogers, as the deputy attorney general, when there were judicial appointments to be made, would always consult with the chairman of the Senate Judiciary Committee about the nominee in advance, to make sure that it wasn't someone utterly unacceptable to the committee, or that there was some reason that he didn't know why the name wouldn't be accepted and so forth.

Well, I think it was the very first time that Rogers went to see McCarran about a judicial vacancy and a nominee to fill it that McCarran brushed that matter aside and said, "Bill, I want you to nominate so-and-so for such-and-such a vacancy," which also existed. This was a name that wasn't under consideration for that vacancy at all, but when the Senator had expressed himself in that way, we at least took a good look at the man, investigated him thoroughly, and found out that he was absolutely hopeless. He couldn't possibly get any support from the local bar, or any adequate support from the congressional delegation from the state where he was. He had what

Olney: you could only describe as a bad character. So Rogers had to tell the Senator that we simply couldn't consider sending that name to the president as a nominee.

Stein: What post was he being nominated for?

Olney: For a judgeship, a federal judgeship.

McCarran got into one of his typical rages and told Bill Rogers that he was going to approve and recommend that fellow or there wouldn't be a single judicial vacancy filled. He would not okay any judicial appointment until this one was made.

Now, those were not empty words. McCarran had done the same thing with Truman in connection with a vacancy on the district court here in San Francisco, and he had been very insistent on filling it with a man that was regarded before he took the bench as not being qualified. Truman held out for something like two and a half years, with that position vacant. McCarran did permit some of the other positions to be filled, but not that one. It remained vacant all the time.

This threat, however, was that there wouldn't be any judges confirmed unless this one was. I remember Rogers coming back and telling us all about this at lunch, with the attorney general there. They were very, very disturbed, of course, and worried as to what they would do. Nobody could think of how to approach the problem, but we went on and went to bed and woke up the next morning to read in the paper that during the night McCarran had died.

Stein: Well, that solved the problem.

Olney: It surely did. Well, the Lattimore indictment that you asked about--I wouldn't doubt that it had happened that way. But I can't say that I remember even that Lattimore was called to testify before the McCarran Committee.

I do believe that Lattimore's experience before whatever committee called him, where he had answered every question, was one of the major reasons why later people who were called before those committees would take the Fifth Amendment. It was not because they necessarily felt they'd done anything wrong, but because the questioning was being used not just to pull out the truth, but to try to lay a trap by getting some kind of a wrong answer along the line where there was contradictory evidence on which they could base a perjury charge. Lawyers, of course, advising their clients who were called as witnesses in that predicament, very properly would advise them to take the Fifth Amendment, not answer any questions.

Stein: Do you have any other recollections of McCarran? You said earlier that he was really more vicious than McCarthy.

Olney: No. Well, I might say this. He is the one who jammed through the Internal Security Act of 1950. He was the author of it and jammed it through. He got it passed over Truman's veto. That is a really thoroughly unwise statute, in many particulars. It's the one, of course, that has the provision in there for preparing lists of subversives to be locked up. This program that was in process that I described earlier was authorized under that statute. Well, that's McCarran.

The Jencks Case

Stein: The next thing is the Jencks case.

Olney: The Jencks case was a very unusual one. Jencks was a labor leader in the Mine, Mill, and Smelter Workers' Union. He had signed an affadavit that he had never been a member of the Communist party in order to continue in his labor activities in that union. There was evidence to show that he at one time had been a member of the party. So he was tried for filing a false affadavit. One of the principal witnesses against him was an informant named Harvey Matusow.

Matusow had been an FBI informant on a number of different instances, but he had never been brought out into the open before and testified as a witness. He gave detailed testimony about Jenck's activities when he was himself a member of the Communist party as an undercover agent, and he implicated Jencks. Well, Jencks was convicted. The case was tried, as I recall, in New Mexico--yes, that's right--and sometime after the verdict was returned, Harvey Matusow signed an affadavit at the instance of the defense repudiating his testimony, and saying that his testimony about Jencks and his party membership was untrue.

Well, this brought on a motion for a new trial before the judge, and there was a highly formal hearing about which time Matusow was telling the truth, with a lot of evidence taken, of course, about the circumstances under which he'd made this repudiation. It certainly caused great suspicion to arise about his motives in repudiating his testimony. The net result was that the court concluded that he'd been telling the truth the first time, and that his repudiation was false. So the new trial was denied.

Stein: Did they attempt to determine why he changed his mind?

Olney: Oh, yes, sure. He'd been monkeyed with by people on the defense side of the thing and the evidence was pretty clear that he'd been paid some money for it, a considerable sum of money for it. Anyway, that was the conclusion they came to. Of course, the Jencks case went up on appeal to the Supreme Court. The Supreme Court made a decision which was a rather landmark case on the right of the defendants to examine statements in the hands of the prosecution that had been made by prosecution witnesses.

This made the case more famous than anything else, and I won't go into that now except to say that the language of the majority opinion, which was written by Mr. Justice Brennan, we thought went altogether too far. We introduced a bill in the Congress, which the Congress passed, which limited the effect of the majority opinion. The bill which was passed was in substantial conformity with the concurring opinion that had been written by, I believe, Mr. Justice Burton.

But there were certain things about this Matusow incident that made a great impression on me, although the case was not in my bailiwick; it was in the internal security division. In FBI reports, when they are recounting what confidential informants will say, they never use their names. They will say that it's a confidential informant, and then usually they will put in an adjective. They'll say that it's an informant of "unknown reliability," or an informant of "questionable reliability," or an informant of "known reliability."

Well, with Harvey Matusow, he appeared in the reports given to the lawyers trying the case as an informant of "known reliability." That was the reason that government counsel went barging right ahead without looking into his character or much else about him as a witness. But after he had repudiated his testimony, there was a loud to-do, of course, among the lawyers: "Well, how come we called this guy anyway?" It's all right to say he told the truth the first time, but it sure weakened his credibility to have him execute that affadavit.

So they got to wondering, "Well, did the FBI give us any indication that there was anything doubtful about this man?" Tommy Tompkins, who was the assistant attorney general in charge of the internal security division, went up to the files to get the original FBI reports in which Matusow's story was given. There it appeared that Matusow was described as an informant of "known reliability." They also found an FBI agent there taking the file out, in the process of removing the first page and substituting another page, in which Harvey Matusow was described as an informant of "unknown reliability."

Olney: There was a big stink. The Justice Department asked how come. The Bureau's explanation was that they thought that this ought to be changed in order that in the future no one would think that Matusow was of "known reliability." They were actually in the process of trying to change that record.

Stein: Did you yourself write the legislation that went to Congress?

Olney: I worked on several drafts and especially the final one which was enacted. There were several drafts proposed, many of which went altogether too far in the other direction. I don't know--we had our own version.

It was very hotly contested in the Congress. There were all kinds of debates and discussions and it ended up as a compromise piece of legislation. I always thought that the result was the proper result. The FBI was very indignant with us because we had consented to any kind of a compromise at all. They just wanted to reverse history and put it back as though there had never been any such decision. One of the reasons why I think it was a decent piece of legislation is because it's proved to be entirely practical and workable. Nobody's made any complaints about it. That's why it's still on the books.

This is the only piece of legislation that was ever passed through the Congress in my time that anyone could claim altered a decision of the Supreme Court with respect to criminal procedures. There's been a lot of misunderstanding about what it was and why we got the bill passed, so I think I'd better explain it in a bit more detail.

When the Supreme Court reversed the Jencks conviction, it was by a majority opinion written by Mr. Justice Brennan, in which the general language was that the government was required by due process to make available to the defendant all statements that were in the government files that the defendant might have made and other evidence that might conceivably bear on his innocence. The language of the opinion was broad and, we thought, quite ambiguous. There were only about, I guess, no more than four of the justices that joined in that opinion.

Then there was an opinion by Mr. Justice Burton; I now do not recall whether it was a concurring or a dissenting opinion. I believe he concurred in the result, but dissented from the language of Brennan's opinion. He had a different procedure outlined in his opinion, quite a specific procedure that he thought ought to be followed in cases like this.

Olney: Then there was a dissenting opinion written by Justice Tom Clark, which can only be described as a violent tirade against the idea of giving the defendant access to government files under any circumstances. It was full of alarums about what would happen, that this was going to lead to rummaging all through the FBI files, and we couldn't have any effective law enforcement with this kind of thing going on. It was a terrific blast at the Brennan opinion. The position taken in general was that the Court had delivered a major blow to law enforcement all over the country, that it would mean that it would be impossible for investigative agencies to secure statements from witnesses because there could be no guarantee that they could be kept confidential, and the like.

Now, that dissenting opinion just brought out every newspaper in the country, you might say. They printed headline articles everywhere about how the Supreme Court had torpedoed the FBI and there was a great deal of consternation about it. The Bureau itself took it up. Hoover made statements that the Bureau was being terribly handicapped by this kind of a rule and things of this kind.

Well, if one read the Brennan opinion, which was the statement of the majority of the Court, it didn't seem to us that that was what the Court was talking about at all. We thought, however, in view of this uproar and the vagueness of Brennan's opinion--it was really a poorly written opinion--that the best thing to do was to see if we could get some legislation which would put into statutory form the basic holding, the Brennan opinion, so that it would spell out the procedures that were to be followed. Now, we started to draft a bill along that line in the department almost as soon as we read that Jencks decision and saw these newspaper headlines.

Stein: Would that have been Brownell's decision to go ahead?

Olney: Yes. And that was drafted by me and Wilson White. Wilson White was the assistant attorney general in charge of the office of legal counsel. The bill was introduced in the House by Kenneth Keating and in the Senate by Joseph O'Mahoney. In the Senate, [James] Eastland, [Estes] Kefauver, [John Marshall] Butler of Maryland, [Everett] Dirksen, [Matthew] Neely of West Virginia, [Charles] Potter of Michigan, and [Alexander] Wiley of Wisconsin were co-sponsors, so that it was a respectable group of sponsors that we had of a bipartisan type. Then later on, the White House press secretary, James Hagerty, announced that the administration would urge the passage of this bill.

Olney: Well, this was Senate Bill S 2377. Now, In Mr. Walter F. Murphy's excellent book and study of this matter entitled Congress and the Court*, there's a completely accurate description of the course that that bill had in the Senate and the drafting of a number of variations on it.

I think it would be worthwhile to say what the original bill, number one, actually provided, and that was that "no statements or reports of a witness or 'person' other than the defendant in the possession of the United States would be given to the defense in a criminal trial except under the narrow terms prescribed in the bill. After a witness had testified, the defense could petition the court for reports or statements of that witness bearing on the events to which he had just testified. The trial judge would then order the government to turn over to the court all such reports 'as are signed by the witness or otherwise adopted by him as correct.' The judge would inspect these documents in camera, decide what portions, if any, related to the testimony, and give those portions and only those portions to the defendant. In the event the United States chose not to comply with the court order for the production of such reports, the judge was authorized, in his discretion, to strike the testimony of the witness from the record and allow the trial to proceed, or 'if the interests of justice require,' to declare a mistrial."**

Well, that was the original bill, as we drafted it. Now, in Mr. Murphy's book, the various changes that were insisted on that resulted in Jencks bill number two are related. Similarly, he also relates the committee action in the House, and then the opposition that developed in the Senate, and then the Jencks bill number three, which was drafted, and the changes that were made.

The changes that were suggested were--well, take Jencks bill number three, which is the handiwork of George Arnold and Senator Joseph S. Clark in largest part. In that bill, the general form of S 2377 remained the same, but there were three major changes in substance.

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*Walter F. Murphy, Congress and the Court (Chicago, 1962), pp. 127-154.

**Murphy, p. 133.

Olney: The first was that the "rights of the defendant were safeguarded by dropping the reference to 'person' and restricting application of the law to statements or reports of a 'witness.'"* Now, as Murphy points out, "since in legal parlance a corporation is a 'person,' this change meant that the government would not be able to invoke the Jencks law to deny a defendant the right to examine business records seized in a tax, antitrust, or similar prosecution."** George Arnold was in the law office of his father, Thurmond Arnold, who represented a great many companies in both tax and antitrust matters; that was his field. George also was Drew Pearson's son-in-law.

Well, I'm going back to the Jencks bill number three again. An additional protection, and one shielding even more specifically any existing rights to pre-trial inspection, was that "relevant reports in the possession of the government could be ordered to be produced not only in accordance with the bill's terms, but also as provided in the Federal Rules of Criminal Procedure."*** Now, this would have meant an extension of discovery procedures in criminal cases. Discovery is a common practice in civil litigation; that is, finding out what the other fellow's got in the way of evidence in advance of trial. But it's not used, was not used at that time, in criminal cases.

Stein: It's been expanded, however, since then, hasn't it?

Olney: Yes, it has.

Then there was a provision that relevant statements or reports were to be turned over directly to the defendant, unless the government claimed that they contained privileged information the disclosure of which would be prejudicial to the public interest. Then, if that was the claim, they would give it to the judge to examine it in camera.

The third change would enlarge this scope of the reports that would be made available. In the original bill, the defense could obtain only such statements as were signed by the witness or

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*Murphy, pp. 137-138.

**Murphy, p. 138.

***Murphy, p. 138.

Olney: otherwise adopted or approved by him. But this would allow also those documents which contain a recitation or the substance of any oral or written statement previously made by the witness.

In other words, the original bill would require the production only of statements which could be attributed to the witness in the legal sense. But the expanded bill would permit, or would require, turning over hearsay statements as to what the witness had said, for example, in an investigator's statement, written up hours or days after.

Well, this would mean that a great many reports as to what the witness was said to have said would have to be turned over, whether they had ever been seen by the witness or could properly be attributed to him or not. Now, that was the kind of thing that bothered the FBI and bothered us very much. We thought that was going altogether too far.

I ought to make mention of the fact that when these bills were introduced, the civil rights legislation was in the process of being debated and discussed in the House. So this piece of legislation and the civil rights bill and everything were all going on simultaneously, and it made it frightfully confusing, as you can see from the list of sponsors that we had on the Jencks bill. There were people who were on opposite sides on the civil rights matter.

Stein: You must have felt like a juggler.

Olney: Well, exactly. Very much so.

I don't think I need to go much farther than this in this discussion, because Murphy does cover it so completely. He describes how, on August 22, Jencks bill number five was circulated and this one was passed in the House. This was different from any of the bills that I've mentioned to you. It kept going back and forth, putting in one and taking out other things. Number five was finally passed in the Senate by a voice vote, and then in the House. What they passed was the Department of Justice bill.

Stein: Which was number one?

Olney: Yes. Well, it was what was called Jencks bill number one. But this was under Keating's sponsorship. With the two bills passed, in different terms, they had to have a conference to try to work it out. They did have a conference. We were very much concerned that Jencks bill number five not be passed, because it had these provisions in it that were just totally unacceptable and, we felt, were quite dangerous.

Olney: To try to make our final pitch, Wilson White and I had lunch with Senators O'Mahoney, Eastland, Dirksen, and then with Keating and several of the House conferees as well. Now, when we got together at that point, as Murphy relates, I tried to emphasize that there were only a few major points of disagreement. We tried to get Keating and O'Mahoney to discuss a middle ground between the bills which would meet the Justice Department goals. Then after lunch Wilson White and I and Aubrey Gasque, who was a counsel for O'Mahoney's subcommittee, got together and in less than an hour we beat out a compromise bill which seemed to meet their requirements and was satisfactory to us. The conference accepted the bill without any problem. As a result it was passed.

The bill as passed defined statements as "one, a written statement made by said witness and signed or otherwise approved by him, or two, a stenographic, mechanical, electrical or other recording or transcription thereof, which is substantially a verbatim recital of an oral statement made to an agent of the government and recorded contemporaneously with the making of such a statement." As you can see, that wording did not include notes that somebody else made on their conversation. Well, it was passed.

Now, the people who were friendly to the Supreme Court always contended that there was nothing in that legislation that was contrary to the position taken by the Court and the Brennan decision. Frankly, that's the view we always held. We did not think we were changing the Court's decision from what they had intended. We thought the only thing we were doing was making it specific.

This had turned out to be very, very necessary, because after the Jencks decision, and before the bill was passed, we had an epidemic of rulings by judges from various parts of the country of the most unreasonable kind. On motion of a defendant they would order the government to turn over the whole government file, claiming that they were required to do this by decision of the Supreme Court, and when the government wouldn't do it, why, they'd dismiss the case. It was to get judges like that in line that we thought this legislation was necessary.

There were others who tried to make it appear that Congress had rebuked the Court and had risen up in its wrath and changed the line of the decision, but we couldn't see that that had happened. Since that time there has been no agitation for any further legislation or any reversal of the legislation or anything else. To the best of my knowledge, the courts and the government and defense counsel get along with the so-called Jencks Act without much difficulty. But it was a tough issue at the time, and getting it through the Congress was extremely complicated business because of this civil rights act which we were also pressing at the same time.

Stein: I'm still a little bit confused. How does the Jencks legislation differ from what now goes on in criminal discovery? It seems to me that in criminal cases now a certain amount of information is released to the defense.

Olney: Well, there is a great deal of information that's released to defendants in advance of trial now, but that has not come by legislation from Congress, and very little of it by discovery rules in the court.

What has happened is that the judges have gotten impatient with the attorneys on both sides who will go to the length of producing a lot of evidence and taking up a lot of court time proving facts which the other side is ready to concede. So they started in with pre-trial meetings of the attorneys in advance of trials. The judge knocks their heads together and says, "Now, boys, what is going to be the issue in this case? What's in dispute?"

This has led to the U.S. Attorneys coming to the realization that it makes very, very little sense to hold back the gist of the government's case in advance of trial, that in many instances it's very much to the government's advantage to disclose the case. Very often it results in a plea of guilty, when they realize that the thing is unbeatable. But it's a great time-saver, anyway, because then there can be agreement on the things that are in dispute. That's the way discovery gets into criminal cases now, and it's not through either legislation or rules, or such as were involved in the Jencks case.

Stein: Speaking of the Justice Department drafting legislation, someone in one of our other interviews mentioned that Brownell himself was very helpful in drafting legislation.

Olney: Oh, he is an excellent draftsman. Yes, yes. There are many good lawyers who are not. But he is a good draftsman. During his tenure, he would always go over personally and with care any important piece of legislation, although it might be drafted elsewhere in the department. Often he made improvements.

The Harry Dexter White Affair

Stein: I thought we might talk about Harry Dexter White now.

Olney: All right. That is a very long story and a peculiar one. My story of the Harry Dexter White matter is quite different from what you would find in magazine articles and in books of the time and so forth.

Olney: It all stemmed from our desire in the criminal division to get our business under control. When I got there, I found that there was no real order about anything. Cases would come in and the file would be referred to a lawyer. Nobody would be very sure what lawyer, there was no system for following up on what he did with the case, and folders would be stacked around in offices. The general appearance of lawyers' offices was desks and windows and everything with files piled all over them. Papers would come in and would go to the lawyers. They would accumulate in boxes. Sometimes they'd get into the proper folders and sometimes they wouldn't.

The result was that topside we had no idea what was going on. We felt that we had to know, we ought to know, what was going on in all our cases, or at least be in a position to get the information immediately. Besides, we had found that there were some of these files sitting out there that were matters of real importance that we knew nothing about.

One of them was this heavy investigation of Tom Clark that we got on to by finding the file in one of these huge piles of files in a lawyer's office that related to that investigation. There was no record anywhere else about it. There was another inquiry about Judge Bazelon and some of the dealings that he had had when he was assistant in charge of alien property.

Stein: What kind of judge was he?

Olney: He was on the court of appeals of the District of Columbia.

Well, the best way we could think of to get these cases in order and matters under control was to insist that the files be brought up to date, and then be issued by the filing room only when they were needed. We did this by sending out first a directive that the appropriate papers should be put into each of the files and the lawyers should send them to the general files and then redraw them if they needed them and leave the ones that they didn't need in the general files where they ought to be.

Well, that worked fairly well, but it had to be followed up, some couple of weeks later, with a flat order that no one was to have any file in his office or on his desk on which he wasn't working unless he could account for it in some proper way. I don't remember the terms of the order, but I know it was as positive and had as severe a sanction as I dared put on it about what would happen if this wasn't done.

Stein: It seems to me I remember in the Saturday Evening Post article* I read that you said that they might as well consider themselves fired, or something equally severe.

Olney: It does relate that. I believe that is in that article and I guess maybe it was something like that. I know we made it as severe as we could, but whether it was in language like that or not, I don't recall.

Anyway, the result, of course, was that there was just a complete blizzard of files that hit the general file room. All sorts of stuff showed up, incredible materials that had been out of the files for many years. Some of the things had been quite important. Some of them had been badly neglected.

Among these many papers which came in where these very extraordinary reports about Harry Dexter White. These reports, classified top secret, had been signed by J. Edgar Hoover personally and addressed to the attorney general, I believe, and then to General Vaughan, who was Truman's secretary, for the attention of the president. The reason for that was that Truman had asked Hoover not to send stuff to him directly but to send it through General Vaughan. These reports described this very large espionage ring of Russian agents. That is, they knew who the Russian connection was and there was a whole ring of people in government, particularly in the Treasury Department, who were supplying documents and things of this kind for transmission to the Russians. Harry Dexter White was one of them.

White was Henry Morgenthau's number-one man in the Treasury Department. At the time this report was being written, he was under consideration for appointment as director of the--it wasn't the World Bank, but it's something similar to that; it's an international banking organization.

Stein: The International Monetary Fund.

Olney: Yes, the International Monetary Fund: that was it. Well, that fund had complete control over the decisions that were to be made about the expenditures of American funds in the rebuilding of Europe. To have a communist agent in charge of that was certainly not in our interest.

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*Sidney Shalett, "How to Be a Crime Buster," Saturday Evening Post, March 19, 1955, p. 25. [See Appendix F.]

Olney: The reports were not vague. They were very specific not only about White, but about all the others that were named in them and what their functions were and what their activities had been and the like. Well, the remarkable thing about the matter was that White had been appointed by President Truman to the position of executive director of the International Monetary Fund after he had seen and notwithstanding these reports that established pretty conclusively that White was an espionage agent.

I couldn't understand why something hadn't happened when this information got over to the White House. I took it up with Hoover and showed him the report, and he gave me a full account of how it had been prepared and who the informant was. There was never any doubt in their minds, or in mine either, about her reliability and accuracy. The tip-off came from a woman who was an intermediary between the Russian agent and the rest of these people, who had changed her mind about Stalinist communism and had informed the FBI about this ring. They had investigated thoroughly and found out that her story was entirely true.

Well, Hoover said that he had discussed it with Tom Clark when he was attorney general and that he had sent the reports to Truman. But nothing was done. He was sure that Truman had seen it. No action had been taken. He had no explanation of why it hadn't been taken.

Well, I thought that we ought to try to find out what had happened to these reports in the department. We made a quiet inquiry as thoroughly as we could to try to find out who in the department had had this matter on his desk all these years. We never could find out. We never did know. But it was there on somebody's desk.

I then made out a memorandum, myself, to the attorney general and transmitted the whole thing to him so that he would be fully informed about this. I can't recall that I discussed it with anybody excepting him and Bill Rogers. I think we all felt that it was too explosive for general discussion anywhere, and it was too mysterious as far as we were concerned. We were just baffled as to how this appointment could have happened in the face of information of this sort.

I don't remember the sequence of events--I mean the intervals of time--but it was somewhere not long after I had turned this over to Mr. Brownell that he was to make a speech before a businessmen's club in Chicago. Here again I'm going entirely on recollection. Mr. Brownell tells me that my recollection is at fault, but I don't know whether it's at fault. My recollection is that I wrote that speech and put this material in it.

Olney: It was earthshaking. It was like setting off an atomic bomb when it happened. I always felt very apologetic for having put that in the speech, because I know that I did not discuss it with him in advance. I thought that I was simply drafting a talk that he might make, that he might use, supplying material. I had no idea that he would use anything of mine without a very complete revision. My recollection is that what he gave was what I had written.

On top of that, I thought the timing was terrible. It was the wrong place and the wrong period of time; it was just before an election. Mr. Brownell is an astute man. To let off a thing like that before an election doesn't help; he knows that. Lots of people think it does, but usually it has a bad reaction. I don't think, if he had really considered this in advance, that he would have done it at that time and place. But when I try to apologize to him for this, he won't accept it. He said, "Warren, that isn't the way it happened." He said, "Don't worry yourself about it. You didn't do anything out of line."

Stein: Has he told you how it did happen?

Olney: No, that's all he said to me about it. Well, anyway, it went off with a bang. I was horrified, not at the public revelation, but I thought that the timing of it was just unfortunate.

Stein: Yes, I think that Drew Pearson said something in his Diaries.

Olney: Yes, he does, sure. He draws the inference that that was planned and done deliberately in order to affect the elections. Well, Drew Pearson had a son-in-law, George Arnold, who was running in California for the Congress on the Democratic ticket against a Republican, and his Republican opponent used this stuff against him. So Pearson came to this conclusion, but that doesn't mean that that was the reason that it was done. I only know that this is the way the thing came to light, and that Mr. Brownell thought it ought to be given to the public.

But another thing about it that appalled him at the time was that the papers twisted his language so that it sounded as though he was questioning the loyalty of Harry Truman. Well, he never had any intention of doing that. He was very, very upset to see how these remarks had been used. He didn't know why there hadn't been some action taken. But none of us ever had the slightest doubt that Harry Truman was as patriotic as we were or anyone else. To have this come out was awful.

Olney: Of course, Truman flared up the moment that happened and he made some very unwise statements. He said, right off the cuff, when they asked him, that he had never seen the FBI reports. Then he changed his account and said that he had let the nomination go through because he thought that was the best way to "trap" White. Well, that's a lot of nonsense. It didn't make any sense.

A curious incident with Governor James Byrnes of South Carolina, Truman's former secretary of state, may be worth mentioning here. You will recall that after Mr. Brownell's Chicago speech, when Harry Truman was confronted by the press, he first said that he had never read the FBI reports on Harry Dexter White, as Mr. Brownell had implied that he must have done in his speech. Later on he changed his account, saying that his memory had been at fault and that he had indeed read the reports and had decided to go ahead with White's appointment notwithstanding in order to permit the FBI to catch him.

But there was an interval of some time between the time that Truman denied ever seeing the reports and his subsequent admission that he had read them. During that interim period I received a telephone call from Governor Byrnes. I had never met the man. He said he did not want to talk to Mr. Brownell but wanted to speak to me because I was the assistant in charge of the criminal division. He wanted me to tell Mr. Brownell that Mr. Brownell was absolutely right in believing that President Truman must have read the FBI reports on Harry Dexter White; that duplicates of the reports had been sent to him as secretary of state at the same time they were sent to President Truman; that he had written a note to President Truman telling him that he considered the reports a matter of major importance and they certainly should be read by him; and that later on he had discussed the reports with President Truman as to what should be done about the pending appointment of Harry Dexter White to be the American director of the International Monetary Fund. He wanted me to tell Mr. Brownell that he was willing to testify to this if necessary.

Shortly afterwards President Truman issued his second statement to the effect that his memory had been at fault and that he had indeed read the FBI reports but had decided to go ahead with the appointment of Harry Dexter White notwithstanding.

Well, one of the internal security committees, I think it was, called a public hearing.

Stein: It was the Senate.

Olney: Well, they had Mr. Brownell up there to explain all this and give his story, and this is the document that I handed you, which is his testimony before the Senate subcommittee.* This is what he read.

It's one of those things that's bound to come to light; it's bound to become public. But none of us have ever understood at all why no action was taken. We don't know whether it was that Truman never read the reports. Truman had an intense dislike for Hoover and, if you will read this recent book, Plain Speaking**, the brush-off that he gives Hoover is typical. He always disliked Hoover. He thought Hoover was messing around in a lot of things that weren't his business. And it may be that he just wouldn't read it. But, my goodness, Jimmy Byrnes read it and Tom Clark read it and, according to Drew Pearson in his Diaries, [T. Lamar] Caudle knew about it. And all of these people knew about it at the time of White's nomination and appointment.

Stein: And none of them spoke out about it?

Olney: No, none of them spoke out about it. They seemed to get the information there too late, or something. I don't understand it.

Now, it's worth noting that many of the others that were named in that report besides White were later proved to be communist agents.

Stein: What was the upshot of the whole affair, after Brownell gave his speech and there was all this to-do?

Olney: Well, White was dead, and there wasn't much that did happen from it. Most of the others had gotten out of the country. Laughlin Currie, I think it was, went to Venezuela and became an advisor to the Venezuelan government and wouldn't come back.

Stein: Nathan Gregory Silvermaster was a name that appeared often.

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*"Remarks by Attorney General Herbert Brownell, Jr. to Subcommittee of the U.S. Senate Committee on Internal Security," November 17, 1953. On deposit in The Bancroft Library.

**Merle Miller, Plain Speaking. An Oral Biography of Harry S. Truman (New York, 1974).

Olney: Yes, he was an important figure, but I don't remember what happened to him. I just don't. I know that those who were available were all called before one committee or another. All of them took the Fifth Amendment. I don't recall that any of them were successfully prosecuted. The principal witness was Elizabeth Bentley, and I can't recall that we ever used her as a witness.

Stein: Was she an informant?

Olney: Yes, she was the one who was an informant. I think she's dead now.

Stein: Had she been used in other cases also?

Olney: Well, she knew--I think I'm correct in this--Alger Hiss and Whittaker Chambers and worked with them too, and I believe that she may have testified in the Hiss case, for all I know. I'm not sure. No, I guess she didn't, because the Hiss case was during the Democratic days and I don't think she'd been uncovered at the time that this report came to light. So, I'm too hazy to be exact on this.

Stein: At the end of Brownell's remarks to the Senate Internal Security Subcommittee, he offers a couple of proposals for new legislation.

Olney: Yes, the first was to allow the government to use wiretap evidence. That was never passed. The next was to allow grants of immunity to witnesses. There was eventually legislation on that subject. I don't think it was passed while he was attorney general. I think it was the Kennedy administration that passed that.

Senator Joseph McCarthy

Stein: Speaking of subversive activities, did you run into Senator McCarthy much? Did you have many dealings with him?

Olney: Yes. I didn't have any dealings with him personally, but there were anti-McCarthy groups in the Congress who tried to keep Senator McCarthy from being seated and were opposing him in every way, and they had accumulated a whole mass of evidence which they wanted to use against him in the Congress. Drew Pearson, in fact, recounts this. Then they all got cold feet and there wasn't a single one of them who dared to protest his sitting.

They had turned this over to Attorney General McGranery, who was in office, so that was one of the things that I inherited. They used to come in--I can't remember who they all were, but I had numerous visits from many of them--and they were urging us to take action against McCarthy.

Olney: What they had was evidence of McCarthy's collecting money. He'd go out and make speeches and talk about a "cause" or something like that and there would be contributions that would pour in, all kinds of them, mail and everything else. Then they had dug out the fact that McCarthy had not used these monies in any particular cause, but he was using them personally. He was buying and selling on the commodity market, and other ventures of that kind, which, if these were trust funds in any way, would have been embezzlement. They wanted us to proceed on that.

Well, we would have been willing to proceed, and we always told them so. But where's the trust; for what purpose were these monies donated? And who is complaining that the money that he gave is being misused? When you talked to the people who gave the money, they said, "Well, that's fine, we gave him the money without any strings attached. He can use it for anything he wants. We believe in the man. If he can use it on the commodity market and make more money, well, that's great." [laughter] You can't make a case, not on that kind of evidence.

Then we also had just as many complaints from the McCarthy people, who were trying to persuade us to take action against Senator [William] Benton and Senator Chester Bowles. They had complaints about their activities, things they had done to try to get McCarthy, that they claimed were illegal. And it was the same sort of thing. They had actions that they didn't like, but they weren't provable criminal cases. So we never took any action on them. We did investigate as best we could and as far as we could to try to find out and be sure that we had all the facts, but we didn't bring any case, because there wasn't any evidence to make a provable criminal case.

What else do you have on McCarthy?

Stein: The Post article mentioned that there was some kind of suggestion of election fraud in Senator Tydings' failure to be re-elected in Maryland in 1950.

Olney: Well, that's true. There had been a very adverse political pamphlet put out against Tidings which--I don't remember if it was unsubscribed or falsely subscribed; I think it was the latter--but the man who was responsible for its publication and printing was prosecuted and convicted. That's as far as the evidence would go. We couldn't develop it any farther than that. But we never had any doubt that the person really behind it was probably McCarthy and the other people associated with him. But the fellow who was convicted wouldn't talk, and we had no other evidence. He took the rap and went to prison for it.

Stein: That's a frustrating situation. I guess it comes up again and again in prosecuting.

Olney: Yes, it does. You can see from that kind of situation that there are certainly instances where it's thoroughly justified for a prosecutor to offer immunity, either partial or sometimes even total, to a man who is the immediate perpetrator of an offense to get the testimony against the ones who are higher up, because there is no other way of doing it. Of course, when you do that, you have to be very, very careful that what you're getting is a true story. That means that even after you get the story, it has to be one which can be corroborated by other, outside evidence, quite aside from this fellow's story, showing not merely that the events took place, but that they were criminal in nature, before you're justified in going ahead with a deal of that kind.

Stein: I think that the article also mentioned that there was a question of income tax evasion with McCarthy.

Olney: Well, on that I have no knowledge. That would have been in the tax division. I didn't even remember that there was any such allegation. Perhaps so.

Stein: What was the general feeling then in the Justice Department about what would happen to McCarthy?

Olney: Well, I don't think that there was any uniform feeling about him. I know that Herbert Brownell, William Rogers, and all of the assistants including me absolutely detested the man. We just loathed the fellow. We couldn't understand why President Eisenhower was not more outspoken, not more effective in dealing with him.

But there was one man in the department who used to say that he was against McCarthy, although he would sometimes say that he thought McCarthy was working towards pretty good ends but he didn't like his methods. That was J. Edgar Hoover. He used to try to lead us to believe that he was not in sympathy with McCarthy. But after McCarthy's death, his house on Third Street came up for sale and Mrs. Olney and I bought that house. And it still had all the McCarthy furnishings in it when we went to look at it. And on one wall were hanging all these medals that he squeezed out of the marine corps.

Stein: Yes, I read about that.

Olney: And on another was an autographed portrait of J. Edgar Hoover, with a very, very strong personal endorsement. [laughter] There was talk at the time that Hoover was furnishing information to McCarthy and the committee. I don't know whether he was doing that or not. We used to wonder where McCarthy got some of his information, but there was nothing that turned up, even circumstantially, that would substantiate those rumors.

Stein: What did you feel would eventually be his fate?

Olney: Well, after the hearing on McCarthy, he was so terribly discredited that he no longer was of any importance; he just didn't cut any figure at all; nobody paid any attention to him. The newspapermen wouldn't even bother to go to see him. McCarthy would have hand-outs and he'd have to press them on newsmen. He was just a dead duck.

It was an education for me, the effect of that hearing. I had no idea that a vote of censureship would have such an effect. But it just pricked the balloon.

Stein: Did you find anything else in the house? I assume you bought it.

Olney: Yes, we did buy it. Well, no. He had a mortgage on the thing from one of the insurance companies which had some pretty unusual terms in it. He could occupy it for so many years without paying anything on the mortgage at all, and then the payments were nominal for two or three years or something, and then the whole thing became due. I knew about that because we took over the mortgage. However, the time when you didn't have to pay anything had already expired by the time that we got there, so that we did not have the advantage of those very unusual provisions.

I don't think they were in the house for very long. It was an old row house that had been gutted and then done over again completely. It had a couple of fireplaces in it in which no fire had ever been built, for example, so I don't think they were there for very long.

The Smith Act Prosecutions

Stein: I have one more question about the internal security matters. Were you involved much with any of the Smith Act prosecutions?

Olney: Well, the main prosecution on the Smith Act was before my time. We had one or two cases against top communists who had been apprehended after the main Smith Act case, and they were tried.

One of them was a man who was picked up out here at Twain Harte in California.

Stein: Oh, yes, I remember reading about that.

Olney: That was one of our cases, and there were a half a dozen or more members of the party. But I think they were what you might call second- or third-rank members of the party who were prosecuted in my day.

Stein: I gather that the people who were prosecuted were prosecuted for conspiracy to violate the Smith Act. I wonder why conspiracy was a part of the charge.

Olney: Well, I can't tell you. I don't even recall that they were charged with conspiracy. But maybe they were.

On cases like that, I left it up to the staff members to handle them. I had confidence in them by that time. That was their field. They knew these cases and this was familiar territory. They'd been over them before and they were the same kind of charges that had been presented before against others, so that I did not know these cases in the detail that I knew many others, or knew the first few cases that we had anything to do with.

But during the time that I was assistant attorney general, on conspiracy cases I entertained misgivings about the way the charge of conspiracy was being used and treated. I never had any compunctions about using a conspiracy charge, but I did have misgivings about, or rather definite ideas about, how it ought to be pleaded.

The trouble with most conspiracy indictments is that they're so vague. It is extremely difficult for the man on the receiving end of the thing to know with precision what it is he's charged with; they're in such general terms. Without knowing that, it's difficult or impossible to prepare adequately to meet it.

In California I had used conspiracy counts from time to time, but we had an entirely different system for pleading them. We would charge the conspiracy, the agreement, in general terms, but we always made a deliberate effort to describe the agreement with such precision and the acts that were done to carry it out, that the whole picture was there. We might allege the mailing of a letter or the making of a telephone call or something like that as an overt act, but we just didn't leave that hanging in midair. It

Olney: was apparent what the relation of the mailing of the letter or the phone call was to the carrying out of the purposes of the agreement. We felt that was the only fair way to charge conspiracy. This was in the district attorney's office, and in the state attorney general's office, but the federal method of pleading is entirely different.

The man who has always claimed credit for that type of pleading is Judge William J. Campbell of the U.S. District Court in the Northern District of Illinois. He had been district attorney there, and he had drawn the indictments against Moses Annenberg and others, and then he was brought to New York at the time that Judge Manton and some of the other federal judges were accused of bribery and other crimes of this sort. He drafted conspiracy indictments against them for accepting bribes and defrauding the United States. The bribe-taker and the bribe-giver would be charged with conspiracy to defraud the United States out of its honest services of the judge, and some otherwise innocent-appearing act, such as mailing a letter or making a telephone call, would be alleged as an overt act to carry out the purpose of the conspiracy. There would be nothing more in the way of details or particulars.

I think that the government would avoid a lot of difficulty with their conspiracy cases if they would develop a more explicit form of pleading the conspiracy count. But that's only my own opinion on it.

A Question of Federal Jurisdiction

Stein: Do you have anything more to say about internal security?

Olney: No, but there are some other things, though, I failed to mention that I think I should.

I hadn't been in the office very long before Mr. James V. Bennett, the director of the Bureau of Prisons, came to see me. He explained that the Bureau of Prisons was receiving a very large number of juveniles for automobile theft charges and was having to incarcerate them as ordered by the courts, when he thought their cases would be very much better taken care of if they were charged with automobile theft locally in the state courts, under state law.

Olney: He pointed out that these juveniles charged in federal courts more often than not had to be transported several hundred miles from their homes to serve their terms, where they were without friends or relatives or anything else. When they were released, often probation offices were not located anywhere near their homes, so that it was very difficult, very expensive to supervise them. He pointed out to me that the reason for this was the provisions in the U.S. Attorneys' handbook.

The U.S. Attorneys are supplied with an official handbook that is broken down into chapters and subjects and gives appropriate forms. It also states what the general policies of the department are. Under automobile thefts, in that section, the handbook states as policy that as many of these automobile theft cases as possible should be charged in the federal rather than the state court. There's some language in there that "experience has shown that some of the worst gangsters in the country got their start as automobile thieves" and so forth.

Well, my memory goes back long enough so that I could remember when the statute was passed first giving the federal government jurisdiction in automobile theft cases. The purpose of that statute as advanced in the Congress at that time was to make it possible to get at interstate rings of automobile thieves, people who were stealing automobiles in one state and removing them to other states and repainting them and changing motor numbers and that kind of thing. It was very, very difficult for a state to try to get at thieves and receivers in some other state many hundred miles away. It was never intended at that time that the federal government would do the job of policing the ordinary joyriding case, where somebody just picks up a car for a ride or something of this kind. So I was quite amenable to this change in policy, and we redrafted the section for the U.S. Attorneys' handbook.

The gist of our redraft was that the federal government should not assume jurisdiction in automobile theft cases unless it appeared that the operations of an interstate theft ring were involved, or some other major interstate criminal activity was involved, or some other unusual and special reason. Having drafted that, we sent it up to the deputy attorney general's office for consideration there.

They sent a copy of this draft over to the FBI. You'd have thought an earthquake had hit the building. The FBI was absolutely outraged at the thought of any such change, and they were very, very strenuous in their objecting to it and succeeded in having me overruled out of hand.

Olney: Then I found that Mr. Bennett had made this same suggestion to one or two of my predecessors with the same result. He hadn't told me this. [laughter] But it took some little time before I appreciated the reasons for this. And it has to do with FBI public relations.

The Bureau puts out an annual report around New Year's with a list of their achievements for the year. One of the things to which they always point with great pride is the number of automobile theft cases which the Bureau has handled, and that is always going up. Then they put in the number of automobiles recovered and they put in the value of these automobiles recovered. I'm sure they didn't get those out of the Blue Book. [laughter] They were the initial prices; the figure is fantastic. But it makes it a very fine story, indeed, on this.

Stein: It gives them a good batting average.

Olney: Yes, it does, and they use that very consistently. They use it in the Congress all the time on appropriations.

Now, the fact of the matter is that out of those thousands of cases that they have, there are only a small fraction where the arrests are ever made by federal agents. In practically all those cases the arrests are made by local police departments or local sheriffs or the state highway patrol or something like that. Having made the arrest and got the car, the local officers call up the FBI, who come down and have the charge filed in the federal court and then, of course, take credit for the arrest, for everything else on it. Not only does it irk me, but it's one of the things that has tended to sour the relations between the Bureau and local law enforcement agencies, because they're well aware of the fact that the Bureau never gives them credit for the part they play in those cases.

But the point where it gets serious is on the matter of the treatment of offenders, because Mr. Bennett, in my judgment, is entirely correct that most of these juveniles would be handled much better locally than they would be by federal authorities who have such spare resources for supervising them in their own communities. But we've never been able to change the policy and I don't think it's changed to this date.

There are thoroughly embedded interests against it. The insurance companies and automobile associations would probably scream to high heaven if we changed that policy. They like to be able to do business with as few agencies as possible when it comes to getting cars back and that kind of thing. And then there are many local courts which don't want to have the expense of processing these

Olney: cases and of supervising juveniles any more than they have to. They are glad to shift the burden over to the federal government. But it's a bad administrative practice, in my judgment, and we never were able to correct it.

Now what do you want to go to?

The Nomination of Earl Warren to the Supreme Court

Stein: The next topic that you suggested was Earl Warren's nomination to the Supreme Court and the hearings on the nomination.

Olney: Well, Chief Justice Vinson died very suddenly and unexpectedly. At once there was speculation as to who was going to be appointed to fill the vacancy. I did become aware that Earl Warren was being considered, because Mr. Brownell and Mr. Rogers both asked me and Stanley Barnes, who had known him very well too, a great many questions about him. The particular question that they were asking was whether he had really had any amount of trial work. He had been governor of the state for three terms, he'd been attorney general, and he'd been district attorney for a long period, but they didn't know whether this meant that he had ever had any real experience himself in going into court, presenting cases before juries, arguing matters on appeal, preparing briefs, and the general work that goes along with the courtroom.

I did know about that. I knew about it in detail, many, many cases in which he had participated personally and some of his accomplishments there. Of course, I was glad to give them what information I had. They never asked me whether I thought he would be a good chief justice, and I never expressed any view as to it. Of course, I hoped they would name him. I think they knew I hoped they would name him without their asking me. But I never did anything more than answer their questions.

I don't know exactly what did happen when Mr. Brownell came out here to California to see the governor. He talked to the governor for quite a while. While he was here there was a newspaper leak, which, when Mr. Brownell came back, I realized was deliberate. I think what it was was a trial balloon to see what public reaction there would be to it. But, at any rate, he was nominated--well, his name was sent to the president and the president sent it in. But Congress was not in session and they had to wait until Congress came into session before he could be confirmed.

Stein: Well, now, to back up just a minute, did you know anything of what went into the decision to even put his name in the hopper as a candidate?

Olney: No, no, I don't. I only know this, that Mr. Brownell was very conscientious about his judicial appointments. He used to say very frequently that it's the judges that were going to give this administration its reputation, that they'll be here long after this administration goes. He did his utmost to fill those positions with men who he thought were qualified. He strove very, very hard to get the best men he could.

Now, they were aware, when they went in, that there was a very great imbalance among the judiciary as a whole between Republicans and Democrats. Well, I say between Republicans and Democrats, but nobody knows what a judge is after he's been on the bench. The only way you have of judging him is what he was at the time he took office and then it's clear enough. But there were about ninety percent Democrats and they thought that was out of balance. They thought it ought to be about half and half, something like that. And so the first few nominees were largely Republicans. But they were very carefully selected, and I think you'll find that they are recognized on the whole as very good appointments, indeed.

Now, when it came to the chief justice, they were trying to get the best one they could find. They were not playing politics with it; there wasn't any politics to play. The qualifications for a justice on the Supreme Court in their view and in mine--I speak of their view because I heard them talk about it--are quite different from what you want as a trial judge or even a court of appeals judge.

The Supreme Court doesn't get any easy cases. It gets the tough ones. It gets the cases where there is no precedent. They have to decide things for the first time. And in deciding them for the first time, they have to be men of vision, because they have to be able to see what the effect of that decision is going to be, not just on the parties before them, but the precedent it will establish for future cases. Well, that is totally different from being a trial judge whose duty it is to take the facts before him and apply the law as it exists as best he knows it. Occasionally he may get something that's new, and he does the best he can, knowing full well that whatever he decides will probably be reviewed on appeal. If he makes a poor decision, it can be righted on appeal.

Well, the qualities that are needed on the Supreme Court are quite different: broad experience with government and with life, an open mind, an understanding of people, a high degree of imagination of the type that makes it possible to project the future with some reasonable accuracy. Qualities like that are far more important

Olney: than the case-by-case training of a trial judge. But a man on the Court should have some background of trial work; at least it's a great help to him. But there have been many good ones who didn't. Black had very, very little experience in the trial courts, and yet he made a very fine justice, and there have been others.

Well, I should also say this. With a position of that kind, they have to get somebody who is going to be accepted by the Senate and by the president too. So the choice isn't so overly broad. It has to be someone who's pretty well known. That's all I can tell you about why they did select him.

Stein: And then you were saying that Congress was not in session.

Olney: Yes, so Earl Warren had to serve without confirmation when the Court took up its business, which is always when the term begins on the first Monday in October. He had a few weeks to try to get familiar with judicial business. It must have been an awfully tough time for him. But then the Court opened.

An interesting thing happened in that first day. Although Stan Barnes and I had both been in the department for some months, neither of us had gotten around to being admitted to the Bar of the Supreme Court. We hadn't had any occasion to appear there personally to handle cases or anything, so we just hadn't done it. Shortly before the Court was to begin and we realized that our friend was going to be the chief justice presiding, it occurred to us that this was a good time to get admitted.

Time was so short, so we had to telephone out here to California to get our papers sent from the clerk's office in proper time. Then we had to find somebody who would move our admission. At that time--I don't know whether they have the same requirements now or not--your admission had to be moved by someone who was himself admitted to the Supreme Court, but who was also from your own home state and admitted to the court there. He would appear before the Supreme Court on the proper day and he would say, "Mr. Chief Justice, I move the admission of Mr. So-and-so, who is a member of the Bar of the Supreme Court of the State of California and has been for so many years. I know that he possesses all the necessary qualifications." The chief justice would respond by saying, "I welcome you to the Bar of the Supreme Court of the United States, Mr. So-and-so. If you'll just stand over there by the clerk's desk, he will administer the oath of office."

But you have to have somebody from your state. Well, Stan and I couldn't find anybody from our state. Bill Knowland wasn't a lawyer, and the rest of the congressional delegation was not around for some reason.

Stein: If they were in recess, they had probably all gone home.

Olney: Well, I don't know, but we couldn't find them. We were muttering to each other about this one evening when we were at some kind of reception. Dick Nixon was there and heard us going through this and he said, "I'm a member of both bars. I'll move your admission." Well, this was fine, and he did.

Another bit of protocol in the Supreme Court is the order in which things are done. When the Court opens, the first order of business is the admission of new members to the bar. Those admissions are taken up not in alphabetical order, but according to who the sponsor is, according to rank. If you're a Senator, why, your man is called first so that you can go about your business. If you're a congressman, why, then you're next on the list. Then, if you're a cabinet member, and so forth. And if you're an assistant attorney general, you have your proper place on the list before you get down to ordinary lawyers who are moving admissions. But we had the Vice-President of the United States, so we were first.

The result was that Earl Warren's first official act on taking office was to hear the motion from Dick Nixon for the admission of Stan Barnes and me to the Court. And his first order as chief justice was to direct our admission. Our certificate shows this. It's got this strange couple of names on it, but from the dates and the rest of it, one can see it's exactly what happened.

Well, when Earl finally left the bench, there was something of a follow-up on this. You'll recall that he had told Lyndon Johnson that he wanted to step down as chief justice at the end of the term in June. Then Johnson had nominated Abe Fortas and they got into all that racket. Fortas wasn't confirmed, so there was no confirmation or nomination of a successor until after Nixon's election. Nixon called the chief justice and asked him if he wouldn't serve until the end of the current term, which would be the following June, (so Warren was there a year longer than he had intended to stay) so that he, Nixon, wouldn't be confronted with having to fill that position as well as all the cabinet posts and other responsibilities that he had. Warren agreed to do that, but he made it very clear that that was the end, that he wanted out. He would have his resignation effective at the end of the term.

Well, I was in the East and had lunch with Earl Warren two days before the term was to end. His successor hadn't been announced. I had lunch with him and I said, "Well, time's getting pretty short. Do you know who your successor is going to be?" He said, "No, I don't. They haven't given me any indication." Well, while we were

Olney: having lunch, his secretary, Mrs. McHugh, came in and said that it had just been announced by the White House that the president was going to announce his appointee that night on TV. So we said, "Well, we'll both learn." We took a couple of bets as to who it might be. [laughter]

Stein: Who were you betting on?

Olney: Well, I won't say. I really didn't know. I wondered who it was going to be. There were many names that were being mentioned at that time, but I did not think that it was going to be Warren Burger. I'd known Warren, of course, in the department very well. We were very close friends and our wives are very good friends. As a matter of fact, while I was having lunch with Earl Warren, Mrs. Olney was out shopping with Vera Burger, because the Burgers were planning to come West and Vera had never been out here before. She wanted Elizabeth's help in getting some clothes that were suitable for the climate. She went home early.

We went to dinner at the home of some old friends, all of whom were in the legal profession and were interested in who the next chief justice was going to be, so we were sitting around having a cocktail when they staged this thing; it was like an Ed Sullivan production. Out from behind the curtains comes the president, who makes his announcement, and then who comes out but none other than Warren Burger and Vera, to our immense astonishment. Poor Vera looked like she'd been run over by a truck. She had no idea at all, until she got home for dinner that night, as to what was going to happen.

Stein: Here she'd been buying a wardrobe for the west coast.

Olney: Yes. She had to get her two children together and get down to the White House. Warren Burger himself hadn't known until that afternoon.

[Attorney General John] Mitchell had called him up and said he wanted to see him. So he went down to the department, and Mitchell said he wanted to send his name in to the president as the next chief justice and thought he better let him know ahead of time. "What about it?" Warren told him that he wanted a little time to think about it. He said, "I had hoped the president would name Herbert Brownell." Mitchell said, "I can't give you much time to think about it because we're going to name you tonight." [laughter] Warren said, "Well, go ahead, then." So he became the chief justice.

Well, then later on they had a swearing-in ceremony. The outgoing chief justice concluded the business for the term and that was the occasion for the introduction of the new chief justice, who

Olney: had taken one oath of office at the White House, and then he was brought to the Supreme Court by the president himself and introduced to the Court. The president said that his first appearance before the Supreme Court had been when Earl Warren, who was now retiring, was entering in on his duties, and at that time he had moved for the admission of Warren Olney and Stanley Barnes to the bar. He said that this was one case in the Supreme Court that he had succeeded in winning. [laughter] He now hoped that he would win his second one when he presented the new chief justice. So, we had quite a time with that!*

Now, the other thing about Earl Warren's nomination had to do with the hearings on him before the Senate Judiciary Committee. The chairman of the committee was Senator [William] Langer, because we had a Republican Congress at that time. The senior Democratic member was Senator James Eastland of Mississippi.

Senator Eastland didn't want to hold any hearings. He said, "There's no need for that; we'll just go ahead and approve it." But Senator Langer said, "No," that he'd received a letter objecting to the appointment and he was going to have a hearing. He wanted it to be a public hearing and he was going to hear anybody who had anything he wanted to say. Well, Senator Eastland said, "I'm not going to be a party to this at all. We'll have every damn dog in the country coming around lifting his leg and I'm not going to have that happen. If we're going to have to have hearings, they are going to be private hearings." So they compromised and they had private hearings. And they did have a lot of dogs, a lot of dogs.

These characters would show up. One of the first ones said that Earl Warren when he had been district attorney had squelched the investigation of a murder committed by Sheriff Barnet of Alameda County, the so-called Bessie Ferguson case, and that this had been a rank miscarriage of justice which he had perpetrated simply for political reasons. Well, Bill Rogers, as deputy attorney general, was in the hearing--that was usual--but no one else. When he came out for lunch he spoke about this. He didn't know anything about the Bessie Ferguson case. Well, I told him about the case. So he went back and explained it to the Senators.

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*See Supreme Court of the United States. Retirement of Mr. Chief Justice Warren, administration of oath to Mr. Chief Justice Burger, 6/23/69. On deposit in The Bancroft Library.

Olney: Then they had someone else testify, and he [Rogers] would tell me what it was about, and it was always something that I knew about. Well, it ended up by their inviting me to come to the hearing. I think the hearings lasted two or three days. Poor Earl was very irked by this. You can imagine what it's like to have a closed meeting of this kind with so many people who, he knew, weren't friendly to him, all the accumulation of twenty years of public life with all the enemies there saying things about him; he didn't know what.

But I did sit there and answer these things as they came out. I did not realize that I knew as much about Earl Warren's professional activities as I did. They did not have anything in there that I did not know about, and nearly all of them from my own personal knowledge.

The people who came were obviously subsidized. I thought it was probably some of these oil people out here, such as Keck of the Superior Oil Company, that hated Earl Warren like poison who had put up the money to send them back to Washington.

Stein: What were some of the other issues? Do you remember any besides Bessie Ferguson?

Olney: Oh, yes. One was that he allowed the Chinese gamblers to operate in Emeryville when he was DA. Totally false. It was just the other way.

Stein: I was just going to say that of all the things that they picked, they couldn't have picked more clear-cut cases where Warren had moved in with alacrity.

Olney: I can't remember. I'm sure if I sat down and figured it out, the list would be lengthy. There were a lot of things that they brought up. But they didn't bring up anything that had any merit in it or any difficulty about it. So he was confirmed.

But it's another instance of what a very strange man this Senator Langer was. Very peculiar fellow. I told you what he did with me, telling me he was an expert in the criminal law because he was the only Senator who had ever been tried and convicted of conspiracy.

Now, during the time Earl Warren was chief justice and I was assistant attorney general, in spite of the fact that I knew him so well, I tried to make sure that I didn't do anything that would embarrass him in any way, because of our former close relationship. So I never appeared in the Supreme Court while he was chief justice to argue any cases. He sometimes wondered why I didn't. But I never explained to him why I didn't. I just didn't think that it was a good idea at all. Everybody knew that I had worked with him for a long, long time, and I wouldn't want to have that fact involved in any of our cases.

Swearing-in Ceremony, February 2, 1953. From left: Attorney General Herbert Brownell, Chief Justice Fred M. Vinson, Assistant Attorney General H. Bryan Holland (Tax Division), and Assistant Attorney General Warren Olney III (Criminal Division).

Wedding reception for Mr. and Mrs. Brownell's daughter Joan, Anderson House, about 1955. From left: Charles Rice (Tax Division), Warren Olney III (Asst. Attorney General-Criminal Division), S. A. Andretta (Admin. Asst. to the Attorney General), Mrs. Olney, Mrs. Stanley Barnes, Charles Metzner (Asst. to the Attorney General).

Olney: But on top of that, I was concerned about the effect it might have in my division. If I appeared and argued a case in the Supreme Court and won it, it might be regarded as a hand-picked case and an easy one. If I appeared in the Supreme Court and lost it, it would show what a complete dope I was, that I couldn't even win a case when the Court was stacked with my friends. So I didn't take part in the Court.

I did see him from time to time on the outside. It took Mrs. Warren quite a while to get moved, and so when he was there alone we used to go walking together on the weekends, things like that, and he often came to our home for dinner.

Cleaning Up the Mess in Washington

[Interview 11: April 17, 1974]

Olney: Now, I wonder if we should go on to something else, and if so, what?

Stein: Well, we could move on to cleaning up the mess in Washington.

Olney: Well, when I entered the attorney general's office, it was against a background of publicity that the Truman administration had received about scandals in the Justice Department. There had been congressional investigations about the mishandling of cases, even the fixing of cases in the Justice Department. As a result of all that, I was, of course, very suspicious of the staff that I took over. We didn't know exactly where to go. Well, there had been a series of changes in the Justice Department just before we came in.

Most of these scandals that had gotten into the press were during the tenure of Attorney General Howard McGrath. Truman had fired him out of hand way back in July or August of 1952. Then he had appointed in his place Judge McGranery. I don't recall his first name. He'd been a United States district judge and prior to that had been around Washington as a prosecutor of one kind or another. Well, McGranery was a totally different type from McGrath. He set about on a housecleaning in an extraordinarily vigorous way, to say the least, and many changes were made.

He brought in as assistant attorney general in charge of the criminal division Mr. Charles Murray, who had been U.S. Attorney for the District of Columbia. Murray was my immediate predecessor. Well, I found that Murray had taken a real hold and had straightened out most of the things that needed straightening out, and such criminal prosecutions as had been needed to be brought had already been started. Many of them had been completed.

Olney: In the few weeks when Murray and I were both there, when he was still in office and before I had been sworn in, we got to know each other reasonably well, well enough that when he left, Murray gave me a list of about a dozen lawyers in my division that he thought were deadbeats and told me that if he'd stayed, he would have gotten rid of them. Naturally I was a little skeptical of the list, just considering its source, but as time went on I discovered that that was an absolutely bona fide list. There wasn't a lawyer on there that was worth anything, and we did indeed get rid of them. But aside from the incident that I mentioned in the Bramblett case, where I felt I was the victim of an attempt to get rid of me, I had no problems to speak of with personnel inside the division, excepting with people such as were on Charlie Murray's list.

The previous administration, for some reason or other, had used the criminal division as a sort of a dumping ground for political hacks that they didn't know where else to place. They'd be given a job there where they could draw a salary, even though they weren't doing any work that anybody could notice. We got rid of those.

Now, the main place that we discovered corruption in the government was in the Treasury, and it was on the fixing of income tax cases. There we found real corruption. Dan Bolich was the commissioner of Internal Revenue, and we had a grand jury investigation and indicted and tried and convicted him for just out-and-out bribery. Quite a few cases. I believe there must have been a half a dozen top Treasury or Internal Revenue people who were convicted of graft.

Now, I had a peculiar experience there, with the Internal Revenue Service. The new commissioner, I think they called him--it was the Internal Revenue Bureau then, headed by a commissioner. Later it was the Internal Revenue Service, headed by a director, but the position was the same in either case.

Well, the first Eisenhower commissioner was a man named T. Coleman Andrews. I was delighted to learn of his nomination, because I had served with him in the marine corps, both in Samoa and on Kwajalein Island, and so I contemplated a good friendly working relation with him while we tried to clean up the Treasury. I made it a point of going to his swearing-in ceremonies and of calling on him and renewing our relationship.

The first place that we tackled was the Bureau office in Pittsburgh, and this was because the U.S. Attorney and his assistant--why do I pull blanks on all these names that I know so well?--well, his assistant was Malcolm Anderson, who eventually was my successor in the criminal division. But John MacIlvain was the U.S. Attorney, who was later United States District judge. MacIlvain came to see me about the corruption in the Internal Revenue Service, and because

Olney: I knew Andrews well, we went over and had a discussion of this with him. Measures were taken so that there was an adequate investigation and arrests were made, convictions were had, but it was a long, continued affair. There were others besides those who were first indicted and convicted, and it kept going.

But there came a point where suddenly I got major resistance from the Bureau of Internal Revenue. The coldness and resistance from Mr. Andrews became apparent somewhere along in the fall of 1954. Finally I got wind of the fact that Mr. Andrews was resentful of all the corruption we were bringing to light in the Internal Revenue Service, and that he was of the view that a lot of this was aimed at him. He had stated that he had had trouble with me in former years when we were in the marine corps. I don't remember where I got this report. It was an oral report, but it satisfied me that he had expressed himself that way.

So I wrote him a letter in November of 1954 and said that I'd heard this statement attributed to him that we had had some difficulty in the marine corps and asked him in what respect I had offended him, but I never got any answer, not even an acknowledgement from him. I did not have any trouble, if one would call it trouble, in the marine corps. We did have what I thought was a very amusing incident.

We were both captains, and we were both attached, as intelligence officers, to the staff of the Fourth Marine Airwing. This made us junior officers, and the so-called field officers--that is, the generals and the colonels and whatnot--had their own separate mess, and we had our own junior officers' mess. Well, the generals' mess had to have somebody to run it, and so, of course, they picked a captain for that purpose. The captain was Jerry Green, who was a little senior to both Andrews and me, and who'd been a reporter on one of the New York papers and then later was a reporter, after the war, for one of the Washington papers. He had to run the generals' mess for them. Well, the time came when Jerry had served his allotted time out there and went home, and then they had to get somebody else.

Well, the next two seniors were T. Coleman Andrews and me. I didn't want to have any part of it. I didn't want to be in the generals' mess at all. Furthermore, I wasn't very far from finishing my tour of duty, too. So when this came up it turned out that we were commissioned on the very same date, so that it was most difficult to figure out who was senior. I went to the colonel who had charge of thie perplexing problem and told him I would be happy to waive all my rights, and to please recognize T. Coleman Andrews as the senior because he wanted it very much and I didn't.

Olney: Well, the colonel told me that was absolutely unthinkable, that this thing would be decided strictly according to a matter of rank. The lengths to which they went were just preposterous. They even figured the times of day. Andrews had been sworn into the marine corps in Africa; he had been in Africa in some civilian capacity when he joined the marine corps. They figured that was a little earlier in the day than it was in California when I was sworn in. So, to my great delight and satisfaction, he became the mess officer for the generals' mess. Now, that was the only difference that he and I ever had. We really were both seeking the same end, which was to make him mess officer.

But in years later I have come to wonder about something else. And that is whether or not this is related to civil rights.

T. Coleman Andrews, in later years, was one of the founding members of the John Birch Society, and a rank segregationist from way back.

Stein: Well, the connection does look clearer.

Olney: Yes, what with the Brown decision and the position that my division was taking on civil rights, I've come to the conclusion that those two things were related.

Stein: He probably thought he was being persecuted on all fronts by the criminal division.

Olney: He was even the John Birch Society candidate for the presidency. He ran on some kind of a ticket at one time, as extreme as you could possibly make it.

Stein: What was the eventual outcome?

Olney: Well, we succeeded in getting the information and then we had a lot of difficulty in working out between the Treasury Department and the FBI who was going to have the responsibility for investigating bribery and misconduct on the part of Treasury agents. Up until that time, Treasury agents had been investigating their own people, and it hadn't worked very well. The question was, shouldn't the FBI investigate corruption in the Treasury?

And, my goodness, to work that out is as difficult as what Henry Kissinger is having to do with the Israelis and the Arabs. Those two agencies were just about as far apart and as difficult to bring to agreement as any I've ever worked with. We did, finally, pound out a written agreement. It looks like a treaty of peace, on who was supposed to investigate whom under what circumstances.

Stein: Can you remember what the gist of it was?

Olney: No, I can't. But it was not a very satisfactory thing. The negotiations and the drafting were carried out by Lee Rankin and the office of legal counsel.

Now, one of the things that Mr. Brownell had been much concerned with when I first talked with him about going into the department was the low repute of the department, and his belief that public respect and confidence in the department must be built up by doing its job in a fair and impartial way. Well, we recognized when we came in that the only effective way of doing that was to make it clear that we were being just as tough on Republicans as we were on Democrats, and that they were all being treated alike. To carry that out it doesn't mean you have to treat Republicans any worse. It means that you have to be prompt and act at once, because if you don't, then the complaint will be made that you're dragging your feet just because they're Republicans, and then, when you do act, you don't get any credit for it. They say, "Well, you got pushed into it by the publicity," and this sort of thing.

So we tried to follow a policy of acting as promptly as we could on our own people. I notice in the attorney general's report for the fiscal year 1953, in which as assistant in charge of the criminal division I made my contribution on violations of the election laws, we report here that "three former officials of the state Republican committees were indicted for unlawful political activity. In the northern district of Georgia, the chairman of the Republican committee for the Eighth Congressional District of Georgia and the Republican chairman for Pierce County, Georgia, were indicted for soliciting $1,000, $500, and $200 for use of their political influence in filling post office positions." Then we also indicted Henry Grady Smith and Chestnut A. Thompson, who offered $1,000 for appointment as postmasters in Georgia.

As my report states, "the information leading to this investigation was brought to the department's attention by leaders of the Republican party in Georgia." They were indicted and sent to jail. There were other similar cases against Republicans which are mentioned here. Now, it's worth noting that these were reported by leaders of the Republican party in Georgia.

This was the work of one man, a very unusual man. His name was Elbert Tuttle. Mr. Tuttle was born and brought up in Atlanta. He had been a Californian for a long period, and he was the general counsel for the U.S. Treasury under President Eisenhower, which is

Olney: really next to the secretary of treasury. He had the identical ideas that we had about the need for trying to get a good name for Republicans. He and I discussed it at some length.

He said, "You know, down in the South and particularly down in Georgia, it's been so many years since the Republicans had any office at all, that when they take office, most people think that what they should do is do just what the Democrats did. They think that they can go around and buy and sell offices and things of this kind, and we've got to hit them over the head with a club to make it clear that that isn't to be done." Well, he was a real political leader down there and had many good connections. When these things would start coming to light, he put the pressure on the party leaders to come in and report these things.

This had some effect, I suppose, publicly, because we did make it apparent that we were going after Republicans, but it had a lot of effect in our own administration. I wasn't getting any interference from the White House, but I did have one or two--I remember Jerry Morgan, who was the president's counsel, talking to me on the phone one day and saying, "What's the matter with you fellows down there? Can't you indict anybody except Republicans?"

But the place where it made the biggest difference for me was in my own division. They realized that we were entirely serious when we said we wanted to enforce the law without regard for party connections. It made a very great difference, especially in the civil rights section, where the men had been kicked around by people that they had had to work for in the past, and they were very skeptical of me and of our administration and of what our intentions really were. They were in charge of our election fraud cases and things of this kind. When I got them in and said, "Now, on these election frauds we need to move fast. The one place where we cannot afford to be dilatory or hold up at all is on any case that involves a Republican. We've got to move, keep it moving, and dispose of it." I think that had a lot to do with building up confidence, which we did develop.

It was small things like that, where we tried to prosecute everybody alike, that did result in a revival of confidence in the department, we felt. By the time Mr. Brownell left, the department was very well regarded. It certainly was in government. It was regarded as one of the best departments that we had functioning in the administration. I think that among knowledgeable people, even among the media, that was the general opinion of it at that time.

Of course, there were left over quite a number of cases from the earlier administration. I was not at all enthusiastic about going to any great length to try to dig into the misdoings or alleged

Olney: misdoings of people who had left office. If there had been something very flagrant that couldn't be overlooked, of course, we would go after it, but you can't do everything in a criminal division, and we thought that our efforts would be better spent on things that were current and trying to keep our own house in order than on trying to prosecute people who were no longer in power.

But when it came to St. Louis, we had no choice. There was a judge out there, Judge George H. Moore. He was a district judge, the chief judge. He was a very, very powerful man locally, very much given to publicity. He had a tremendously strong press behind him, and he was most outspoken on racketeers and things of that kind. He had been on the bench for years.

He hated, with a purple passion, these people who had been in the Internal Revenue Service and had fixed income tax cases. I think one reason for this was that he himself had been the local collector for Internal Revenue before he became a judge. I think he had respect for the office, and he greatly resented its being debased and misused. Well, he was insistent that we have a grand jury investigation of the alleged corruption in the income tax cases there.

We went over the cases thoroughly. There must have been eighteen or nineteen income tax cases that, on their face, were very, very peculiar, to say the least. There were some cases where the violation was outrageous, and yet there had been no effective prosecution. It had all dwindled away. There were other cases where convictions had been obtained, usually by plea, and yet there was no appropriate sentence, no jail sentence and no substantial fine. There were enough of those, just looking at the results, so that any experienced Treasury man would conclude that there had been a fix in there on these cases.

They had all been handled more or less the same way. They had gone through the ropes in the Treasury Department, where they're developed, and then they're referred to the tax division of the Department of Justice for prosecution. The bogging down was in the Justice Department.

Well, we had a grand jury. To handle all those cases, we didn't have the manpower to do it. It would mean a full-time occupation for some really experienced lawyer, not somebody just getting experience in trial work, some really experienced cross-examiner to handle this. So we got a man named Willis Newcomb from New York who was indeed an experienced prosecutor (he'd been a successful one on Tom Dewey's staff) and he took this assignment on.

Olney: It went on for a good many weeks without his coming up with anything very substantial, nothing substantial in the way of evidence. What he did come up with was plenty of smoke that convinced us all that these cases had indeed been fixed, but we couldn't prove it. The reason was that nobody would talk about them.

So he finally came to me and said, "Warren, we're not going to get anywhere unless we promise somebody some immunity. Maybe we can get some of these taxpayers to help us if we just tell them frankly what our objectives are, and assure them that they're not going to be prosecuted for anything they tell us."

So we agreed to do this. We discussed this with Judge Moore in advance. We called these various taxpayers in these seventeen or eighteen cases before the grand jury one by one, and the gist of what Newcomb said to them was: "The government is not interested in you. We're not trying to enforce any sort of penalty against you. Your case is closed as far as we're concerned. But what we <u>are</u> concerned with is corruption in government, and how your case happened to be closed, the circumstances. If you will tell us truthfully just what happened, we assure you that no action will be taken against you no matter what it is that you may tell us, or what it is you may have done."

Well, this didn't work on any of the taxpayers until we got to one whose name was Sachs. He said, "Well, I will tell you my experience if I can be assured that I'm not going to be prosecuted or hit with a penalty suit or something like that for such information as I give you. It may be that I can't tell you very much, but I'll tell you what I <u>do</u> know, on those assurances." This was all made a matter of record before the grand jury.

He was a shoe merchant, and he had been caught evading taxes by the grossest fraud imaginable. I've forgotten now what it was, but there were whole warehouses full of shoes that he didn't declare and things like that, and they just caught him cold. Now, he had as his counsel representing him some very reputable St. Louis lawyers, and then there had been a change in the representation. They had left the case and he had got another lawyer from Kansas City, a fellow who had no tax background particularly, but was well known as an associate of President Truman and of others connected with the White House.

He had entered a plea of guilty and then the representation had been made that his state of health was so precarious that a jail sentence would kill him, that he would die in jail. They had a doctor who said he'd examined him and certified to this condition.

Olney: This was joined in by the Department of Justice, the assurances being signed by T. Lamar Caudle, who was the assistant in charge of the tax division at the time. As a result, the judge had not sent him to jail, but had imposed a fine of not very much; it didn't amount to much.

Well, that was the circumstance of the case when Sachs said he'd tell us what else had happened. He said that it had cost him about $60,000 to get out of this jam, and he didn't really know where the money had gone. He thought he'd like to know himself. He said that his regular attorneys had told him that he had no chance at all of beating that case in court, and that if he were to stand trial he'd only make his position worse by denying things that were clearly provable. Their recommendation had been that he plead guilty and throw himself on the mercy of the court. But he didn't want to go to jail, and they couldn't give him any assurance that he wouldn't.

He discussed his predicament with some friend of his who said, "Well, why don't you go see this lawyer down in Kansas City because he's pretty good at keeping people out of jail in situations like this. He's got some connections." So he went down there to see him and this lawyer, whose name I've forgotten, told him, sure, he'd take his case, and he was quite sure that he could work out the arrangements. It would cost him $60,000.

So Sachs gave him $60,000 in a check. He produced the cancelled check. Then he told the grand jury that he had just taken his lawyer's advice, had entered a plea of guilty at the proper time, stayed away from the court and from St. Louis. It seems that at the time that he was supposed to come up for his sentence, when he was supposed to be so desperately ill that the jail sentence would kill him, he was attending a shoe merchants' convention in Chicago. [laughter]

Well, the key to the matter, of course, was this lawyer. So we explained to Sachs that there was a legal privilege for dealings between an attorney and his client which meant that the attorney couldn't ordinarily reveal his client's affairs, but that that was the privilege that could be waived by the client if he wanted to. If he, Sachs, wanted to waive his privilege, his attorney would have to testify as to what happened to the $60,000. Well, Sachs said that he wanted to make the waiver, and he did so in writing.

Of course, we had made inquiries about this attorney and found that since this trial he had retired. He'd retired to Puerto Rico, but the agents found out that when he retired he had not taken the records of his law practice with him, that he had boxed them and put them in storage with a rubber company that he used to represent. They were in the warehouse of this rubber company.

Olney: Well, we got out a subpoena for the lawyer, and we also got out a search warrant for his records. We went down to the warehouse and succeeded in getting possession of them. Well, this brought him back from Puerto Rico in a terrible hurry. We were at once hit with a restraining order. The lawyer went into court and got an injunction against our opening these records, claiming all sorts of violations of his rights. Of course, we had to wait until that litigation was decided and it took quite a long time. We won the case in the district court, but then he took an appeal to the court of appeals.

Meanwhile, we were going ahead as best we could with our grand jury investigation of Sachs's story. We could corroborate everything he told us. We got a great deal of information about the movements of this lawyer, his contact with other people. We found that he was a bosom pal of a man whose name, I believe, was Wallace, who was one of the principal fund-raisers in the Truman campaign--that would be the one in '48, the one he was supposed to lose. He was also very well known to other people in the administration and used to ride with the president occasionally on his plane from Kansas City to Washington. He had an in, all right, of a personal sort with these people.

But we were having difficulty figuring out what Sachs's lawyer had done with the money. We had some most puzzling information. It came across from scrutiny of his bank accounts, which showed us one check coming to him from Matt Connelly, who was President Truman's appointments secretary, and another one from T. Lamar Caudle, who was assistant attorney general in charge of the tax division. This mystified us. We couldn't imagine why those men would be paying money to this lawyer. We would have thought that the money would have been going the other way. But, anyway, we had that much information. When we'd run everything out, we did have enough that the grand jury wanted to hear from both Connelly and Caudle as to what they knew about this character and this case and those payments.

We asked if they would object to testifying before the grand jury and they said they wouldn't at all, they'd be glad to. They appeared voluntarily and waived any rights that they might have. Each of them underwent questioning before the grand jury. They answered many, many detailed questions from Bill Newcomb. He's an awfully good examiner and he really took them over the subject so that they were pinned down, one way or another, on everything that was crucial in that case. But there were no admissions of any kind that seemed to them to be in the least significant. They went out of the grand jury room.

Olney: Well, the next morning the court of appeals made its decision on this search warrant. They held that the search warrant was valid, and we were entitled to open and inspect the lawyer's files on everything that related to Sachs. But we were not entitled to rummage through the lawyer's files, and they appointed a proper monitor to go through the records and give us what was pertinent for our case, and not the rest. But we got the records.

Boy, here it all was. Here was the $60,000. We found that there indeed had been money going out from that fund to both Connelly and Caudle, and some of it had gone to pay for oil royalties on oil wells in Oklahoma which were purchased with this money for them. Then Connelly and Caudle would get the income, you see, from the oil wells.

Stein: So that's where the $60,000 went.

Olney: Well, this is where some of it went, just some of it. Then, these checks that had come back into the lawyer's account turned out to be oil royalty checks that they had received just after the Sachs case started getting publicized as being reinvestigated. That's when these checks which had been issued to Connelly and Caudle came back and this lawyer put them in his account.

Stein: Did you speculate about why those checks were coming back?

Olney: Well, sure, it was plain enough. They didn't want to get caught with those checks, so they sent them back.

Now, the rest of the money--I don't remember how much there was. I think they got about two thousand, twenty-five hundred bucks apiece. It was scrapings off the edge. The main piece of that money went to Wallace and we were never able to get anything out of him or trace it any further. But we knew, or I should say were satisfied, that it was a campaign contribution that went to the Democratic party.

Now, when we went back below the surface, we found that this doctor's certificate on Sachs was completely false. The doctor had never even seen the fellow. This was all worked up in the Justice Department, and we could show that Caudle himself was the one who had arranged for this. So, Connelly and Caudle were indicted and brought to trial. Bill Newcomb tried them. It was a lengthy trial. The case was entirely circumstantial. There was nobody who ever blew the whistle in this case. Nobody made any confession; nobody made any admissions. The government's case was entirely by witnesses testifying to this fact and that fact and putting them all together.

Olney: Now, it meant that the credibility of the witnesses was not open to question. It was just a question of when you had all those facts, did it prove the case or not. The jury thought it did, and they were convicted. They were tried before Judge Rubey M. Hulen, an excellent trial judge, but a very reserved kind of man, very reserved. He was a judge, for example, that would never permit a lawyer to come into his chambers. He would always insist on meeting lawyers in open court. It's a fine principle not to deal in private with lawyers, but when it's an invitation to attend a bar dinner or something like that, it's carrying it a little far, I think.

He was a very, very strict-minded man. He had tried the case very well, very successfully. The jury returned their verdict of guilty and then there was a motion for a new trial pending. The gist of the motion was that the evidence was insufficient to justify the verdict. That was pending before Judge Hulen, and he went home one evening and went strolling out in the field and put a bullet through his head, right at that stage of the case. Nobody ever knew whether the case had anything to do with it or not. He was obviously totally distraught about something. Never did know.

The law is very clear about what the procedure should be if a judge dies at that stage of the case, and the statute was followed carefully. The chief judge of the circuit assigned another judge, Judge Gunnar H. Nordbye from Minnesota, to come down and hear this motion for a new trial. Since it was on the sufficiency of the evidence, it was the kind of a thing in which a new judge could pick up the transcript and see what all the evidence was. This was reviewed by Judge Nordbye and he concluded that the evidence was ample. He denied the motion for a new trial and proceeded to pronounce judgment.

Well, they took an appeal, and I thought that Bill Newcomb, who had tried the case, would argue the appeal, because he knew the evidence forwards and backwards. But we had a brief which was written in the appellate section in the criminal division, and when Bill got that brief he said he wouldn't argue the case. He said, "This brief is terrible, awful. This is just the kind of brief we shouldn't have. There's no color in it; there's no nothing. It's just the barest recital of the facts and the evidence, and that's all. I can't argue the case from a brief like that."

Stein: Who had prepared the brief?

Olney: Well, it was prepared in my division by a young man named Carl Imlay. Bill didn't get down to doing this until about ten days to two weeks before the case was set for argument. I realized that I'd have to argue it myself, so I did.

Olney: Now, we'd had a young fellow helping Bill throughout the trial named St. John Barrett, "Slim" Barrett, and since he had been present at the trial, we got the transcript, and I got Slim and Carl Imlay's brief, and we went to St. Louis and just holed up in a hotel room for as many days as we had while I went over the thing until I thought I had a grasp of it. Well, the more I studied the record, the more I studied Imlay's brief, the more convinced I was that this was exactly the kind of brief we needed. This was an excellent brief. It's true it had no color in it or purple prose, but this was a circumstantial case and every single statement of fact was cited to the page in the transcript where the evidence of that fact appeared.

When the day came for the argument, I felt we were quite well prepared, and we went into court and argued the case. The defendants were represented by Morris Schenker of St. Louis, who was and is well known as a lawyer for gangsters. It was the strangest argument I think I ever made in an appellate court, because neither side referred to one single previous decision on any point by a court, and neither of us cited a single statute. We didn't talk about anything excepting the testimony of the witnesses, and what the reasonable conclusions were to be drawn from it. It was a lengthy argument. I must say that the judges were most attentive and would ask questions about this fact and the other, but we were so well prepared, and with Slim sitting there right beside me with Carl's brief, we were able to answer every question that was asked about the source of every statement that was made. In due course, the court confirmed the conviction unanimously.

That was the major case of "cleaning up the mess in Washington" that I myself participated in. But there were these other cases, like Dan Bolich, whom I mentioned, who had been the commissioner of Internal Revenue, and quite a few others that were prosecuted around the country.

The ones that we prosecuted were ones that were flagrant and where the evidence was very clear-cut. We made no attempt to get underlings and people who were in minor positions and who had taken advantage of the situation and that kind of thing.

Stein: You mentioned St. John Barrett, and I know I have his name in my notes somewhere. Did he later turn up in the civil rights division?

Olney: Yes, he did. He asked to go there. I can't remember whether he asked to go after it became a division or before; I think, before. That's because he believed so sincerely in civil rights and he wanted to do his part in that area.

Olney: He came from California, from Santa Rosa. He'd been in the district attorney's office here in Alameda County, and he happened to come back on a sight-seeing trip during the summer with a friend, John Schour, and they came through Washington and they knew Alan Lindsay, who was one of my assistants. Alan and Dave Luce, who was also in the office, sort of got a hold of them and they talked him into taking the job. [laughter] And so he did.

He was assigned to trial work because he was a good trial man. He helped with this case, and then later he went into civil rights. After that he went into the Department of Health, Education, and Welfare, and now, for many years now, he's been the general counsel of that department, under several administrations. He's been there right along. He has the highest civil service position in the legal work in that department. He's almost ready for retirement, which kills me. When he came to work for us he was single, and he went on a skiing trip to Austria and ended up by marrying an Austrian girl he met skiing. [laughter]

Stein: It seems his vacations end up with rather phenomenal results.

Olney: Yes. We've often tried to get him to come back to California, which he would like to do, but she won't consider it. It was hard enough making friends in Washington. She isn't going to go through that kind of experience again. She's got her friends there. [laughter]

Stein: I think you mentioned to Mrs. Fry and Mort Schwartz that you thought that later, when you had trouble with the appropriations committee when you were administrator in the courts, that might have been linked to the Matt Connelly business.

Olney: Well, I do. This is only my own surmise; I have no evidence for it. But Matt Connelly was a product of Brooklyn politics where John Rooney came from, who was the chairman of our subcommittee on appropriations. Rooney and Connelly were very close. I think that I earned some ill will there that was never forgotten, both by initiating the investigation and prosecution in the first place and by taking over the arguing of the case on appeal and getting the conviction affirmed in the second. But I can't prove that. There was some kind of block like that, because in all the years I was with the courts I couldn't get anything out of Mr. Rooney, even the most reasonable requests. And, while he was a cantankerous fellow, other people had been able to do very much better with him than I had.

Stein: It sounds like you certainly got your fill of playing politics, or having politics played with you.

Olney: Well, yes. Yes, of course. But that just goes with the job. I thought it would be worse than it was.

The thing that's hard to bring home is the fact that all these things are going on at the same time, the St. Louis investigation, our legislative efforts on civil rights and Jencks, these internal security matters; they were all happening at once. It was just a daily crisis. We used to come down in the morning and wonder, "What's the crisis going to be today?"

There's one thing to be said about having it in such volume like that, that you either get used to it or it kills you. And I did get used to it. I never let it worry me after the first few initiations I had. I didn't worry about it at all. Then on top of that, I had known that this kind of thing would happen. I had always--all the time we were there it was with my fingers crossed--felt that something would happen so that I wouldn't be able to stay anyhow, and it really didn't make much difference whether it was this one or something else; something would come along sooner or later, although it never did.

Stein: I'm amazed that you could keep all those things straight, when they were happening all at once.

Olney: But you can see how mixed up my recollections are. It's partly because it was so confusing, confusing at the time. It was very difficult. Well, like this matter: I know that Ed Barrett was back there and gave very valuable assistance in drawing the statute. But now I can't tell you whether it was the Jencks Act or the civil rights bill.

Civil Rights

Desegregating Washington, D.C.

Stein: Well, this may be a good time to move on to civil rights.

Olney: When I became assistant attorney general, strange as it may seem, I did not realize that there was a civil rights section in that division, or that I would have any responsibility for civil rights matters. My knowledge of civil rights was pretty dim, to say the least. Of course, I knew that President Truman had made a tremendous effort to get some civil rights legislation through the Congress just before he went out of office, and he had been

Olney: defeated in doing it. And I knew that there were stories of lynchings in the South and things of that kind, and racial prejudice, but I really hadn't thought about it very much.

Before World War II, we didn't have many black people in California. That meant that the race problem was nothing such as it is now, and we just didn't think that it existed out here. Then all these black people came out here during the war. I was in the marine corps then, and after I got out I was so busy with my private practice, trying to get that established, and with the crime commission, that I just didn't pay any attention to what the social conditions were around here.

So when I went to Washington, I got the shock of my life when I discovered that it was against the law for a black man to go into a restaurant and have a meal in the restaurants there in Washington where white people ate. They couldn't go to the National Theatre. And then the streetcars--they were still running streetcars then that went out to Virginia--they required the blacks to sit in the back section of the car. They couldn't sit in the other part of the car at all. Well, I'd never seen anything like this, and it incensed me, very frankly. I thought it was just outrageous.

When I got into the office and found that my division did have some responsibilities on this matter, I got very interested. I think I should say what a very, very small section this civil rights section was. I had Arthur B. Caldwell, who was the chief, and then Sydney Brody and Maceo W. Hubbard (he was a black man), and James Kildridge and Leo Meltzer and William O'Hear and Francis Pohlhaus and Henry Putzel, and that was all. That was the whole staff of lawyers to take care of these very difficult civil rights problems. It was quite in contrast to what I inherited in the internal security section.

The civil rights lawyers, I think, at the outset, were very skeptical of me and I was skeptical of them. I couldn't imagine why they would be there doing this kind of work and I was not aware that anything much had ever been accomplished. Caldwell came from Arkansas and that seemed like a rather strange place of origin for somebody who was chief of the section. But I hadn't been there long before I found that this group was sincere, dedicated, hard-working, and very experienced in this field.

They had to educate me in civil rights law. The statutes that we had to work with were so vague and so difficult of application that the legal questions that would come up in these cases were very, very tricky. I would say it was almost a year that I'd still be saying to them. "Well, why can't we do this in this case, or that in the other case?" and they would have to explain the law to me. The difficulty was that our statutes didn't fit.

Stein: What sort of things were they working on?

Olney: Well, there were a great many things that they were working on, anything from school problems to discrimination in employment to maltreatment of prisoners, things of this kind. I can't go over all that they were working on; it would be too long. But there were some things that were very interesting that were going on.

I should say that I found that my predecessors had been doing a very good job through this section in trying to enforce civil rights. There was no pulling of punches in this section by the lawyers at all. They'd had real problems going way back. Caldwell told me that he once had an assistant attorney general who was from the South who said to him, "Well, you know, A.B., we're both from the South. Once in a while they do lynch a nigger or two down there, but you know it's always the bad niggers that get lynched."

Stein: This is the federal government talking.

Olney: Well, it's a little difficult for a civil rights section to function very well under a man like that, but they had done it. I came to have a lot of respect for them.

Well, one of the interesting things that was going on was litigation in the District of Columbia over this matter of excluding blacks from hotels and other places of public resort. There was an old statute that applied to the District of Columbia which was still on the books, but it had never been enforced and everybody had supposed that it had been superseded in some way. But I believe it was probably Thurgood Marshall who worked out the theory that that statute was still in effect.

At any rate, some private parties through the NAACP brought suit to declare that these statutes that outlawed segregation in the District of Columbia were still effective and active and applicable there. We couldn't get into the case because the government had no standing in the lawsuit; it required a private person who was injured to bring the suit. And we couldn't even get into it unless we were asked to appear as a friend of the court, and the court never asked.

That suit was brought during the time of our predecessors. Anyway, we hadn't been there very long when the suit was decided by the court of appeals of the District of Columbia, which ruled that the statute was still effective and that this kind of discrimination was outlawed in the District of Columbia.

Stein: That's rather far-reaching.

Olney: Well, of course. There had been those who had said that there was going to be all kinds of trouble and whatnot, but there was no trouble of any sort, none at all, on that kind of thing. Never has been. So that kind of discrimination didn't last very long after I was there.

Then about that time the Department of the Interior announced that there was no longer going to be segregation in any form in any national park and the same way with the national forests. Well, it seemed to us that that was a great step and that it would probably apply to all the federal parks, but we discovered that Rock Creek Park was in a different status and we had to do a lot of negotiating to get acceptance of the idea of desegregation in Rock Creek Park, but this was worked out by negotiation and agreement.

Then there was the last remaining thing, some small parks in the city of Washington. It turned out that jurisdiction over those was not in any of the federal departments, but it was in the District of Columbia government. It added up to the corporation counsel being the controlling figure in what was to be done and said about these little parks.

There was one called Turkey Thicket. I don't know how it got its name because it hadn't seen a turkey in two hundred years and a thicket probably as long as that [laughter], but it was in one of those areas that was built up with brick houses, you know, the typical Washington type, all around it, all around this small block. The block had an iron fence around it with a gate and a lock, and it was originally built and used by nannies to bring their charges out there in their baby buggies and take the sun and whatnot. The houses were built that way--they all had servants' quarters and nannies, and there were kids, and they had the fence and had them all locked in there.

Well, this had been reserved for white children all these years. But the neighborhood had changed considerably and the percentage of whites was down to something like twenty to thirty percent, and the rest of them were blacks. Of course, it wasn't being used by nannies anymore; it was being used by children to play in. Here were these white children having a whole block there to play in, all locked away by themselves, and the black neighbors couldn't play in the place just because they were black.

Well, Caldwell thought something ought to be done about that, and so did I, and so I had him take it up with the corporation counsel. I don't know how many times he went down there to see him, but this fellow was just adamant. Caldwell would say, "Look,

Olney: you can read the Supreme Court decisions and you can see what the general policy of the administration is elsewhere, and what's happened to the segregation in restaurants and all, and this thing we just can't continue to tolerate."

But it just made no difference to this fellow. He said, "Well, I'm not going to desegregate those parks until some court orders me to. It's going to take litigation to persuade me. These other decisions aren't applicable and we're just going to have to litigate it." Of course, that just meant dragging it out for another two or three years.

So when Caldwell came back from one of those meetings where it was very clear that there was no other way of settling with the fellow--I can't remember how we delivered the message, whether we called him up on the phone (I think I did because I know I wouldn't have written a letter on this)--but anyway, I got in touch with him (I think it was on the phone) and told him that we couldn't tolerate continuation of this segregation in Turkey Thicket anymore. If we were going to have to litigate, well, we'd litigate.

I thought I ought to tell him the form the litigation was going to take. I said, "We're not going to go into court and ask for an injunction. We're going to submit these facts and your interviews with Mr. Caldwell to the grand jury, and we're going to ask for an indictment of you, not the people who are out there at the park or who work for you, but you, for violating the civil rights statutes. We can litigate if we must, but you're going to be litigating it from the point of view of the prisoner in the dock." Well, that changed his mind, and they opened Turkey Thicket up.

It was that kind of activity that we were engaging in. We were trying to do this attracting as little attention as possible. There were a lot of reasons why we didn't want to attract attention. In the first place, when you're dealing with things like that and trying to ameliorate a situation, the less said about it the better, so that feelings don't get aroused and people don't get in a turmoil. Then another reason was that we knew that it was a politically hot subject. There were very active, strong segregationist politicians who might very well pick up our activities and try to block us, make problems for us. We didn't want to have that happen. So we not only made no effort to publicize what we were doing, but we tried to avoid publicity. It did have the effect of persuading all the liberals in Congress that the administration wasn't doing a darn thing on civil rights, but you can't have it both ways.

We were doing that kind of thing, and I should say that this was always with Mr. Brownell's full knowledge and approval. When I was in New York and talked with him about coming into the department,

Olney: he didn't say anything about civil rights. I sometimes wondered if he even knew that we had civil rights in the department, but naturally we had many discussions on the subject after he became attorney general. His ideas and mine were identical, and they were that segregation was a curse in any and all forms and we should, for the good of the country--it wasn't a matter of politics--be doing everything we could to eliminate it. We should be proceeding effectively, but hopefully with no more irritation than was necessary. So he was approving all that we were doing.

The Civil Rights Bill of 1956-1957*

Olney: We kept this kind of thing going as best we could, but meantime I was getting a real education in civil rights law, and by 1955 I think I knew something about it. And, thanks to my section, I had some real understanding and grasp of the principles and needs.

We had talked in the section from time to time about the Truman administration's approach and their efforts. So I had a concept of what they had been trying to do, which was usually to get legislation through to outlaw lynching and the poll tax, and to make a declaration of rights here, there, and the other place on voting and things like that. We understood what the program had been, but it wasn't a very adequate program. They wanted to have a commission, and commissions are all right, but they make investigations and make reports and usually the reports just sit on the shelves and gather dust.

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*The Eisenhower administration's civil rights legislation was the subject of a series of interviews conducted by Dori Dressander with Mr. Olney in the spring and summer of 1978. Ms. Dressander interviewed both Mr. Olney and Herbert Brownell in preparation for a book she was writing, to be published in 1983. Upon publication of the book, Ms. Dressander will deposit copies of the interview transcripts at Notre Dame University and at The Bancroft Library. These interviews cover the subject of the 1956-1957 civil rights legislation in greater detail than do the interviews bound herein, and the reader is therefore urged to consult both sets of interviews.

Olney: With the experience that I'd had with the civil rights section, it was apparent to me that what was needed wasn't any more declarations of rights. What we needed were tools, the legal tools, the machinery, so that the government could go into court in proper cases and get observance of the law. There had been little attention paid to that in these other earlier proposals.

I guess here I ought to mention J.W. Anderson's book, Eisehnower, Brownell and the Congress, which is subtitled, The Tangled Origins of the Civil Rights Bill, 1956-57, published by the University of Alabama Press. This is an account which is far more complete than anything I can give, but I have read it, and to the best of my knowledge it is accurate. It has discussion of the background of the civil rights bill that was eventually passed which I've never seen printed anywhere else.

At any rate, to go back to my own account, Anderson thinks that the president's heart attack had something to do with this, but I don't know whether it did or not. I only know that in December of '55, Mr. Brownell told me that he thought the time had come when we ought to try to shape up what we thought a really good, adequate civil rights statute ought to be.

This was entrusted to me to undertake. I did it with the section without telling them anything about objectives, excepting to say that we had all experienced the weakness of our tools in trying to make civil rights a reality and the time had come when we ought to examine the question from that point of view alone: what do we need? What do we need in the way of basic authority in the Department of Justice for procedures, and what kind of procedures in order to do the job that ought to be done?

Well, Anderson recounts in there all the different forms that this effort took. It's very interesting, I think, to read it, because we started in by trying to enumerate all the rights, and discarded that. The section's views, interestingly enough, centered mostly on changes and enlargements in the criminal statutes. I suppose that's because the only civil rights statutes they had were criminal statutes.

If I made any contribution to it, and I think I did, it was my belief that good civil remedies would be far more effective in this field than criminal ones. The reason that I was of that view was the experience that I had had with injunction suits and civil remedies of that kind here in California against gambling ships and the wire service and cases like that, where we were able to be effective through a civil action of that kind where we couldn't get to first base with ordinary criminal prosecutions, even though the criminal laws were there and clearly applicable.

Olney: Well, Anderson describes how this went on and how finally we had a big meeting with people in the department discussing this. The more we talked about it, the more importance all of us could see in the civil remedies that were involved. We ended up with four major points. One of them would be a new civil rights division; a second, that there be a civil rights commission. These were old chestnuts that had been proposed before. A third was that there would be a provision authorizing the government to resort to the courts by way of injunction and otherwise to prevent violations of civil rights and to enjoin their continuance, and to do that without having to be requested to be a friend of the court or brought in by a private party. Then there was a fourth one on voting rights were the idea was to make it possible for the government to take effective action to avoid such things as this mass disenfranchisement of voters that had gone on in the past. Later, in '56, it happened on even a greater scale.

Stein: And was that also primarily through civil means?

Olney: Yes, yes, although I think there were some criminal penalties attached. I guess not; I think those were civil. The reason is simply this: in the first place, to invoke a criminal penalty the act has to be done and completed; it can't be something that's merely threatened. In the second place, if it is done, it's done by the local clerk, if it's voter registration, or by some other officer who may be violating the law, but all he's really doing is carrying out what he thinks public opinion wants him to do and expects him to do. It makes it very difficult to get a conviction in a criminal case like that. And if you do get a conviction, it is extremely difficult for the judge to know what to do with the fellow by way of penalty.

The criminal law is just not a suitable kind of remedy. In a court of equity in equitable proceeding you can get an injunction, and you may be able to stop it, or if it goes on, you may be able to prevent its repetition. And then you can bring the man before the court for contempt of court, which is a failure to obey the order of the court after full notice and the rest of it, and even have a jury trial. That's not so difficult to get a conviction of contempt or failure to obey after he's had every chance to answer and explain and be heard and all the rest of it, as it would be in an ordinary criminal statute.

Anyhow, we had these bills that we were working on and Mr. Brownell took them down to the White House to present them to the cabinet as a possible administration proposal. It went over like a lead balloon.

Olney: I never did like most of those cabinet members. Most of them were rich men who had no real concept at all of what was involved in racial relations. They were the type who didn't want to rock the boat and stir up things: Truman had taken a terrible licking, and why should we? They were very discouraging. And then, of course, as Anderson recounts, J. Edgar Hoover showed up down there too, and Brownell took him down there in the belief that he was going to support this proposal somewhat, but he did just the opposite. He tried to torpedo the idea of doing anything excepting having a commission and a new assistant attorney general. It was very discouragine.

Now, it's Mr. Brownell's conduct, right along here, that explains, if it needs any explaining, my continued admiration for that man. He was not discouraged by this kind of reception, and he made up his mind to continue. He discussed it with me at some length. The reason for his choice was simply a matter of morals: this is the right thing and we've got to do it because it's right. There shouldn't be any politics about it.

He said, "It's just loaded with politics all over, but we've got to go ahead with it. The president is in no condition to even consider it, in his state. But it doesn't mean we ought to pull out, just because some of the cabinet members don't like it." So we went ahead and got our bill in just as good shape as we could do, and he got permission from the cabinet to introduce the two measures, or two proposals, make the two proposals to the Congress, as administration proposals, one for the assistant attorney generalship and the other for the commission, but not the other two.

Mr. Brownell would not compromise for just those two proposals, so there were weeks and weeks of dragging around, and he just wouldn't take no for an answer. Finally it was agreed that he could present the other two as his own proposals, the attorney general's proposals. Well, I won't go into all the details, because they are so well stated elsewhere.

Well, we got the four bills presented in spite of the cabinet. The way it was done was to--we discussed with Congressman [Kenneth] Keating and--I forget who the Senator was--in advance about the situation. When Mr. Brownell appeared before the House committee with these proposals, he presented the first two and then, by agreement, Mr. Keating asked him, "There have been these other problems in civil rights that have arisen and we know that the department has given consideration to those problems. Would the department be able to draft any legislation to meet them?" Brownell's response was, "Yes, we certainly could and, indeed, we have. We have drafts right here." So Keating asked for them and they were produced, so that all four bills got there at the same time.

Olney: The curious thing is that the press never caught on to this. The press was aware that there had been a long delay between the president's State of the Union message, in which he had said that he was going to present some civil rights legislation, and the production of the administration bills.

Now, the Congress itself had had some bills--Senator [Thomas C.] Hennings had some bills that his committee was working on. It was the same old stuff, anti-lynching and things like that, but the administration bills weren't forthcoming until way along--I think it was April--way along in the session. In fact, it has sometimes been said that it wasn't introduced until that late in order that there couldn't be adequate consideration, and also in order to divide the Democrats for political reasons.

A lot of nonsense. They had no idea what was going on behind the scenes. The difficulty was right in the White House, getting approval for these things. So we breathed a sigh of relief when the media didn't pick this up and didn't appreciate the fact that there was any difference in sponsorship on those bills, two with administration approval and two without. They just thought the administration approved all four of them.

Stein: Anderson mentioned that and, I think, attributes it to the fact that the media weren't taking civil rights legislation seriously at all at that point.

Olney: No, and there were several reasons for that. One of them was that we were so quiet about the work we'd done on civil rights. We didn't blow our own horn, didn't say anything about it. So they thought that we weren't doing anything about it and that we weren't interested in it. Another reason for it that he [Anderson] brings out there is that we knew that there were people in our own administration who were very much opposed to any real change as far as civil rights were concerned, some of them on political grounds, thinking that we couldn't do any better than Truman had done. But we had our share of segregationists in there among the Republicans too, right in our own administration. This led us to believe that we just had no way of accomplishing anything excepting to keep our own counsel and to go ahead with our own plan and not make announcements that simply would be alarms for the opposition to rally around.

Furthermore, they didn't understand the bill. Nobody had been talking about injunctions and that kind of remedy, and the potential had escaped them completely.

Stein: Again, just as well.

Olney: Yes, just as well. So that's the reason that we took the strange course that we did. And, of course, it did have some serious disadvantages. It meant that it was, indeed, very late in the session that the bill was introduced, but it's amazing the progress that we were able to make in that Congress. We did get a bill through each house.

It wasn't the same bill, so we didn't get a completely adequate law, but I don't believe that the 1963 civil rights act ever could have been passed without this experience in '57.

[Interview 12: April 23, 1974]

Stein: John Anderson in his book mentions Sydney Brody as one of the draftsmen of the bill in 1957.

Olney: Yes, that's right. He was one of the lawyers in the civil rights section. He had a great deal to do with drafting our bill and also the accompanying statement that the attorney general was going to make to the houses of Congress when he presented these proposals.

But as you can see, the problem for us was initially to get the administration committed to any kind of a civil rights legislative program. Mr. Brownell was faced with a sick president and with cabinet members, many of whom were not really in sympathy with the civil rights proposals that he had in mind making.

Stein: Anderson also mentioned that when the bill was first introduced into Congress in 1956, the White House "refused to go along with it." One reason, according to Anderson, was that Senator William Knowland had read the account of the bill in the New York Times and was upset by it and had bent the president's ear, so to speak.

Olney: Well, this is the information that I had and believed to be true. But I was never at those White House meetings when Senator Knowland was there. I was told that Senator Knowland was indeed upset about this and the reason for it was that he was convinced that it was not possible to pass any kind of a civil rights bill through the Congress at that time excepting one that would do no more than create a commission and a new division in the Department of Justice.

His opposition, I believe, was primarily on political grounds. He just didn't think it could be passed through the Congress, and didn't want the administration to repeat the experience that the Truman administration had had of having a tremendous fight and being defeated.

Stein: I understand, though, that by '63 he was one of the prime movers in the Senate to get the bill through.

Olney: But an awful lot had happened during that time. The introduction of the bill and the efforts that were made in '57 showed very clearly that there was an excellent chance of passing a really good civil rights measure. The '57 bill almost got through in its entirety, and it might well have passed with all four parts if it had been possible to present the bill at an earlier time so that there would have been more opportunity for debate and discussion before Congress adjourned.

Now, the reasons for that delay, of course, as you see, were the problems that we were having with the White House, not that we didn't have the bill and the proposal. But what happened in '57 did make it clear that there was a great deal more support than Senator Knowland and others at the White House realized for such a measure. When '57 had passed, it was evident that there was not only support in the Congress, but there was a great deal of public support in favor of such measures.

Stein: And was President Eisenhower by that time more favorably disposed?

Olney: Well, this is very difficult for me to say, and I don't know. President Eisenhower never showed anything that I would regard as interest in the civil rights legislation. It's easy to say it's because he wasn't interested in the subject. But I think this is probably not being fair to the man.

He had a concept of what his role was as president that, I think, events showed was not realistic. He thought of himself as sort of a reconciler of the people who were favoring integration of the school system and the elimination of all segregation on the one hand and those southerners who were talking about massive resistance on the other. He was trying not to give offense to either side.

Well, I believe that this was really a tragic mistake. If, after Brown v. Board of Education had been decided, the president had appreciated what the real situation was and had been outspoken on the subject of discrimination and taken the leadership, I think that the history of this issue might have been very, very different. But he didn't do that, and then, when he became ill, this was not one of the major issues that was bothering him while he was convalescing. There were many things about foreign affairs and even other domestic problems that he was far more concerned with than this.

He never did support these four proposals until the very last minute. Then there was an official statement which, I think, Anderson mentioned in his book, which was made by the official

Olney: White House spokesman to the effect that all four of those propositions were administration measures and had administrative backing. But that was after the war was pretty well fought in the Congress.

Stein: He was jumping on the bandwagon?

Olney: Well, I don't know about that, but that's the way it happened. At the time I felt very disillusioned. I had felt that the president, of all people, of all Republicans in particular, would be in favor of all those proposals. I didn't understand it at the time and felt very disillusioned at the time and rather let down on it. The only thing that really kept us going was Mr. Brownell's personal persistence and his belief that it was politically feasible to have a decent civil rights bill and his conviction that we ought to make the effort anyhow because it was the right thing to do. Well, when you have a man in leadership like that, why, even though you might be somewhat let down, you're prepared to go ahead and do what you can.

Stein: You mentioned in one of your letters to Harry Kingman that you were fearful even toward the end that there might be a filibuster in the Senate. Do you remember if there was or not?

Olney: No, there was not.*

Stein: You mentioned earlier that you had quite a struggle in '56 getting any mention of civil rights in the Republican platform.**

Olney: Well, we did.

The Democratic convention had already been held and they had an awful lot of difficulty with their civil rights plank because the Democratic administration had taken such a beating with their efforts

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*The question of whether or not there was a filibuster and the role of Lyndon Johnson are the subject of considerable discussion in interviews conducted by Dori Dressander with Mr. Olney and with Herbert Brownell. Transcripts of these interviews will be deposited at Notre Dame University and at The Bancroft Library. The reader is also referred to relevant portions of the Congressional Record.

**Dori Dressander, in subsequent interviews with Mr. Olney, points out that the Republicans included a strong civil rights plank in their 1952 platform.

Olney: to get one through under President Truman that they didn't want to have a plank advocating a repetition of that kind of thing. So their plank was very disappointing; it was very weak.

By that time, there were a number of important Republican political figures like Senator Everett Dirksen, for example (I remember him in particular) who had really seen the light of day as far as public sentiment was concerned. He had experienced the big shift in public opinion himself, at the polls. Dirksen had had to run for office and he was put into office by black folks. This made him a real convert to the cause of civil rights. He was very insistent that we must have a good plank in the party platform and that it ought to be a better plank and a stronger plank than the Democrats had. Senator [Prescott] Bush from Connecticut felt the same way about it. Those two were on the committee of the Republican party that was supposed to draft the plank.

I was over at the convention in San Francisco; it was the only convention that I'd ever attended. I was assigned to work with them in trying to draft a plank. We held our meetings in the St. Francis Hotel and we had a good many drafts that we thought were quite appropriate. We thought they were far better than the Democratic plank. We thought they were indications of the kind of action that could and should be taken by the administration if it won the election and took office.

But we had great difficulty in getting those things approved in the White House, great difficulty. Anderson relates in his book how, after many phone calls, which, of course, were coming into the White House pretty late--three hours later at night as compared with our time out here--we got word that the president was going to bed, and that he wasn't going to consider any more planks, and that if the Republicans didn't like his idea of what the plank ought to be, they could go and get a new candidate.

Notwithstanding that, we went ahead and put the polishing on the best reconciliation we could make of our own ideas and the positions that we had gotten from the White House, and in the morning we had a plank which was acceptable to us. It wasn't as strong as we would have liked to have seen, but it was better than the Democratic plank and it had been approved by the White House. It said, "We support the enactment of the civil rights program already presented by the president to the Second Session of the Eighty-fourth Congress." There was a latent vagueness about this. Did the program "presented by the president" mean just the commission and the division? Or did it mean all four proposals? Fortunately the vagueness was not detected and the media and the public assumed it meant support for all four proposals.

Stein: Did you participate in any other parts of the convention?

Olney: No, no. I just sat in the galleries and watched.

Stein: Do you know what role Lyndon Johnson played in the passage of the bill?

Olney: Just from off the top of my head I can't recall what part Lyndon Johnson played in steering that bill through. I do remember that we had a Democratic Congress and I do know that the passage of the bill would have been impossible if there had been adamant resistance on the part of either Lyndon Johnson or Speaker Sam Rayburn, but there was not. I think both of them felt that some such bill or bills must be passed for the sake of the country. But I think they were hesitant in being in the forefront, probably because of the positions they were in, but also with respect to their own home constituencies and the general feeling there. I think they were relieved that it was a Republican bill and were willing to support it for the sake of the country.

Stein: How about Senator Knowland? Do you know what role he played?

Olney: Yes. I do recall that on the '57 bill, after all four proposals were introduced, he put up a very, very strong, vigorous fight to get all four of those proposals enacted. As far as I know, he did everything in his power to try to get the full program enacted.

There were compromises made, as you will recall. The third proposal was not included in the statute as enacted. It was a great pity that it wasn't, in my judgment, but what we got were the other three, and then there were a lot of new provisions in the fourth one about voting. I think that that's where they have provisions for federal registrars. I believe that came in by way of amendment to the voting rights provision in the '57 bill. It had not been in the original draft bill and was a very great improvement. Well, I'm hazy about this. I don't believe that I have this accurately enough in my mind to try to relate its history.

Voting Rights

Stein: Speaking about voting, could you tell me about the testimony that you gave to Senator [Albert] Gore's committee on election disturbances?

Olney: Well, let's see now. Do you remember the date of that statement?

Stein: Yes, it's October 10, 1956, so it would have been before the election. It was a statement in response to questions by members of a Senate subcommittee on privileges and elections.*

Olney: I only recall this about it. The Senate subcommittee of which Senator Gore was the chairman was making inquiry into alleged election irregularities. They were talking, however, about irregularities that were supposed to have taken place in Michigan, I believe, and other places, and they were primarily concerned with campaign contributions, as I recall. At any rate, they were paying no attention whatever to the disenfranchisement of voters, although their subcommittee had clear jurisdiction over this.

They had subpoenaed me, or not subpoenaed me but asked me to appear to testify about these other matters, the details of which have completely gone from my mind. I made some reference to these and then raised the question as to whether the committee wasn't going to inquire into these other matters. I believe I was then asked if I would submit a statement on the subject, something like that.

Anyhow, I did submit that statement, and I must have appeared before the committee twice, at least, because my recollection is that I read that statement; I didn't just file it as an exhibit. This first statement disclosed very widespread disenfranchisement of black voters in Louisiana and some in Mississippi.

Later on, I sent a letter to, I believe, the chairman of every committee in the Congress that might have jurisdiction over the subject, and gave them the full details of what the investigations had shown about the disenfranchisement of black voters in these southern states. Disenfranchisement was very, very widespread.

Nothing was done about it, but it was one of those things which eventually registered its effect. It became known throughout the rest of the country what was going on. It had its effect in due course when the Congress considered the 1957 bill. I have no doubt at all that these federal registrars who were provided for in the 1957 act were based on the experience that was shown in these disenfranchisement matters that we presented to the Congress way back in October, '56.

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*Supplemental Statement by Assistant Attorney General Warren Olney III in Response to Questions by Members of the Senate Subcommittee on Privileges and Elections, 10/10/56. On deposit in The Bancroft Library.

Stein: How had you become aware in the first place of the disenfranchisement that had gone on in Louisiana and Mississippi?

Olney: Well, Mr. Brownell, as I have said, was not only interested in civil rights, but it was his personal conviction that the key to the matter was voting, and that if black voters could be given their constitutional rights to vote in elections, a great deal of the difficulty with discrimination would disappear. It was he, really, who was responsible for the voting proposal that we had. His interest in that was greater than it was in my pet proposal, which was to use the injunctive process.

Because of his interest in it, we had investigated through the FBI as quietly as we could just what was going on. We had heard about the White Citizens Councils. We had gotten complaints from Clarence Mitchell, Thurgood Marshall, and others in the NAACP, so we conducted an investigation to find out what the facts were. And that's why we had the information.

Unfortunately, those facts were not sufficient to indicate the violation of any federal law. There wasn't anything that we could do about them excepting to bring them to the attention of Congress.

Stein: It was a wonderful example of why legislation was needed. It was so flagrant.

Olney: It certainly was, yes. And for once we had the information when we needed it.

[a short break for tea]

Stein: You mentioned while we were having tea that Earl Long was a great help to you.

Olney: Well, Earl Long's organization had relied very heavily on Negro voters, and so he was not at all in favor of this disenfranchisement movement, and they did supply us with information about it. I don't remember how much. It wasn't openly done, as I remember, but we realized that we did have considerable political support in Louisiana itself against this disenfranchisement.

Stein: I have in my notes here that in February of '57 you wrote a letter to the one of the subcommittees in the House of Representatives chaired by Emmanuel Celler. Evidently Attorney General Jack

Stein: Gremillion of Louisiana had testified to the committee in response to your statement, trying to make it sound as though there wasn't anything wrong with voter registration in his state at all.

Olney: Yes, that is true. He gave some testimony, I believe, before Congressman Celler's judiciary committee, minimizing what was said in our statement of October, '56 about disenfranchisement in Louisiana. So I wrote the committee a letter giving them the full details, the actual facts as we then had them, which were greatly at variance with what was said by Louisiana's attorney general. I also sent a copy of that statement to him so that he could answer it if he wanted to do, but he never made any response.

Stein: Harry Kingman wrote a letter to William Knowland in August of 1957, giving him credit for helping to pass the '57 bill. He said there were also a couple of assists from Vice-President Nixon. I wondered if you remembered Nixon's role in that.

Olney: No, no, I don't. I don't remember. I don't even remember whether Nixon was presiding as president of the Senate during those debates or not.

Stein: Harry Kingman also mentioned in one of his letters to you that he hoped that you would consider the post of assistant attorney general in charge of civil rights. I wondered what came of that.

Olney: Nothing. I wasn't interested. I didn't feel very well qualified for that position, and nobody ever asked me to undertake it.

That was '57, and I was getting ready to leave the department. I had been there a long time. I have explained to you that when I went to the department I didn't expect to stay very long. Actually, I was assistant in charge of the criminal division longer than anyone else had ever been. But by 1957 I thought I'd been there long enough and I wanted to leave.

Furthermore, I became quite convinced that year that Mr. Brownell was going to leave, and I had no desire to serve under anyone else. I wanted to stay long enough so that he wouldn't have to find somebody else to take my place, and then resign himself, and then have a new attorney general who might not desire to have the successor that Mr. Brownell had put in. So I left in, I believe it was, October of '57.

Our intention was to drive our car home, but my daughter-in-law, my son's young wife, was about to have a baby. They were up at Amherst. So we thought we better go see our new grandchild before going West and drove up to Massachusetts. We had to wait around for a week or so for the baby to show up, but when it did then we took off for the West.

Olney: But we didn't want to go directly home; we wanted to go via northern Mexico. We'd gotten as far as Taos and Albuquerque when I read in the paper that Mr. Brownell was resigning as attorney general and the department was going to have a dinner party for him. You can see that my timing of my resignation was pretty well coordinated with the timing of his, although I never asked him when he was going to leave.

Stein: To jump ahead a little bit, you found yourself back in Washington sometime after that.

Olney: Yes, but that was very unexpected for me. Before leaving Washington in '57, I went around to see Chief Justice Earl Warren to bid him good-bye. When I was there talking with him, he asked me if I wouldn't consider becoming director of the Administrative Office of the Courts. I told him that I really didn't think that that was very suitable for me, that he knew perfectly well I'd had no administrative experience, unless you call the experience I'd had in the Justice Department administrative, and I knew very little about the judicial system and its problems. "Well," he said, "I know you. I've known you for many years and this is something that I think you would enjoy. And it is something that you could do perfectly well. You're fully qualified for it, and I wish you would consider it."

So Elizabeth and I had to bat that thing around all the way to Mexico, as to whether we were really going to stay in California or consider this other position. The appointment is actually made by the Supreme Court as a body, but they ordinarily take the nomination of the chief justice for the reason that it is he who has to deal with the director of the Administrative Office. The other members of the Court, after he's once in office, have very little to do with him. The director of that office has a great deal to do with all the federal courts excepting the Supreme Court--nothing to do with their budget or personnel or administrative matters.

Stein: So did you return to Washington immediately to take up that job?

Olney: Well, we got home about Thanksgiving, I believe, and went back to Washington in January. We weren't home very long.

Stein: Just long enough to celebrate the holidays.

Olney: Yes, but we had sold our house in Washington and moved everything out--put our furniture in storage, fortunately; we hadn't actually had it moved. But we had to start all over again.

Stein: Did you have to buy another house? You'd had Joe McCarthy's old house.

Olney: Well, that's the one we bought when we went back there this second time. We ended up in McCarthy's house--he was dead and gone by that time--which was very convenient, because it was only a hundred yards from the Supreme Court building.

Stein: Marvelous.

Olney: Oh, yes, I should say so. It had great conveniences for me. It wasn't nearly as pleasant for Mrs. Olney, I'm afraid, because of the part of town it's in. It was in what was regarded as the most dangerous and violent precinct in the city, and we had a lot of burglaries and robberies and things of that kind around, but we survived it.

Stein: Were you ever hit yourself?

Olney: No.

Stein: So then you were out of the Justice Department, really, by the time the civil rights division got itself into full swing.

Olney: Yes, yes, I was indeed, and I had no real contacts with them. I had all I could handle with my new work without worrying about the Justice Department. They had a new attorney general, Bill Rogers, who was my very good friend indeed. But it was being reorganized, as it naturally would be, and I just am not knowledgeable about what happened down there.

Little Rock

Stein: There were a number of other civil rights items that you had mentioned when we first talked, besides the civil rights bill and the situation in Washington, D.C. You mentioned Brown v. Board of Education.

Olney: Well, yes, I did. But I think we've covered that well enough. One thing I haven't mentioned was the Little Rock matter. That came up while I was still in the department, but, I think, after I had made public my intention to leave. I gave an account of what had taken place from the department's point of view in that address of which you have a copy.* But there was an incident in connection with that that is not mentioned there, and it was very, very disturbing to me.

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*"A Government Lawyer Looks at Little Rock," address by Warren Olney III to the Conference of Barristers of the State Bar of California, 10/3/57. On deposit in The Bancroft Library.

Olney: You may remember that the Little Rock affair involved Governor Orville Faubus calling out the National Guard and putting them around the school. Their orders were to keep out the black children on the excuse that there would be violence if they were let in.

This was simply intolerable, and there was a great deal of discussion in the department as to what to do. It was our very strong view that what should be done was not to bring in outside federal troops, but that the president ought to nationalize the National Guard, which he had the authority to do, which makes them responsive to his orders, and that he ought to use the very same Guardsmen who were out there right then, only change their orders: that the black students were to be allowed in and to keep order.

But, instead of doing that, they brought in some paratroopers and took the National Guardsmen out. We thought that that was a mistake. General Swing was a former army general and a very close friend of President Eisenhower's and he was our director of the Bureau of Immigration and Naturalization. He felt very strongly that the National Guard should be nationalized just as I have outlined. The reason that they weren't was that somebody over at the White House didn't think they would carry out orders. General Swing thought that was ridiculous; he was sure that they would carry out orders. He pointed out that these men were National Guardsmen, and in order to qualify for all the benefits that Guardsmen receive from the federal government after their years of service, they certainly weren't going to throw all that in the ashcan by failing to carry out the proper orders of the President of the United States.

Another thing that happened at that time that was disturbing was President Eisenhower's treatment of Governor Faubus. The president went up to Rhode Island, I believe. I don't recall exactly where he'd established a temporary summer White House for vacation in Rhode Island. This serious matter in Little Rock had broken out. Governor Faubus, for all legal purposes, was in the position of defying the courts. He was evading the law, he was violating the constitutional rights of a lot of his own citizens, and had misused, we felt, the National Guard for this purpose. Yet the president invited Governor Faubus to come up to Rhode Island and confer with him on this.

We thought that that was a terrible blunder, that it dignified Governor Faubus, and it did indeed. He went up there and treated with the president as though he were a foreign potentate negotiating with an equal. It gave respectibility to his position. Mr. Brownell was invited to come up there for that meeting too, but when he returned we learned from him that the president and Faubus had met in private and they left Mr. Brownell twirling his thumbs outside. They had not consulted him, not taken him in on what was going on at all.

Olney: This just outraged me, personally. I was so upset about it that I was prepared to resign right then and there, but I didn't. I was going to leave anyway, and it would have served no purpose for me to do anything, and it would have complicated Mr. Brownell's position, so I did nothing about it. But I felt the greatest indignation over the way Mr. Brownell was treated at that meeting between the president and Faubus. And I think that the president made a great mistake in not recognizing Faubus for what he was, a cheap demagogue who had no hesitancy in misusing the National Guard and misusing his authority to try to build up himself as a representative of segregation.

Stein: That sounds like an example of the president trying to play the role of great conciliator that you were talking about before.

Olney: Well, I think so, but it was misdirected. I think it was a failure to appreciate the kind of a worm that Governor Faubus was. After this meeting public statements were made that everything was going to be sweetness and light down in Arkansas, and, of course, Governor Faubus went back and it was worse than ever, as we might have anticipated. I think the president was very badly advised on that. Anyway, it was a bad decision. I don't know whose it was.

Stein: You mentioned to me a while ago that A.B. Caldwell had gone down to Arkansas.

Olney: Yes, he did. But that was initially; that was at the very beginning. And it was one of the strange things that happened. He went down to Little Rock at Governor Faubus's request. Governor Faubus got in touch with us and said that he would like to see somebody from the department because there might be trouble down there in Little Rock if the school board went ahead to try to implement their program.

So A.B. went down there to see him and talk with him at length. He came back and said that he couldn't understand why the governor had ever sent for him or anybody else, that there were no signs of trouble. No one was excited or concerned about it. The school board's program for integration was gradual indeed. It was something like eight to ten years that it would take to get full integration in the schools there, and no one was anticipating any problem. And the governor was anything but specific about where the trouble might arise. We just didn't know what to make of it.

He did ask Caldwell specifically, "If there is trouble in the school, is there going to be intervention by the Department of Justice?" Well, that's the kind of question that you can't answer unless you know what the trouble is and who's making the trouble. Obviously there can't be any intervention by the Department of

Olney: Justice unless the federal law's being violated in some way. And the governor was most uninformative as to what ways the federal laws might be violated. But that was at the beginning.

Stein: But even then Caldwell had the impression that Faubus was not to be trusted.

Olney: Well, this is true. A.B. Caldwell came from Arkansas. I believe his father was the president of the University of Arkansas at one time. I know he was on the faculty there anyway. A.B. had been born and brought up there and he knew Arkansas very well. He knew what Governor Faubus was. He wouldn't trust him out of sight, or even in sight, on anything.

Stein: You also mentioned the Autherine Lucy case and the University of Alabama.

Olney: Well, there are these cases, but those were cases before the enactment of the civil rights law, and there was very little that the federal government could do under existing statutes at that time. There were a whole lot of incidents like that, in which we were prepared to act if we had any statute under which we could act, but we didn't. And, of course, our liberals were very full of criticism of us because we didn't do anything, not appreciating the fact that there wasn't anything that we had any legal authority to do. But that's usual in situations of this kind.

Stein: So that also would have been true in the Emmett Till case?

Olney: Yes, it was. The Emmett Till case was an out-and-out murder, but there was no interstate aspect to it; there was no violation of federal law that was anywhere involved. It was thoroughly investigated by the FBI and nothing turned up that would give us any foothold to get into it.

Stein: In a case like that, could you have acted after the '57 act was passed? Could you have used any kind of injunctive proceeding, or would it have been too late by that time since the murder had already occurred?

Olney: Well, I really don't know whether we could or not, because I never really tried to enforce the 1957 civil rights act. I was out of there by the time that became law. I never had any experience with its practical application. But I doubt that that statute would have made any difference in the Emmett Till case. There just wasn't any federal aspect to it.

Stein: Well, were there any other civil rights matters that we haven't discussed that ought to be?

Olney: Not that I can recall. Certainly nothing of any importance that I presently remember.

Kidnaping Cases: The FBI and the Justice Department

Stein: Well, then let's move on to the kidnaping cases and the question of jurisdiction.

Olney: Well, I only mentioned that to you, not because it's a matter of any great importance, but you're asking me about my experiences in the Justice Department, and it's a good example of how bureaucrats work against one another and have to work against one another, you might say.

The FBI, which was, of course, under Mr. Hoover all the time that I was in the department, was an organization for which I had the greatest respect for its accomplishments, for its organization, for its discipline, and for its integrity. But it had grown large and become a big bureau and it had certain policies that it followed that seemed to have as their objective the protection of the FBI as an organization without regard for other agencies. We were equally concerned with criminal cases and with the matters that the Bureau had.

Mr. Hoover used to say repeatedly, publicly and privately, that the FBI was an investigative agency and did not ever try to evaluate cases, that it was their function to gather evidence and to report it to the appropriate agency, which in most cases was the criminal division of the Department of Justice, and to rely on them and their judgment as to whether there was a sufficient case to be prosecuted or not and what the charges should be and the like. This is true. This is indeed the function on the criminal division.

But on some things the Bureau used to go barging ahead on its own without asking for any evaluation from the criminal division and then sending us reports and wording the reports in such a fashion that if anything went wrong with what had happened, the responsibility could be laid on the criminal division and their failure to evaluate, rather than on the FBI.

Stein: Wasn't there some little catch phrase that they used at the end of their letters?

Olney: Yes. They would send us these reports saying that in the absence of a specific request from you, no further investigation of this matter will be made. That was the gist of it.

Olney: Well, you can see that if no further investigation was made and no request received and then it turned out that it was a federal matter which could and should have been investigated, why, the responsibility for not doing it would rest on the criminal division.

Well, it took me a good many years before I became enough of a bureaucrat to realize what was being done to us. I didn't think this was fair to the lawyers in the criminal division. If anything did go wrong in these cases, then the men who were charged with the duty of reading these reports and making an evaluation would be the ones who would be held responsible. I thought that as assistant in charge of the division, I ought to keep them from that kind of criticism when it was unjustified.

These reports were usually addressed to the attorney general or the deputy attorney general with a carbon copy to the criminal division. I began to respond, in appropriate cases, by giving the facts, stating that in our judgment there was an adequate legal basis for the Bureau proceeding with their investigation. They didn't like it, because it put the monkey on their backs when I did that. They used to get so put out by this that Mr. Hoover took this up with the attorney general personally.

As you can see from that file, the attorney general had a little difficulty in getting it straightened out. He finally suggested to the Bureau that they not put that snapper on the end of these reports because it was being taken by us as an indication that we should evaluate the matter. On the other hand, he also suggested to us that we shouldn't write critical or offensive memoranda to any other agency in the department.

I might say that my personal relationships with Mr. Hoover were quite different from the experiences that other assistants in charge of the criminal division seemed to have had. I have read that there were some of those assistants that Mr. Hoover wouldn't even speak to and were never received in his office or anywhere else. Mr. Hoover was very friendly to all the assistants in Mr. Brownell's administration. Most of them he would call by their first names. But although I saw more of him than any of the others, he and I never called one another by first names and we always dealt in a more or less formal fashion, the reason being that we had to deal with one another so frequently.

Now, he always received me in his office any time I asked to see him. When I first went there, he actually inquired whether I wouldn't prefer to have him come to my office. I said, "Well, Mr. Hoover, I don't think that's in order. You've been here in government far longer than I have. I'll come up and see you." I didn't

Olney: realize at that time that in Washington it makes a great difference as to who goes to see whom. I'd never been accustomed to doing business in that way. I'd always been quite prepared to go to see anybody I wanted to talk to just because I wanted to talk to him. But it seemed in Washington it has something to do with the relationship as to who goes to see whom. But, anyway, I always went to see Mr. Hoover.

Stein: What does that presumably show?

Olney: Well, it showed that he wasn't working for me; you might put it that way. But it never made any difference. I don't think it made any difference to him, excepting I think the rest of the Bureau would have thought it was very much out of line if he had come down to see me.

But at the outset we got along extremely well. He was very helpful to me in investigating the corruption in the Treasury Department that was bothering us. But there were limits as to what he would do, because he was concerned about his authority to investigate Treasury agents. This I could understand. We did have some early disagreements. I think I mentioned the one about the automobile cases, things that I couldn't understand then, and don't very well now, about why the attorneys general could have let that condition go on.

There were occasions when I didn't agree with some of the things that were in Bureau reports and I never hesitated to talk to him about them. We could talk perfectly frankly about that and had no difficulties. Some of the things that I did he liked very much. When that would happen he sometimes would send a note of commendation to the attorney general.

He had certain Christmas lists so that if you were in his good graces you got one kind of card, and if you were just an official that he had to recognize you got another and so on. It was laughable around the department, at least with my assistant John Airhart. He used to joke about it all the time because he never could tell what list I was going to be on. First I'd be on one and then on another.

The director's attitude toward me was always reflected in the attitude of his assistants towards others in the division. John claimed he could always tell whether I was in or out with the director just by going to talk with anybody in the Bureau to see what sort of reception he got.

Stein: Can you remember any particular instances that Hoover really approved of what you had done?

Olney: Yes, on this kidnaping letter. The first one that was in the file that I showed you was a letter that I wrote to Mr. Richard Hartley about the kidnaping of his daughter way back in March of 1954.

This was an awful crime. Mr. Hartley was, I believe, on the faculty at Wisconsin State College, and his daughter was acting as a babysitter. The people came home to their house and the baby was there, but Hartley's daughter was missing. There was blood around the place and one shoe, or something like that. It was evident that somebody had broken in, and whether they killed her in the house and took her body away or whether they kidnaped her, we never knew. But, anyway, she was gone. Of course, the uproar was terrific. The Bureau was trying to help the local authorities as best they could, but it was not a federal case in their judgment; there was no federal jurisdiction.

Mr. Hartley wrote to--I guess he wrote to me; the answer indicates that. I think he'd written to the White House first and they directed him to write to me. So I wrote him a letter explaining exactly what the role of the FBI was in cases like that. Mr. Hoover thought that letter was exactly right, that that was precisely the position of the Bureau and just what should have been said, and he wrote a letter to Mr. Brownell to tell him so. That was the kind of thing he would have liked me to do in all these other kidnaping cases.

But the circumstances are different in those other cases. It isn't that there was any difference in policy on our part, but here we thought the Bureau was thoroughly justified in what seemed to be a hardboiled decision of not entering, in the sense of taking charge, as against the local authorities in a disappearance. The girl was unquestionably murdered, but her body has never showed up. Chances are that she was murdered right there in the house, in which case there never would be any federal interstate aspect to it.

Well, I think Mr. Hoover got pretty exasperated with me before I left, because there was an increasing number of instances where I was trying to protect the lawyers in the criminal division against being saddled with responsibilities that were really the Bureau's on investigations and not ours on evaluation. But whether he was irritated or not, he was always very polite and reasonably friendly, although, as I say, we were not on first-name basis as he was with many of the other lawyers that were in the Department of Justice.

Stein: Now, I think you said earlier that one of the things that you felt, if I understood you correctly, was that the FBI was sort of picking and choosing which cases it would enter even when it had the jurisdiction to enter, based on whether they thought they could solve them, to keep up a batting average.

Olney: Well, that's my personal conclusion drawn from the cases they entered and those that they didn't enter. I could never see any other rationale behind it. Sometimes they would go in and sometimes they wouldn't.

The Weinberger case is an example where they held off just as long as they could on the thing. Then when they went in they had a long investigation, but they made it. They made it. And, of course, when they did, they were very, very proud of themselves and patted themselves on the back regularly, especially in public.

Stein: Now, as a result of the Weinberger kidnap, I think you said before, the legislation was changed so that the presumption of interstate action was reduced to twenty-four hours.

Olney: Yes. But even there they wouldn't always go in. There was one case that I mentioned, very similar to the Weinberger case, which they didn't enter at all. I don't remember now which one that was.

Stein: It was another baby case. Is that the case where the baby was taken out of the carriage at the supermarket?

Olney: Yes, that one. I think I have it here [referring to files]. It was the case of Stephen Damman. The little boy was found to be missing by his mother after she had finished her shopping in the supermarket, and he'd disappeared and hadn't been seen since. Now, he was obviously taken by somebody. It was very similar to the Weinberger case, but the Bureau never entered that at all. The case has never been solved.

But it's not on the list of the Bureau's unsolved kidnapings because they never put it on their books as a kidnaping case. When you get that concerned with keeping records, why, it's not healthy, not healthy at all. I don't think that that's an adequate reason for failing to do everything possible on that Damman case.

I'm rather reluctant to say this. But I think, if you take a look at these cases, that another aspect that enters into them is that if the victims appear to be very well-to-do, the Bureau seems to get into the case a lot faster than when they're not. I don't know if that's a coincidence or not, but the Damman family was certainly not well-to-do. But take that Greenlease kidnaping; the Bureau was into that instantly. They didn't wait for anything on that. They succeeded in solving it, and the man and the woman that did the kidnaping and killed the little boy were convicted and executed.

Olney: But we had very, very serious difficulty in establishing any federal jurisdiction in that case. Initially there was no federal jurisdiction because they had not gone across any state line; there was no interstate aspect to it. My recollection was that these two had gone from Kansas City, Missouri to Kansas City, Kansas after the baby had been murdered and while they were still trying to extort money. They'd sent some extortion message from Kansas into Missouri and this was the only thing that ever got that case into the federal court, which was really well after the Bureau was in that case up to its ears. The Greenlease family was very well-to-do.

Stein: What about the De Galindez case?

Olney: Well, the De Galindez case was a very complicated affair. De Galindez was a citizen of the Dominican Republic, a well-educated man, politically opposed to Trujillo. He was a refugee from the dictatorship, on the faculty at NYU [New York University]. He was teaching there to maintain himself, and he was also writing a book about Trujillo and the numerous crimes he'd committed. The book was well along towards completion, and it was quite well known by Trujillo agents what he was doing.

He disappeared one night after he had left his lecture class and apparently was on his way home. It seemed evident that he'd been snatched by somebody, and it seemed to be pretty plain who was the one that had an interest in seeing him disappear.

The New York Police Department got into the investigation right away, and then the FBI was notified about it but did not enter the case as a federal investigation. De Galindez's friends and others immediately concluded what must have happened to him and made vociferous demands that the federal government make a thorough investigation of his disappearance and whatnot, and wrote many letters and petitions and so forth to the White House and some to the Department of Justice insisting that the FBI ought to investigate the thing thoroughly.

Those letters were sent to me for reply. I did reply that the reason that the Bureau wasn't in it was that there were no federal aspects to the case, that the matter was being investigated by the New York police, and the Bureau was following the investigation closely and was prepared to enter it just as soon as there was sufficient evidence to justify a federal investigation. That was the position of the Bureau and I think it is to this day.

I don't believe they ever did book that case as a federal kidnaping, although the facts eventually showed without a doubt that De Galindez was snatched by agents of a foreign power on the

Olney: streets of an American city and taken out of the country to be murdered. De Galindez was apparently injected with some kind of medicine that made him unconscious. They wrapped him all up like a sick man. They had rented a small plane and pilot out at a small airfield near Linden, New Jersey, and they stuffed De Galindez on a stretcher into an ambulance and took him out there and loaded him into this plane as a sick man to be taken to a hospital somewhere.

The pilot of that plane was a man named Murphy. Murphy flew the plane to the Dominican Republic. One of the mysteries of the case is how he did that without his plane ever being spotted, because we had a radar screen which was supposed to be effective twenty-four hours a day, yet there's no record of the radar ever having picked him up on that flight.

Well, he went to the Dominican Republic and De Galindez was taken off and then eventually he was murdered. I don't know how much is known about it now, probably a good deal more since Trujillo was himself assassinated. But Murphy came back, flew back in his plane, to New Jersey and once again went through the radar screen without being spotted.

Meanwhile, the FBI was saying in the papers all the time that they were not investigating the kidnaping of De Galindez. Now, Murphy was supposed to be very well paid. He only got about half of what was due him. He also had his personal belongings which were in the Dominican Republic that he wanted to get. He apparently had no idea of what he was involved in. Evidently he thought this man was indeed sick, because after a week or so he finally decided to go back to the Dominican Republic and collect the rest of his money and his personal belongings. He very foolishly did that, with the result that once there, they never let him out. He apparently was murdered, too.

It took a long time for all this to come out, but it did come out. Life magazine published several lengthy articles about it in which they had most of the details, I think, correctly. Now, from the point of view of the United States and investigative jurisdiction, it involved violations of our laws. The laws were violated all over the place.

In the first place it was a federal kidnaping, but more important than that, these were activities of unregistered foreign agents, right here, snatching people off our streets. And if there was anything that was in FBI jurisdiction, that was. I can't recall anything that the Russians ever did that was as aggravated a violation of our internal security laws as this thing was. Yet no real thorough investigation by any federal agency was ever made of this matter.

Stein: Do you have any of your own theories about why the FBI didn't enter, aside from their public pronouncements?

Olney: Well, no, I have not. I have no idea why they didn't excepting that it was one of those cases where they didn't want to enter it as a kidnaping case because they weren't sure they could solve it. By the time that the truth began coming out and they realized what was involved, it was so awfully late. This was a couple of years later, and Murphy was dead.

My own feeling is that if the FBI had entered the case when they should have, Murphy, when he was back in the United States, would have gone to the Bureau and told them what happened before he ever returned to the Dominican Republic. I don't think that he would have ever gone back there and probably never would have been killed. I think he would have told his story to the Bureau, and they would have been well on the way to a solution in the sense of knowing what the facts were, and it would have been a real international incident at the time.

But I don't know why they dragged their feet in this fashion. It's the kind of thing that can happen in a big bureau. I don't know whether anyone made a decision about it or whether it was just reluctance all the way along on everybody's part.

Stein: I wondered if there was anything political about it, the fact that it occurred in the Dominican Republic.

Olney: I don't believe so. Oh, no. No, I'm sure that no influence of Trujillo's had anything to do with this at all. No. But with a very large bureau and the policies that they had, the director in charge, who had almost uncontrolled authority over the agents, one can see that the agents at a lower level would be reluctant to docket this thing as an FBI case and start in the formal investigation on the thing, not knowing where it would lead or whether they could ever make anything out of it. The disposition might very well be: well, let somebody else do it. Let them do it up topside, and it was just never done.

But I think the Bureau dropped the ball on that one. They should have gone into the case at the very outset, and they could have. The criminal division told them in writing that they had the legal authority to do so.

Stein: I gather there's someone now who's trying to put together the story of that case.

Olney: Well, there is. Alan Fitzgibbon is writing a book, apparently about the De Galindez and Murphy cases. He's written to ask me for information about them. I've given him as much information as I could, but it's pretty little.

Shipping Cases

Stein: Let's move on to the story of the oil tankers and Aristotle Onassis.

Olney: Well, these shipping cases came up in 1954 and '55. The Merchant Ship Sales Act of 1948 is concerned with prohibiting the acquisition and control of American flag vessels by noncitizens. Over quite a few years there were many vessels that had been seized for forfeiture for violation of these statutes. Now, those were civil proceedings. During the fiscal year 1955 proceedings were brought against seven more vessels owned by corporations that were claimed to be controlled by aliens, bringing a total of vessels seized for forfeiture to forty-four. These were all in the civil division.

[refers to Annual Report of the Attorney General, fiscal 1955] In addition to the forty-four forfeiture actions, on November 22, 1954 a related civil suit for $20 million was instituted in the southern district of New York against A.S. Onassis and affiliated individuals and corporations, based on the allegedly illegal acquisition from the Maritime Administration of sixteen vessels through fraudulent misrepresentation of citizenship. The circumstances of those alleged misrepresentations of citizenship were also criminal offenses, so there were indictments that were brought in the District of Columbia and in the southern district of New York for the filing of false statements with the Maritime Administration and conspiracy to file such false statements against these people, the owners of the ships, who were also involved in the civil proceedings, including A.S. Onassis.

Now, in the grand jury proceedings in the district court, many of the persons concerned with those transactions were subpoenaed and testified as witnesses about what had taken place, the owners of the ships and the people who had signed the affadavits and so forth. Well, the false statement cases involved violations of 18 USC 1001. That's the general false statement statute, which has a felony penalty attached to it, so it's a reasonably serious offense. So we had, in the department, these criminal charges against Onassis and others, and we also had this seizure of the actual ships, plus the sixteen ships that he had, forty-four all told, and a $20 million suit for penalties against Onassis and his associates, also, in the civil division.

Olney: Warren Burger was the assistant in charge of the civil division. We had a consultation about this situation. Ordinarily the criminal aspects of a transaction are regarded as far more serious than the civil. But when you're talking about forfeiture of forty-four ships and a $20 million penalty suit, that's a good deal more important, probably, and a good deal more drastic as far as the defenses are concerned, than prosecution and conviction under the false statement statute.

One can only anticipate what a judge would do if there were a conviction under those circumstances, under the false statement statute. A jail sentence, in my judgment, would be very unlikely, especially against foreigners, who would justifiably take the position that they had no intention of violating the American laws; they were merely relying on the advice they got from counsel. They had been informed that what they were doing was legal enough, but apparently they had gotten bad advice. Those would be circumstances of mitigation that any judge would have to consider. A jail sentence, in my judgment, would be very unlikely under those circumstances.

Well, these cases had gotten a lot of publicity. The newspaper columnists kept pounding away at me because we weren't bringing these criminal suits to trial. They were just kind of coasting along while the civil division was working on the civil aspects of this.

There were all sorts of accusations made. One of them involved Mr. Brownell. It was said that one of these groups--it wasn't Onassis's group, but it may have been Niarchos's; I can't recall. But, anyway, one of them was supposed to have consulted with the New York law firm of Lord, Day and Lord about these transactions when they were first undertaken, and had been advised that they were not in violation of the law.

That was the firm in which Mr. Brownell had been a partner. Some of the allegations in the press were that Mr. Brownell had handled the whole thing. I don't know anything about those details. I doubt that he had handled any of them at all. But when these things came up, what he said to me was, "I know they are making these claims, that Lord, Day and Lord and even I had something to do with it, advising these people. This is not to make any difference to what you do. You just go right ahead with everything and give it the works, just as you would any other case. And don't be concerned that it's going to be a matter of any embarrassment to me, or to Lord, Day and Lord. I don't know whether they got any advice from us, or what the advice was, but we'll take the consequences, whatever it may have been. But the thing for you to do is just treat it like any other case. Go ahead with it." So we did.

Olney: But in working the thing out with Warren Burger, it was plain enough that it was the civil actions that were important, and it took time to work this out. I might say that the civil litigation was settled by a compromise.

Well, during the pendency of this litigation with Onassis, his lawyers, of course, were in and out of the civil division and the criminal division as well. When they didn't get very far, Onassis tried to come in and see first Warren Burger and then me, personally. He said he wanted to see us, didn't want to be bothered with lawyers around. He just wanted to talk to us man to man across the desk. We both knew what he had in mind. We wouldn't let him in.

Stein: Well, that would be a highly questionable practice, to have people you were litigating against trotting in and out of your office.

Olney: Well, I think that in countries where he'd been accustomed to doing business, that was the way they put in the fix. We could see this one coming and we wouldn't let him in the office. He got very offended. He thought that we took this attitude because he was a Greek, or because we had some other reason for disliking him. But we never allowed him in the place.

We eventually did go ahead with the criminal case, and then we had the unique experience of having our indictments dismissed by the court on the ground that the defendants had acquired immunity by testifying before the grand jury. These proceedings were under the Merchant Ship Sales Act of 1948, and that had a special provision in the statute for criminal prosecution. There was a little sneaker in there that witnesses who testified before the grand jury on these transactions thereby acquired immunity from prosecution. So, we didn't get very far with our criminal cases in the end anyhow.

But in the meantime, the civil actions were settled for astronomical amounts of cash to the government. It made it perfectly plain that justice was done in spite of the fact that they'd gotten immunity in the criminal cases without the government's being aware of it.

Stein: It sounds like the result of the Tony Cornero case, although in this case you got much more money.

Olney: Yes. Now, is there something else you were going to ask me?

Stein: I remember that in Drew Pearson's Diaries he mentions this case. He mentions the rumor, although he makes it sound as though it was true, that Onassis had retained Brownell as a legal advisor.

Olney: Well, I can't remember if it was Drew Pearson or one of the other columnists who used to print that. I guess it was Pearson. Well, anyway, the case went through regular channels and was handled in a regular manner.

Stein: Was that little snapper in the Merchant Marine Sales Act in there to encourage people to testify before a grand jury? It's an odd sort of provision.

Olney: There are quite a number of federal statutes that have such a provision in them. I think that in this case it is in there to make it possible for the government to call people before the grand juries and get the facts. The reason behind it is that in that way they can get the evidence that they need for the forfeiture of the ships and the penalty suits, which, obviously, under that statute are far more important in getting observance of the act than the criminal penalties.

The Prosecution of Artie Samish

Stein: The other case I would like to ask about is Artie Samish.

Olney: Yes. My connection with the federal income tax case against Artie Samish was simply this:

By way of background, when I was counsel for the crime commission here, we had had occasion to investigate Artie Samish's activities very thoroughly. We had a great deal of information about various associates of his and people to whom he had given large sums. We had a lot of information about his finances, and eventually the Internal Revenue Service came around to see us. Because they were making an investigation of Samish for income tax evasion, we opened our records to them. Well, in due course the crime commission work was closed out and I went to Washington and became the assistant attorney general in charge of the criminal division. Brian Holland, who came from Boston, was in charge of the tax division, and we became very good friends.

I think I've mentioned the fact that Herbert Brownell used to have his assistants in for lunch very frequently. One time Brian Holland came in at lunch and told me that he had just been reading a file sent over by the Treasury Department for prosecution. They were up against the statute of limitations; it was due to run out in about a week or ten days--it was a very short time. He said

Olney: the case came from California and involved a semi-racketeer out there and he wondered if I'd ever heard of him. He said his name was Artie Samish. I told him, of course, that I had indeed heard of him and knew a lot about him.

Well, he began to give me a rundown of what he had seen in the file, and everything that he told me was familiar. His problem was to try to evaluate the case as to whether it ought to be presented to a grand jury at all, whether it was a tryable case or not, and then to get it presented within the time limit by somebody who could examine the witnesses and knew enough about the case to do it. I suggested that I go up with him after lunch and take a look at the file, which I did. I found that virtually all the transactions were ones where the Internal Revenue Service had got the basic information from us. Most of the witnesses I had talked to during the crime commission investigations, and I knew what their stories were. The Bureau had, of course, a great deal more information than we had had, but the basic key witnesses I'd talked to.

Well, we had a brand new U.S. Attorney in San Francisco, Lloyd Burke, and we knew that he had no particular background on Samish and would have trouble, as anyone would, to try to get this thing ready. We didn't think that he could do it within the time. The tax division concluded that it was clearly a tryable case and ought to be presented and tried. So with the attorney general's permission, I agreed to come out to San Francisco and present the case to the grand jury myself with Lloyd Burke helping in order to beat that statute of limitations.

I did that. The witnesses were the same people, pretty much, that we had interviewed--or some of them we had interviewed; others had been interviewed by a crime commission investigator. We got the indictment in time to beat the statute of limitations. I went back to Washington, and Lloyd Burke went ahead and prepared the case. It was tried by the U.S. Attorney in the office in the regular fashion. I had nothing more to do with the trial of the case or anything else other than that.

Well, I know that Artie Samish in his book* thinks that this was all prearranged and was kind of a conspiracy to get him in some way. And, I must say, I can hardly blame him for it, because there's so much coincidence involved. I think the coincidence would be a little

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*Arthur H. Samish and Bob Thomas, The Secret Boss of California (New York, 1971).

Olney: hard for him to accept. And yet that is the fact: it was pure coincidence that I'd had this background and that the matter happened to be called to my attention by Brian Holland at this time.

Stein: I can see him thinking that every time he turned around, there you were, holding a club over his head. [laughter]

Life in Washington, D.C.

Stein: Well, you also, I think, had some stories about what it was like living in Washington, like your first visit to the White House.

Olney: [laughter] Oh, well. We were as green as could be. I might say that my father and mother had been to the White House during the Hoover administration--in fact, they were overnight guests there with the Hoovers--and my mother had quite a little experience with social protocol around the White House during Hoover's time. So she gave us some good advice about what we should do, and one of the things that she told my wife was that it was customary for the wife of a presidential appointee to call at the White House and leave her card.

Well, the Hollands had had some experience in Washington, too. Years before they had been there; I guess that was during the Coolidge or Hoover administration, and Trudy Holland recalled that this experience with calling cards was customary too. So the two ladies, Mrs. Holland and my wife, Mrs. Olney, both together drove up to the White House and left their cards in this old way. It wasn't till a long time later that we discovered that this hadn't been done for years and years and years. [laughter] Well, we were doing our best, anyway.

Stein: Your advice was just a little outdated.

Olney: Yes. Eventually we were invited to the judiciary dinner at the White House. This was supposed to be a revived tradition. I don't think they had done it during World War II, and I don't believe that President Truman did it during the Korean War either. But it was revived during the Eisenhower administration.

We received invitations, but we supposed we had to drive our own car, or if we drove our own car, we thought we'd have to park it on the street somewhere. We just couldn't picture ourselves, in formal clothes, trying to find a parking place

Olney: against the curb and walking into the White House. So I borrowed one of the department cars and got one of the drivers to take on the job, for which I paid him, of course, of driving us as a chauffeur.

So we arrived in a chauffeured car at the proper entrance and went in shaking in our boots. No sooner had we got in than we were greeted with an escort marine officer detailed for the purpose. From then on we had not a single uneasy moment.

This protocol is easy to ridicule and has its amusing aspects. But it is a godsend to anybody on an occasion like this, because you quickly find out that you're not going to be caught short or taken by surprise by anything. Here's a man who tells you very politely and discreetly exactly what to do and what's to be expected and the rest. It makes you very comfortable in no time.

Well, we had the usual reception. The president and Mamie were there to receive us all and we shook hands all round and went in for dinner and sat down to a big U-shaped table. There were a great many people there. There were some navy people besides the judges.

I should tell you one thing about the judges. There were enough people there so that they couldn't all go in the same door; I mean enter the White House by the same entrance. There are four different entrances to that place, and each one has a very adequate parking facility. Each is an equally nice place to enter the building. In sending out the invitations, they had included instructions as to which door the invitee was to go in.

Well, the Supreme Court and the court of appeals were to go in one door. Then it turned out that the district judges were to go in a different door. When the district judges found this out they were very upset and their feelings were outraged, because they felt they were being asked to go into an undignified door, as against the court of appeals judges, and the result was that they agreed to boycott the affair. And they did. None of the district judges showed up for no other reason than they thought they were invited to enter through the wrong door.

That's a typical judicial reaction. I found that out when I became director of the Administrative Office of the Courts. I wasn't so surprised then when they acted this way. Actually, this was the first experience I'd had with this sort of thing. So they filled it up with a few navy people.

Anyhow, when we were at dinner, I sat next to Mrs. Rankin--went in with her--Lee Rankin's wife on one side and then the wife of the chief judge of the District of Columbia court of appeals on the

Olney: other. We all noticed that the knives and forks and spoons and all were gold. They appeared to be solid gold and they were. We learned that they had been purchased in Paris by James Monroe when he was ambassador there. He had brought them back to this country and had given them to the White House, but had never used them because he was afraid that it smacked too much of royalty to use gold utensils. They told us that they had never been used before. Now, I don't know how accurate that is, because during the Kennedy administration they used them and they told the same story. [laughter] So I really don't know about that.

Stein: Well, it's a good conversation piece anyway.

Olney: Well, then I admired the china very much. I thought the plates were most handsome. I wondered what kind of china they were and where they had come from. And so, when nobody was looking, I thought, (except my dinner partner) I managed to flip one of them over and looked at the back. Here it said on the back, The White House, and the thing that came into my mind was that that must be the store that they came from. And I thought the only White House I'd ever heard of was the one in San Francisco that Raphael Weil owns, and so I said to my dinner partner, "I think it's amazing that this china would have come all the way from San Francisco." She said, "What?" I said, "I think that's the name of the store." [laughter] Well, I pretty near broke her to pieces with my provincialism. But, anyway, that's what I thought of it.

When the time came to leave, we all went to the cloak rooms where our wraps were, and our drivers, those who had them, were notified to come and get us, and the cars were driving up and someone was announcing whose car was waiting so they could get in. Elizabeth and I were getting our coats when they announced that General Olney's car was there.

I didn't know that there was a General Olney around Washington and I was very interested to see him, so we looked all over the place. Then the fellow announced again, "General Olney's car is waiting." I looked out and I could see it was my car. So we went out and got into the car, realizing that they had been calling us. But that was the first time that I had been addressed as "General." I hadn't realized that that was a part of at least old-time protocol in Washington. An assistant is addressed by the title of his superior, and all we assistants were entitled to be called "General."

The only other time that I can remember that happening was [with] this man Caldwell that I think I spoke to you about, who originally went into the department under President Cleveland. When he came in to see me, he addressed me as "General." I found out that years

Olney: before that was the title that was in use. I might say that Brian Holland and I have always called one another "General" ever since [laughter], because nobody else will anymore.

Stein: Could you tell that story about Caldwell again? That was another one that we didn't get on tape.

Olney: Well, when I arrived at my office for the first time, I found hanging over the fireplace--this was a grand office, indeed, with a fireplace that worked--a portrait of Richard Olney, who had been attorney general under Cleveland, and he later was Cleveland's secretary of state, I think, in the second Cleveland administration. Apparently somebody had him hung there thinking he was a relative of mine and this was a compliment to me. I might say Mr. Brownell found one of his uncles hanging in his office that he had never heard of but found that there was a family relationship that someone had dug out. [laughter]

Stein: There must have been someone who had a full-time job of decorating the offices with people's relatives.

Olney: Well, I knew that this was supposed to be a thoughtful gesture, so I left him there for a considerable time. I didn't think I ought to take him down right away.

He was still hanging there and it was still early in my experience when my secretary told me that Mr. Caldwell, a lawyer in the office, would like very much to come in and see me to simply pay his respects.

I found then that we had two Caldwells in the division, A.B., who was the chief of the section on civil rights, and this other Caldwell. Marty Bailey, my secretary, said that he had been in the department a very long time. In fact, he had been in the criminal division longer than anyone else. And while he had long since reached retirement age, he still had an office and a desk and he did a little work from time to time. He was a bachelor; that was all he had to do. So he'd been there and he wanted to come in and see me, and, of course, I made arrangements for him to come in.

Well, he arrived in his usual garb, which was the old-fashioned dress. He had striped trousers and a Prince Albert coat and a bat-wing collar and a tie, just the kind of getup that you would see in the 1890s, I would suppose. [laughter] He greeted me in a most polite way. He was manners itself. He said that he had come in to see me because I was the chief of the division, but also because he was very interested in seeing another Olney in the Department of Justice. He had served under one before.

Olney: I asked him, "Well, who was that?" He said, "Well, I served under Richard Olney, whose picture is up there on the wall." My mouth dropped open and I said, "Mr. Caldwell, Richard Olney was Cleveland's attorney general. Did you serve under him?" He said, "Yes, indeed, I did. I was appointed in the department by Richard Olney and I've been here ever since. My first job was carrying messages."

I said, "It must have been very different around here then." He said, "Yes, it was. We were all in what's now the Executive Office Building, the old building next to the White House. That included the departments of war, navy, state, and the attorney general, all in the one building. The attorney general had an office at one end of a corridor, and the lawyers had offices along the corridor."

I asked him about his duties and he said, "Carrying messages, but one of my duties was to answer the telephone. Mr. Olney didn't believe in the telephone. He thought it was an abomination and he wouldn't have one in the place, certainly not one in his office. But the president thought that the cabinet members, at least, should have telephones so he could talk to them without having to send for them every time he wanted to speak to them. So one had been installed for the attorney general, but he had insisted that it be at the opposite end of the corridor, so it wasn't anywhere around him. My job was to answer that telephone. Sometimes it would be the president wanting to speak to the attorney general, so I would have to walk the length of the corridor and inform Mr. Olney that the president wanted to speak to him, and he had to walk the full length of the corridor and have his conversation with President Cleveland."

Stein: With all that corridor walking he might just as well have gone over to the White House.

Olney: I should say. Well, this man was, I'm sure, a gold mine of information and it's a great shame that he wasn't taped for his recollections. I'm sure that he would have been delightful.

Stein: He'd sat there and watched the changes in the Justice Department. That's really incredible. He stayed on at the department?

Olney: Oh, yes. He continued on there until he died. He died while I was still assistant; I don't remember just when. But an old man like that would have died a lot faster if they'd thrown him out of the department. We had room enough for him.

Stein: Whatever happened to Richard Olney's portrait? Did you leave it there for the duration?

Olney: Oh, no. I really didn't care for it as a work of art, and I'm not too fond of the subject. He was a pretty rough old fellow. So, in due course, I got a picture of my own. It's that Keith that's in the living room. I replaced the portrait with this landscape. Richard was returned to the gallery.

The Department of Justice has a portrait of every attorney general, I think, without exception. It's possible there might be one that they don't have, but I believe they have them all from the beginning. They hang most of them in the corridor on the seventh floor where the attorney general's office is, and mostly in chronological order. It's really quite interesting to go along there and look at them. Then they bring them down to date. The last one that was hanging there when we arrived was Attorney General [Francis] Biddle's, and that had been painted by his brother. It was the worst looking thing, just perfectly awful. [laughter]

Then there were a number of others that were in the attorney general's office itself. There were three of them there. The main room of the attorney general's office has got beautiful paneling, just gorgeous paneling. There were three former attorneys general who had their portraits hanging on those panels. Attorney General McGranery was one of them--I guess they were older than that--I guess Biddle must have had one there. They'd been hanging there long enough so that the paneling had gotten discolored.

Mr. Brownell didn't want them there, but he knew that if he took them down it would be in every newspaper in the country and it would be claimed that it was showing ill will and not respect for the dead, exactly, but a lack of respect for his predecessors. So he endured them for quite a period until they found that the panels were not only discolored but in some danger of cracking. So then they had a very valid reason for removing them and refinishing the panels and they did not put any more portraits up there at all.

Stein: How did your wife get on in Washington?

Olney: Very well. This was in large part due to Adele Rogers, wife of the deputy attorney general. Adele took all the ladies in tow and she made sure that they all got acquainted and they all did. And they liked one another. The ladies used to do many things together. It made a very pleasant experience for them all.

Our first house was out in the District off MacArthur Boulevard and nearly out to the District boundaries. It was a small house with a garden around it. Elizabeth has always enjoyed gardening very much. The house had plenty of space because we expected our son would come back for his last year in high school. He finished

Olney: up his three years at Berkeley High and did come back. We thought that he would want to bounce his basketball and have his dog and things like that that he'd been accustomed to doing. So we felt we needed that kind of a house. Besides, that's the only sort of house we'd ever lived in.

Well, he did come, but he didn't bring the dog. And he had long since given up bouncing his basketball around, and we didn't really need that kind of a place. It was pretty far out. I had to drive in to work every day and that took about twenty minutes of traffic driving. And traffic back in Washington is as bad as it is anywhere, I guess. But it was a pleasant neighborhood, and Elizabeth developed friends out there in the neighborhood who were pleasant for her. In that respect it was much more agreeable out there for her than it was down there on Third Street, when we moved back later and lived downtown so close to the capitol.

Stein: Is there anything more you want to add about living in Washington?

Olney: No, I don't think so, excepting to say that we found it more agreeable than we had expected. Both of us had visited Washington in summer heat and in winter cold, staying in hotels, and we thought it was really a ghastly place. But we discovered when we had our own place to live that, in fact, the climate was very, very good a great deal of the time.

The spring and fall in Washington are just lovely. Beautiful periods. It's very different from how it is in the West, but it certainly has its charm and beauty. The winters and the summers when you're living there all the time aren't too bad. The snow doesn't last forever, and when the snow's fresh, when it's white, it can be very beautiful too. It's just the slushy melting that is objectionable. The summer heat can be pretty bad. But now they have air conditioning in the buildings.

Our first house was not, and the second one, the one the McCarthys had, was entirely electric. It had a heat pump in it that was supposed to heat it in winter and cool it in summer. This was a General Electric heat pump and it was the first one that had been installed in Washington as sort of an experiment. Unfortunately, we didn't investigate that thing carefully enough before we bought the house, because the miserable brute never did work.

It was a great big monster of a machine, way down in the basement. When we would turn it on it would vibrate with such strength that Elizabeth, sitting in the dining room right over the thing, would vibrate just like one of these massage chairs. [laughter] It would just make the whole room shake, but particularly her chair.

Olney: That was bad enough, but the thing would neither cool nor heat. We did go through one summer in that row house without any air conditioning at all, and it was brutal. My poor daughter-in-law was there, and she used to bring a blanket down and sleep on the floor in the living room.

Well, we eventually had to replace it. We found that we could not replace it with a gas furnace, because there was no gas line in that house. And we couldn't replace it with an oil furnace, because there was no place for oil storage. So we had to replace it with another heat pump. But by that time they had really got those things down to a pretty good deal. This one was suspended from the ceiling on springs and it did not vibrate, didn't make a noise, and it worked.

Stein: Well, that's saying something for it.

Olney: Yes. But to get the old one out was quite a job. They had to cut it up in pieces. It seems that they had installed it before they laid the floors in the house, so that it was impossible to get it out of the basement in one piece.

We also went through a winter without any adequate heat, and our water pipes froze in the kitchen. Elizabeth had to buy an electric fan to put on the water pipes under the sink to make the sink work, but fortunately they didn't break.

At that house we used to have the judges over rather regularly. The Judicial Conference of the United States held semi-annual meetings, and this meant all the chief judges of the circuit courts of appeal, plus a district judge for each of the circuits who was elected by the others, would meet in the Supreme Court building, presided over by the chief justice, twice a year.

They were always interested in meeting the justices of the Supreme Court, and likewise the justices of the Supreme Court were interested in meeting with the members of the Conference. Our house was so close that we decided that after the Conference we would invite them over to have a cocktail, and then invite the Supreme Court justices over, too.

We did that for quite a few years. We didn't invite anybody excepting the members of the Conference and the Supreme Court. We did invite attorneys general when they were new, and I guess we invited deputies once or twice because they used to come to the Conference fairly often. Well, these were pleasant parties, and we had a good time with the judges, and they liked it because there were no newspaper reporters, there were no outsiders, or anything of that kind. But we had some mighty amusing experiences with them.

Olney: One time when they came the sewer pipe got stopped up. We had to phone for the Roto Rooter people and they came up with all their equipment and proceeded to clean out this sewer. Well, this was the finest entertainment I think that the judges had had in years. They were all out there watching this, giving advice [laughter] on how this was to be done.

We had another amusing experience with Judge Ryan. He was a member of the Conference; he was on the district court in New York. He came there with Mrs. Ryan one night for this party, and he had a brand new Borsolino hat that he'd bought in Rome. It was a lovely soft hat, too, a very expensive one. Nobody there but judges. But when he came to go, the Borsolino wasn't there. Some old rag of a hat was there in its place.

Well, we thought, of course, that somebody had taken it by accident and it would show up in due course. But, you know, we never did hear about it at all. That hat just absolutely disappeared. At first it wasn't a matter of a joke, as far as Judge Ryan was concerned, because he really wanted that hat and he couldn't replace it very well. We never knew what happened to it. But one of the judges got an awfully good hat. Well, I want to tell you that I was very careful never to get a Borsolino.

XIV DIRECTOR, ADMINISTRATIVE OFFICE OF THE COURTS

[Interview 15: September 12, 1977]

Staff

Stein: Let's start at the beginning with your assuming the office of director of the Administrative Office of the Courts. I think that we already have the story on tape of the chief justice persuading you to stay on.

Olney: Well, I really don't recall. There wasn't much story about it. I had not discussed the administrative problems in the courts with the chief justice when I was in the Department of Justice and he didn't mention them to me, particularly, until he knew that I was resigning from the Department of Justice and had sold my house and was ready to go back to California. Then when I went to tell him good-bye he asked me if I wouldn't give consideration to becoming the director of the office. This was a big surprise to me. I told him I felt that I was not an administrator. I had had, as he knew, no real administrative experience unless you wanted to count that as assistant attorney general, which is more administrative than it is legal, as a matter of fact.

But he told me that it wasn't just a housekeeping operation; that the Judicial Conference and the Administrative Office together were very concerned with improving the machinery for the administration of justice and that it was that aspect of the work that he was sure would interest me and where he thought I could contribute something. So I told him I'd think it over, which we did, Elizabeth and I, for some months. Then I finally decided that I would take it.

When I went back there and returned to Washington to take up my work, he was very, very helpful and hospitable to me. Elizabeth had to stay behind in California and get our house ready to leave.

Olney: Earl met me at the plane and took me to his apartment and I lived in his apartment there with him for some weeks. Then when Elizabeth came we didn't have any place to stay, so we moved in with the [Warren] Burgers. They had a stable on their property with an apartment up above it and we stayed in that and life was fine. [laughter] It's curious that I would have stayed with the chief justice and also with his successor.

The staff that I found there in the Administrative Office was, by and large, excellent. The acting director was what's-his-name [pauses to recollect name]--William something. [looks up name in annual report of Administrative Office of the Courts] William Ellis.

Stein: So William Ellis was the acting director?

Olney: Yes. He had been in the General Accounting Office and had been asked to be acting director by the chief justice until he could get a permanent appointment. The division of procedural studies and statistics was headed by Will Shafroth, who had been in the Administrative Office since its founding in 1939, a very able man, indeed, who later became deputy director.

Each of the divisions of the office--there were bankruptcy and probation and statistics--was headed by an experienced and capable man and I was well satisfied with the staff.

Stein: Business administration was one of the other divisions, I believe.

Olney: Yes. Wilson F. Collier headed that. They did the budget work. But there were changes made. Collier, for example, had been there since '39 and had hit retirement age, and in the course of time I replaced them. Will Shafroth became deputy director. Business administration--Collier left and went to Texas, and John Airhart, who had been my administrative man in the Department of Justice, came over and headed that work. Then there were other changes, too, as retirements came along. But they were filled by promotions from within.

Stein: Was Ronald Beattie brought in then to be staff in the statistical division?

Olney: Ronald Beattie came to be chief of the division of procedural studies and statistics at the time Will Shafroth became deputy director. Beattie's background was very unusual. In fact, at that time he came there, he, together with Thorston Seline, was regarded as a leading authority in the country on methods of judicial statistics, court statistics. He had worked originally

Olney: with the Census Bureau, and then when the Administrative Office was created they borrowed some people from the Census Bureau to help them set up their statistical system, and Ronald was one. He then became a member of the Administrative Office staff.

But after some years there he returned to California and became chief of the Bureau of Criminal Statistics for the State of California where he made a national reputation. He ended up with what was undoubtedly the best set of criminal statistics for any state in the union.

He returned to the Administrative Office because I asked him to take this on. He knew what it was; he knew what the challenge was. We discussed what the possibilities might be, so he was willing to do it.

A more able and more dedicated man I never had work for me. It's always been a source of very great regret to me that I was never able to get him the assistance that he needed and had to have to make his work truly effective. The personnel for his division was so skimpy that they had to all be engaged in the mechanical and housekeeping part of handling the records and getting them on tape and subject to printing, and they were quite unable to put in the many hours that you have to put in in studying statistics to develop their meaning. Although the office had all the information, all the statistical information, there was nobody who was doing the brain work on it that is essential if you're going to use it for any kind of research purposes.

Beattie was very patient with me. He understood fully the reasons why we were not getting the money, but I never succeeded in taking full advantage of his capabilities, and in the end he felt that he had done as much as he could there in the Administrative Office under the circumstances, so he went back once more to California and ended his career there.

Stein: I don't know if any of the other staff people deserve mention. The chief of bankruptcy, at least in 1959, was Edwin L. Covey?

Olnwy: Yes, and he was outstanding in that field. He had been chief of the division, I think, from the beginning in '39; spent his whole life there. He was very well known among the bankruptcy bar and referees all over the country.

Stein: Louis J. Sharp was the chief of probation?

Olney: Yes. He also had a fine reputation in probation work and knew a great deal about it.

Reform of Rules of Procedure in the Federal Courts

Stein: I don't know if there's anything that needs to be said about this initial conference that you had with Chief Justice Warren and Chief Judge John Biggs. It was mentioned in the 1958 annual report and in the write-up it said that recommendations had been made for some changes. One was to establish a division of personnel and another was to add a space expert to the division of business administration who would function to help the department compete better with other government offices for available office space.

Olney: I do recall those things. They were not of major importance. The judiciary do have to compete with other federal agencies for space in federal buildings. The GSA [General Services Administration], which has general administration of the government buildings and space, likes to design buildings according to their own ideas of what's convenient and thinks nothing of putting courts in with all sorts of other federal agencies. That isn't conducive to good court administration and we did have many problems which were worked out to more or less satisfactory answers, but it wasn't a major matter.

The thing that was going on immediately, that I recall, when I went over there was the effort to have committees on the rules of procedure in the federal courts set up. There had been a committee on the rules of civil procedure in the federal courts that had been appointed by Charles Evans Hughes when he was chief justice in the 1930s. That committee had done a superb job in streamlining civil procedure in the federal courts through the rules of court.

But the committee had become old. Its jurisdiction was limited only to the civil rules in the federal courts and there had been no committee at all--it had been discharged--for several years.

But Earl Warren felt that there was a need for further improvement in the rules; that there should no longer be a separation of the rules in admiralty proceedings from the rules in ordinary civil proceedings; that the criminal rules needed re-examination and restudy; that bankruptcy procedures also needed restudy; and that rules for cases on appeal needed to be more uniform and restudied. So he was seeking authorization from the Congress, as chairman of the Judicial Conference, to create committees on this subject and to obtain the necessary funds with which they could carry on their work.

Olney: The bill was in the Congress at the time I came into the Administrative Office and I recall a hearing, I believe in the Senate, in support of the bill. But there was no opposition to it. It wasn't a controversial matter and the bill was passed and the appropriations were given.

We had a good deal to do with those committees. There was a general rules committee, under the chairmanship of Judge Albert B. Maris, which had an oversight over the work of all the other committees in order to have the work coordinated. Then each of these other separate subjects had a separate committee with its own chairman. Each of them had a staff member, or two, called a reporter. They were distinguished legal scholars, by and large, who were expert at draftsmanship.

The committees were made up of eminent judges, law professors, outstanding lawyers--a very diverse group. They were selected not only because of their familiarity with the subject but also geographically, so that each committee had a reasonable geographic spread, because practices under the rules had been different in different parts of the country. The chief justice wanted to get as broad a representation as he could.

The Administrative Office, of course, did all the housekeeping for these committees: handled their funds, paid their expenses, and that kind of thing. We also contributed to some of their work from time to time. The bankruptcy division, of course, had a very great contribution to make to the bankruptcy committee, for example.

I attended many of the committee meetings, but by no means all, and I tried not to take an active part in their work because judges are jealous of their prerogatives and they are nervous about an administrative organization in their own judicial system lest they become just tools of an administration. So I didn't take any big part in those committee meetings, to avoid that kind of feeling.

Stein: Are reports of that committee available anywhere?

Olney: Oh, yes. They are available in every law library in the country and many law offices have them. Of course, all the federal legal offices have them, such as the U.S. Attorneys. They are of value because in interpreting the rules, the work of the committee and their minutes, like the history of an act of Congress, are revealing as to what the purpose of the rule was, things that were considered in connection with it.

The Problem of Backlog of Cases and Some Solutions

The Philadelphia Experience

Stein: I noticed in the annual reports that one of the serious problems that you faced was the backlog of cases in federal courts. In the annual report of 1958 you noted that despite the Judicial Conference's adoption of six months as a standard period from filing to trial for a normal civil case, the national median was twelve months.

Olney: The backlog of cases was a problem then and it still is now. It's even more of a problem now than it was then; I don't know about that. When I went there I didn't know much about backlogs of cases or about so-called delays in the federal court. They were catch phrases that were being circulated all over the place. People were making speeches on the subject from time to time. But I had not grasped what was involved in those words.

In due course, I found, for example, that there may be many cases on file in a court--a great many cases on file--that are not going to take one day of judicial time to dispose of. This is true in a great many condemnation cases where the interests involved are extremely small, and in many other types of cases. But statistically they're down there as cases, and if they've sat there a long time it makes it appear as though the court is strangling with overwork; you've got to get rid of these cases.

Then with respect to delays, there are other cases, especially in the federal system, where the case may be pending for a very long time indeed. A good example is an anti-trust suit where there is a consent decree with continuing jurisdiction in the court, where under the decree business is continued subject to the conditions of the decree and with continuing jurisdiction in the court to enforce it. That case may be on the books for decades, and yet there's no denial of justice or anything of that sort because the case is there for a long time. But statistically it makes it seem like Jarndyce vs. Jarndyce (the famous case in Dickens' Bleak House), something that grinds on and on and is never ended.

On the other hand, there unquestionably were and unquestionably are many suits where trial is necessary, and where the delay in trial and in getting to trial and the delay in the trial process and appeal may work a very serious injustice indeed. To anyone trying to work on backlogs as a problem it is essential to get an

Olney: understanding of the difference between these different kinds of cases and also to understand how to distinguish them. When you see them on the docket, what is justifiable timewise and what isn't in the given cases? Well, it took me a long, long time to understand that. It isn't in any book. You have to learn it.

There were other things, of course, we found: that is that the mere accumulation of cases may have very little to do with the delays. I think the most important thing we found was that the judges themselves do not understand delay. They do not understand what happens in their own courts, and a good example of this is what took place in Philadelphia. This must have been along in 1965 and '66, along in there. They had some new judgeships and they had had some retirements with new appointees and they had a young, energetic bench of judges who were sincere and devoted to their work. They wanted to have an efficient court, and yet the delay in getting to trial in that court was the worst of any metropolitan court in the federal system.

There were two other courts that were quite similar and were useful for purposes of comparison. One of them was the court in the Northern District of California and the other in the Northern District of Illinois. Both of those other courts were about the same size as Philadelphia. All three of them had about the same kind of business, about the same percentage of maritime business, the same percentage of personal injury cases and the like. Yet the Chicago and San Francisco courts were reasonably current.

Well, the Philadelphia judges were very much upset by their position and they decided to make an all-out effort to improve their standing. They worked like dogs. They put in ungodly hours trying to get rid of their cases and they made little or no progress. They found this very discouraging, and after beating their brains out on that thing they turned to the Administrative Office and asked us if we would come down and take a look at their operation and see if we could see anything the matter with it, and we did.

Joe Spaniol went down. He had gone over their statistics very carefully and in studying the statistics it was evident that it was the Employers' Liability Act cases, especially the maritime insurance cases. They had a large number of these cases and they didn't seem to move very much. Well, it took Joe several weeks of checking the actual dockets on the cases before he could perceive what was going on.

Well, it turned out that at that time there were just three or four law firms that had a virtual monopoly on this admiralty business in Philadelphia. It was the cases of these firms that were

Olney: holding up the whole docket. In examining the dockets he found that when cases would be ready for trial and were called for trial, the judges would usually continue the case because one or the other of the lawyers was tied up in some other case in somebody else's court, and so the case would have to wait until they got through. Well, when you had so many cases handled by so few lawyers, if you're going to limit it to that number of lawyers, clearly you weren't going to be able to clear that docket at all.

This was explained to the judges and it took quite a little explaining and convincing them that the trouble wasn't in the clerk's office. The trouble wasn't with the judges at all. The trouble was in the law offices. That's where the bottleneck was. But they finally recognized that fact, and then they set about it and took it up with the law firms, and they had quite a time with them persuading them that they had to be ready for trial and that it meant they either had to add lawyers to their own firms to handle these cases or else farm them out to somebody else who could and would be ready for trial when the case was called.

The judges had to do this by taking charge of the calendar and saying, "There are not going to be any continuances." When that happened, this thing cleared up in no time. Now, here were these highly intelligent men, devoted to their work, doing their very best to try to find out what was the trouble, and they couldn't see it, although it was staring them right in the face.

This is typical of judges. I don't know why it is that any judge, or most any judge, will concede that he isn't the greatest jurist in the world, that there probably are or have been others who are as great as he when it comes to handling legal principles. But although they may be a little modest there, when it comes to administrative matters every judge thinks he knows everything about it [laughter] and that no one can tell him anything about administrating his own court. That's the reason they're in a mess right now, in my judgment.

I think it's just as true of the Judicial Conference of today as it was in my time. Although these men are my very good friends and old friends, they just won't listen on administrative matters. So I hope that the new director of the Federal Judicial Center will be able to make some dent on them.

Stein: Was this the gist of one of the memos that you wrote to the Center that I think you gave me some material about?* You had sent them a proposal, two suggestions, back in '70 or '71.

Olney: Yes, yes. That's right. There were two proposals there. One of them was brought about by a speech that Chief Justice Burger made in which he said we ought to be able to dispose of criminal cases within sixty days and that ought to be our objective. Everyone agrees with that: that that should be an objective. But how do you do it?

I had a proposal to make because I've seen it done, and I felt and I still feel that I know how it could be done, and particularly how it could be done in the federal system because it's so hierarchical in nature with an attorney general in charge of all the U.S. Attorneys and also in charge of the principal investigative agencies. But it's something that would have to be organized.

It can be done simply by not continuing cases, insisting that the parties be ready for trial and trying them when they're ready. Now, that's easy to say, but it means going back as far as the investigative agencies: the FBI and the Treasury agents and all the rest. What needs to be done there is that they need to be told by the Department of Justice not to come in and seek warrants unless they've got a case that they're ready to try, because when the warrants are issued and the people are brought in, the case is going to be tried. As it is now, they make arrests and make the case later, half the time.

When we had the flood of draft-evasion cases in San Francisco during the Vietnam War, for example, they piled up so that between the time a man was arrested for draft evasion and the time that he was brought into court for arraignment was between a year and a half and two years, just for arraignment. The reason was it took that long to get the fellow's file out of Washington so they could prepare the case. Well, that is ridiculous. That's just the way <u>not</u> to do it. They ought not to issue any warrant unless they're going to take the man into court and proceed.

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*"A Proposal for Certain Statistical Studies To Be Undertaken By The Federal Judicial Center," submitted by Warren Olney III, consultant, January 25, 1971. In The Bancroft Library.

Olney: Now, this means that if the Department of Justice is going to say, "Don't bring your cases in until they're ready to try," they're going to have to try them. It means that when the case is called before the judge, the department must answer, "We're ready; we'll go to trial on the first available date." And they must oppose continuances by defense counsel. But you not only have to say it; you've got to do it. You've got to be ready and this takes work, a lot of work.

Then on top of that, to meet the backlog where there's any kind of an accumulation of cases, you have to take into consideration, where are you going to get the courtrooms, where are you going to get the judges, where are you going to get the extra prosecutors. You can't do everything at once in this thing. It all has to be planned out. There are some districts that have a bad delay situation and others don't. You don't have to do everything in every district all at the same time. But you can change policies and implement these policies and they'll work. I know it because I've seen it done and I've operated under it.

Stein: That was essentially Earl Warren's principle, wasn't it, when he was district attorney?

Olney: Exactly. He made a tremendous reputation on it.

Stein: I seem to remember an editorial which you gave me a copy of, that appeared in the Berkeley Gazette, about how he had reduced the time from arrest to incarceration.

Olney: Yes, that's right. That's right.

Stein: I wonder if there was something in the file that outlines those two suggestions that you made to the Judicial Center.

Olney: It's in that paper I gave you. [tape off while Mr. Olney and interviewer review files]

Stein: So now we have this summary by Mr. Eldridge of your and Mr. Beattie's proposals on the Speedy Trial Project.*

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*See Appendix G, memo to Judge Alfred Murrah, from Eldridge, re: Speedy Trial Project.

The Brooklyn Project

Stein: One of the things I came across in the annual report was the discussion of the Brooklyn project. Did you have any involvement in that?

Olney: Oh, yes, indeed. As a matter of fact, it was my brainchild that we try this. It happened that at that time the United States district court in Brooklyn was in very, very bad shape, a long accumulation of cases and every conceivable problem.

When I came to the office there was a committee of the Judicial Conference, chairmanned by Judge [Alfred] Murrah, on pretrial. Pretrial, generally speaking, is the notion that in advance of the trial the judge should call in the counsel and have a discussion with them as to what they can agree on to save time at the trial, so that they're not spending a lot of time calling evidence and proving things that the other side admits.

Now, that's generally the idea of it. As a method of disposing of legal business, it had proved quite effective in some cases because not only was a great deal of time being saved in a procedural way, but very often bringing the parties together and having to compare their respective cases would result in a settlement, so there wouldn't have to be any trial at all. The device was developed first in Michigan in the state courts and then was tried various places and it spread.

Some of the judges became very enthusiastic about it and Judge Murrah was one. He caused a committee of the Judicial Conference to be appointed to encourage the use of pretrial in the federal courts. There were great claims made for what you could do in clearing up a bad calendar situation.

Well, I hadn't been in the Administrative Office very long, but in talking with Judge Murrah I said, "If these methods are as good as they're supposed to be, why wouldn't it be worthwhile to try it, actually try it in a court that's in trouble, serious trouble, and see what would happen?" He thought that was an excellent idea, and where would we go? I said, "One place that sure needs it and where it couldn't do any possible harm is Brooklyn." We looked at the statistics in Brooklyn and concluded that it was certainly ripe.

They were not using pretrial procedure in Brooklyn, so the problem was: could we persuade the Brooklyn judges to allow us to bring in a number of outside judges who were using pretrial and

Olney: take a section of their calendar and assign it to these outside judges and see what would happen and make a comparison between the ones that were being handled by pretrial and the ones that weren't?

Well, it's kind of a delicate thing to take up with a court, but I had to do it. Anyway, I went up and saw the chief judge, and he was a little doubtful about it. He said, "I'm willing to try anything, but I don't know about these other boys."

He called the court together and had me explain what we had in mind, taking half their calendar and assigning it to other judges who would pretry the cases, by way of comparison.

Stein: Where were these judges from that you were bringing in?

Olney: Well, we had to find out if the Brooklyn judges would allow it, first. They discussed it and finally one of the judges said to the chief judge, "Well, what do you think about it?" The chief judge's response was, "What have we got to lose?" [laughter]

So they agreed to do it, and then Judge Murrah and I had to find judges who would be willing to take part in this experiment. There were the judges who were on his committee. There were other enthusiasts for pretrial nearby and they were willing to give it a whirl. Judge William F. Smith from New Jersey was willing to take part in it and he operated as chief judge for the pretrial section of the court. [tape interrupted to consult annual report of the Administrative Office of the Courts, 1959] He acted as the coordinator for these cases. Besides him, other judges who took part were Judge [Jean] Breitenstein from Denver and Judge [Albert] Sherman Christenson from Utah. There were a number of others, too.

The cases were selected very much at random in order to make the comparison. In taking the files out, these visiting judges quickly found that the files for most of them were by no means complete, and it took several days just to get the papers filed properly so they could handle it. They went ahead with their pretrial program and we kept track of it as best we could. The net result of it is in those reports that you read. It did indeed improve the condition in the Brooklyn court immensely. They got rid of an awful lot of cases.

It was done without any complaint from the bar or the litigants. The only complaint we received was from one of Brooklyn's leading personal-injury lawyers, and his complaint was that we were making altogether too much money for him by closing these cases out, because he was getting all of this money in one year and his income tax was going to be terrific. [laughter]

Olney: We had this experience with the so-called Brooklyn experiment, but we didn't learn near as much as we had hoped or as we should have, and the reason we didn't was that we had not prepared statistically for the thing. We knew that the visiting judges had disposed of so many cases and there was this and that and the other kind of case while the other judges were disposing of an equal number. But we hadn't done the necessary preparatory work to get the real benefit out of an experiment. To conduct an experiment you need to, before the thing even starts, make very close observations and records so that you know what it is you're starting from, and we didn't. It was a good effort, a good try, and worth doing in that sense, and we did learn something from it, but we didn't learn from it in any conclusive way whether pretrial is really effective or not.

Stein: Is that something that has been remedied since?

Olney: No, they never tried another experiment like it. Some of the other judges in other parts of the country were horrified by it and said, "You'll never do that in my court," and this kind of thing. They thought importing a whole benchful of foreigners to dispose of cases was something that shouldn't be done. So it's never been tried again.

The Court Calendar Conundrum

Olney: Along about the same time--in fact, from the time I was in the office until I got out--there was another one of these standing disputes among judges about trial work and that is how should the calendar run. There are two ways of running a calendar. One is the master calendar system and the other is the individual calendar system.

With the master calendar, all cases that are ready for trial are assigned to one department and then they are sent out to be tried according to what courtroom and what judge are available. The idea is to keep a constant feed of judicial work going into these several departments to keep everybody busy. So if a judge has a case and it's settled on the courthouse steps, as it often is, instead of taking the day off with nothing to do, there is a case ready that can be sent to him. He can try that one.

The individual calendar system is based on the notion that the cases as they come are assigned to individual judges just by rotation at random. Then each judge becomes personally responsible for

Olney: that case from beginning to end. You're always before the same judge no matter whether it's a motion to dismiss or a motion for a subpoena or whatever it is; it's always the same judge.

Well, the judges differ tremendously in their opinions as to the merits of those two systems. There is one group of judges who will tell you that the master calendar system is the greatest excuse for getting out of work that was ever invented, that the assignment of cases is easily arranged and the clerk can be persuaded not to send you something when you want to go out to the races.

On the other hand, there are other judges who say that the individual calendar is the most unfair to both the judges and the litigants, that when it's just at random what cases come to a judge, he may get three or four immensely long cases, a patent suit and an anti-trust case and all sorts of things piled one on top of the other. Meanwhile, he'll be picking up his share of other cases as they're filed, and he'll have a workload that's out of all proportion to what other judges are having to contend with, so that it's quite unfair.

Then also some notorious situations have developed, as was the case in Boston where they were using the individual calendar system and they had a Judge [Charles] Wyzanski, a very well known, brilliant judge, very able. They had another judge who was just the opposite. He was a dolt. Wyzanski could handle his calendar with such expertness and ease that he could and would leave for Europe at the first of June and he wouldn't be back until some time in September and he would have taken care of every piece of judicial business that was given to him.

Meanwhile, this other judge wouldn't have been spending his time working, I'm sorry to say. He'd be spending most of his time with a bottle or at the races or some other darn thing. But here were the poor litigants in his court being denied justice. Other judges felt that the judges on the court have an obligation to all of the litigants that enter their court to see that they get a reasonably fair shake.

Well, these two systems have their advocates among the judges, and when I came there one group would pour their case into one ear while the other was doing the same thing into the other ear. After observing it for some time, I came to the conclusion that there isn't any superior method, that one isn't really any better than the other one as a technique. Either one can be very inefficient and either one can work very well depending on whether the judges want to make it work or not.

Olney: During the years I was there, a number of courts changed their system. Some went to the individual system and some went to the master calendar system and vice versa. The thing that was noticeable was that there was always an improvement every time there was a change. The reason was that the change indicated that the judges were disturbed about the conditions in their court and they wanted to improve it. When they were willing to change their system in order to improve it, it meant that they were serious and really did want to do something and the result would show. It would work better and then, of course, they would think it was the system, and what it really was was their improved attention and effort and cooperation.

A number of these courts worked out sort of hybrid systems. In the Northern District of Illinois when William J. Campbell was the chief judge, they had the individual calendar system. But a few months before summer approached, they would take a look at everybody's calendar to see what the status of it was, and if somebody had a big backlog they would reassign the cases, and they would all go to work and clean those things up before they went on vacation so that the whole court was current and up to date. Now, judges who were willing to work that way could operate just as well under one system as under another.

But one of the things that has been of concern to me is that in the Federal Judicial Center, to my amazement, they have issued all kinds of bulletins and things of this kind urging all the courts to adopt the individual calendar system. The head of the Center has been sold on that system. This, of course, is being done without any scientific examination. It's just another gut reaction which characterizes judicial administration from top to bottom.

Stein: Despite your many efforts to inject some scientific, statistical work.

Olney: Well, it's really a little ridiculous that I would be the one to be regarded as doing that, because I had no background. I'm not a statistician and never was a scientist. [laughter] All I can say is that wrestling with these things makes it apparent that most of the problems result from ignorance and failure to get the facts. The only way to do it is in a scientific way. [telephone interruption]

Problem Judges

Stein: Shall we go on to discuss the problem of overage and incompetent judges?

Olney: The federal judiciary was undermanned, there's no doubt about that, in 1958, when I went into the Administrative Office. That happens periodically and the reason is political. There isn't much that can be done about it as long as we have the same system for appointing judges. The judges are appointed, of course, by being named by the president, nominated and then confirmed by the Senate, and the Senate has its own rules on confirmation, one of which is that they won't confirm any judge who is being opposed by the Senator of his state. This is without regard to party affiliation.

On the other hand, there's always pressure, of course, on every administration to appoint as judges people from their own ranks, which is quite understandable, and there's nothing, in my judgment, wrong about that. I think that the judiciary has to respond, to some extent, to the political facts of life and political changes in the country.

This works very nicely when the president and the majority in Congress are all in the same party. But so often the president is from one party and the majority in Congress is of another. Then as the next presidential election approaches, the Congress becomes less and less willing to act and confirm new appointees because they figure with the next election, they'll have their own man in as president and will get either Democrats or Republicans or whatever. So these backlogs of unacted-on judgeships appear and that was the case here. There had been recommendations for forty or fifty additional judgeships and there was no action.

But those things took care of themselves. When the Kennedy administration came in, there were about sixty new district judges all appointed about the same time. That filled that up. So that's the nature of the problem you have with additional judgeships.

However, there is always the problem of judges who get too old or become incompetent in some way or other, sometimes through senility and sometimes through other ailments. It's a very delicate situation, indeed, to know what to do in cases of that kind. The retirement system for federal judges is just about the best imaginable. They can retire at full salary, after twenty years service at age sixty-five or after ten years service at age seventy, which is very helpful.

But there are not as many of them who take advantage of that as you might think and it's for a curious reason. We had, for example, a number of judges who were eligible for that retirement, who lived in such difficult climates as North and South Dakota, places of that kind, where you would have thought that a man seventy years of age

Olney: would have welcomed the chance to move to Florida or somewhere pleasanter, but they wouldn't do it. They wouldn't take advantage of this retirement system.

In making inquiries into this, the explanation became clear. When a man goes on the bench, the longer he's on the bench the more isolated he becomes from everybody else. When he becomes a judge he has to cut himself off from his old lawyer friends who can't have lunch with him anymore the way they used to. It just doesn't look right to be buddies the way you used to be. Old lawyer friends die off and go elsewhere. The new bar coming up is always at a distance. He's never been very friendly with them. He knows them in and out of court. He gets more and more isolated. The people that he comes into contact with, and that come to mean a great deal to him, are the court personnel. It's his secretary, his clerk, his bailiff, the probation officer--the people around the courthouse.

Stein: And, I would assume, the other judges?

Olney: Yes, the other judges, too, and some of these judges were in one-man courts. It appears that they would rather stay in a place like North or South Dakota (I don't know why I pick on them) and enjoy those few social contacts that they've got left than they would go to Florida where they don't know anybody. It's a very interesting sidelight.

We did have other judges who insisted on remaining, trying to function as judges, who couldn't hear well, couldn't see well, couldn't remember, and became very sad specimens. Then there were also judges against whom complaints were made: complaints of unfairness, bias, arrogance.

We had a good example to follow in California with this commission they had on the fitness of judges. Judge John Biggs, Jr., who had years of experience with handling judges, was very acute and aware of this program. He thought we ought to have a system modeled on that California set-up. So we had one of the committees--I guess it was Biggs's Committee on Court Administration--give consideration to it and they had a subcommittee. Judge J. Edward Lumbard was the chairman of that. We had a scheme--my recollection is that it involved using the judicial councils of the circuits, primarily, to hear complaints and make recommendations with respect to incapacitated judges.

But the thing died aborning. The subcommittee chairman was Judge J. Edward Lumbard. He had espoused this thing; he wrote the report; he presented it to the Judicial Conference; the Conference voted in favor of it; and no sooner did that happen than he went

Olney: out and went to work and undercut the whole darn thing. The judges in his own court didn't like the idea, and so he just changed his mind and undercut it, and we never got to first base with it. There's still talk about it, but they haven't done anything effective with it. There's a proposal now, I believe--I don't remember whether it's--yes, it's in legislative form--to have a commission on judicial fitness, continuing judicial fitness.

We do that in the military. Every so often high-ranking officers have to be examined by a board, both physically and mentally and everything else. It's essential and it's just as essential that judges have all their buttons.

That was one of the great projects that we had that didn't flower. But when I say that it didn't flower, I mean that we never got anything through. That doesn't mean that the effort was wasted. These changes in the judicial system, by the very nature of the system, are bound to take years, a long, long time, and a lot of groundwork, spade work, was done on this. I think it will work out eventually.

There was a lot done beforehand, years before, when Hatton Summers was chairman of the House Judiciary Committee. They had had an epidemic of corrupt federal judges. Judge Martin T. Manton of the Second Circuit went to the penitentiary for taking bribes. Judge Albert W. Johnson of Pennsylvania was a known crook who had to leave the bench and should have gone to prison. There were three judges in Delaware whose decisions, it was discovered, were paid for in important patent cases, and they had to undo all their decisions and send the litigation back up to the Supreme Court again.

This was at the time when Judge Biggs became a judge and he had been all through that. But at that period, Hatton Summers tried to set up a statutory procedure for hearing charges against judges and for taking care of disabled judges at the same time. They had hearings on it. There were arguments that it was unconstitutional and there were arguments that it was constitutional, but Congress never did act on it. But if he hadn't done that, we probably wouldn't have done as much as we did; and if we hadn't done as much as we did, they wouldn't be working on it now.

Stein: It sounds like just a matter of chipping away slowly at a great, huge granite block.

Olney: Yes, that's right.

Stein: Do you want to stop here?

Olney: Any time you want.

Protracted Cases: The Problem and a Solution

[Interview 16: September 20, 1977]

Stein: Let's start this time with the problem of protracted cases, which, I gather, came to a head during your administration.

Olney: Yes, it did, although it was a very old problem. Way back in the forties and fifties these so-called protracted cases began appearing in the federal court system. They were cases the trial of which involved long, long period of time and voluminous transcripts and huge numbers of exhibits and very long records, oh, anywhere from seven thousand to eighteen thousand pages of transcript in a single case. Many of them were anti-trust suits, although one of them was a criminal case: the first prosecution of the Communist party.

Stein: Was that the Smith Act case?

Olney: That was the Smith Act case, which was a nine-months trial. These cases began presenting the same kind of administrative problem to the courts as the tremendous influx of new cases. They had a tendency, of course, to clog the calendars. Judges gave a lot of thought as to how cases of that type should be handled and whether there shouldn't be special procedures developed for handling them.

A lot of work was done on that. Chief Justice [Fred] Vinson had appointed Judge E. Barrett Prettyman, the chief judge of the court of appeals of the District of Columbia, as chairman of the committee to make a report on the subject, which the committee did. It's known as the Prettyman Report--and I think it came out about 1950 or '51--in which there were procedures recommended to judges to follow when they were confronted with cases of this type.

But the number of these cases--this type of case--continued to increase, and in 1960 Judge [Sylvester] Ryan, who was chief judge of the Southern District of New York, which had far more anti-trust suits than any other district, reported that there were at least 350 of these potentially protracted cases pending in his court.

The Judicial Conference worked up--that is, a committee under the chairmanship of Judge [Alfred P.] Murrah--a Handbook of Recommended Procedures for the Trial of Protracted Cases, which the Conference adopted in March of 1960. That has been a very useful little handbook and is still in current use.

But along in 1962 a case came along that had no precedent at all procedurally, and this grew out of an anti-trust suit that was brought against General Electric, Westinghouse, and three or four

Olney: other of the large electrical manufacturing companies. The anti-trust suit had been filed in Philadelphia. It was a criminal action brought by the government. The case was tried and the defendants were found guilty. The defendants included not only the companies but a number of the individual officers, including some very highly placed officers in those companies.

The case caused a great furor at the time because when it came to the sentence, the judge imposed jail sentences on these officers and that had not been done in anti-trust suits before. It really shook the boys up. It's a pity that there haven't been more jail sentences imposed in those cases.

Well, a conviction of that kind opens the doors for suits for treble damages by the persons who were injured by the conspiracy. In this case, the conspirators had been manufacturers of very heavy electrical equipment--big turbines, generators, heavy equipment that's needed for electrical plants. The immediate victims, if you want to call it that, of the conspiracy to raise prices were the electrical companies, both privately owned and publicly owned, all over the country. Suits were commenced by a number of those electrical companies for treble damages against General Electric, Westinghouse, and the defendant companies and, of course, they were for very large amounts. The cost of this equipment was very great, and when you figure out what the cost would have been if it hadn't been for the conspiracy, the amounts were enormous. You multiply that by three and they were staggering.

The suits were filed like a torrent. First there was just a trickle, two or three of them in a few places.

[brief interview break]

The first of these suits that were brought were by publicly owned electrical companies, but the privately owned ones were reluctant to bring the suits. One reason was because they weren't the victims they were supposed to be, because they simply passed on these higher prices in the form of rate increases so that they weren't out much, and they really were quite in sympathy with the electrical manufacturers.

But all of them were really compelled by circumstances to bring the suit, because the privately owned utilities were in no position to be asking for rate increases from their public regulatory commissions, as they had to do, without doing something to recover some part of this money. So it meant that practically everybody that bought any of this big equipment during this period brought a lawsuit.

Olney: Then we had quite a deluge of them because there were so many of them bringing suits all at once. I think there were something like nearly two thousand cases that involved about twenty-five thousand claims each, and that means for each of them a separate lawsuit, and they were in thirty-five different federal districts. Well, they all grew out of the same conspiracy and that meant that the witnesses to prove the conspiracy were the same in all of those numerous cases. How could you have nearly two thousand separate cases with the same witnesses? They'd be spending the next hundred years testifying. Nobody would live that long. Also, the physical exhibits--the letters and correspondence and things of that kind that went into the proof of the conspiracy--were the same in all these cases.

The courts had never been confronted with anything approaching this before and they had to improvise and I think it was really quite ingenious. One of the main suits was in Philadelphia, where the criminal action had been, and there was the process of--what do you call the pretrial process where you--

Stein: Discovery?

Olney: Yes, discovery; that was involved in all these cases. The judge in Philadelphia, with the backing of the Conference Committee on Protracted Litigation, decided to hold a consolidated hearing on these discovery matters, and all of the litigants in all of the cases all around the country were notified that there was going to be this hearing at this time. Because each case was a separate proceeding and would have to be handled separately, each judge was invited to set the proceedings for discovery in his case or cases for hearing in Philadelphia at the same time. In this manner all of the judges handling these cases assembled in Philadelphia in the courtroom at one time to listen individually to the testimony that had to do with discovery, and while they all heard the same testimony at the same time, each judge could make his own ruling in his own case according to his own judgment.

Well, it was the most extraordinary spectacle I ever saw. The judges took up more room than a jury panel would--there were some thirty-five of them! The rest of the room was just stuffed with lawyers, of course, from all over the country. [laughter] But the judges all heard the same testimony from the same witnesses. When the hearing was over, they gathered together and discussed it.

Now, they had to be, or tried to be, technically proper and exact, and that meant that each judge had to make up his own mind separately. But they found that they were thinking alike on practically every question that came up. They made their rulings, and they were virtually identical. They were very careful in

Olney: making their rulings not to get into conflicts requiring production here when some judge was requiring the same thing somewhere else--that kind of thing.

There was more than one such gathering of judges in this litigation. I don't remember now how many. It seems to me there was one in Denver and I think there was a smaller one in San Francisco.

But then the number of documents that were required for the discovery process was simply enormous. They ran into a good many hundreds of thousands of documents. An arrangement was worked out to establish a center where all these documents would be located in one place and where the counsel for any and all of the litigants could go and see the documents that pertained to his case.

This had to be handled with great care in order to preserve everybody's rights and not to do injustices. Many of these papers were extremely private. Some of them had nothing to do, or little to do, with the case, some only with one or two of the cases, so that it was important to see that counsel got the proper documents but that they didn't get anything more than they were entitled to.

That experience with that case led the judges to appreciate the fact that that procedure couldn't be followed as a regular thing: the idea of assembling judges from all over the country to sit together and hear the same witnesses. So they worked out some statutory changes to authorize the judicial control of litigation of this type when it exists in many different districts at the same time.

Stein: When you say judicial control, that would be by the Administrative Office?

Olney: No, by the judges, making orders with respect to discovery so that the documents can be located in a single place, the access can be had by all of the judges. There are many facets to it. I don't recall it. I had nothing to do with drafting the legislation. I know that it was enacted and has been quite successful. They haven't had any insurmountable problems come up since then.

But that was really quite a notable event and it was very interesting indeed to see the ingenuity that was shown by these judges in meeting the situation. It was wholly without precedent. They just worked it out by patience, common sense, and agreement. It was one of the few times that I have ever seen a collection of judges that was able to agree consistently on anything much. But they certainly did here.

Stein: I was thinking of your earlier comment about judges being so ticklish about having anyone step into their territory or tell them what to do, and the fact that that number would cooperate is quite remarkable.

Olney: Well, it was, and it wouldn't have happened except the situation was so bad that every judge realized that something like that had to be done.

Stein: Has a case of similar magnitude happened since?

Olney: I think there have been [some]; maybe I can recall one. [pages through annual reports of the Administrative Office] I know where they expected to get it. One of them was in those Boeing 727 air crashes. As you may recall, there were two airplanes that collided over Brooklyn and fell down in the middle of the town. There were a very large number of lawsuits that grew out of that. The plaintiffs could file anywhere that they wanted to. They didn't have to file in New York where the accident occurred. That was very widespread.

Then there was some Monsanto patent litigation I see mentioned here [referring to "Report of the Special Committee on Continuing Education, Research, Training, and Administration"].* I can't remember what that was, excepting I recall the judges talking about it and saying that it was going to involve the same kind of widespread litigation with identical witnesses, but how it was worked out, I don't know. I know that they succeeded. There's been no breakdown.

Stein: I notice in this report of the special committee that there is reference to a report written after that electrical lawsuit case. There was a full report on the development and activities of the coordinating committee of these judges. I wonder if that report exists and if that's something a researcher could go to.

Olney: Oh, yes. Oh, certainly. That coordinating committee is the committee of judges that handled these hearings that I speak of. Oh, yes, that's available.

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*Prepared for the Meeting of the Judicial Conference of the United States, March 30-31, 1967. On deposit with the Warren Olney III papers in The Bancroft Library.

Stein: Is there anything else we need to say about protracted cases?

Olney: No, I think not.

Statistical Matters: A Case Study of the Federal Probation System

Stein: In that case, let's go on to the statistical work. I think that you mentioned last week that you wanted to talk a little bit about that. [tape off briefly] We just started talking about the importance of statistical studies.

Olney: About everything that I can say on that subject is included in a proposal that I made at Judge Murrah's request. It's dated January 25, 1971 and it was entitled "A Proposal for Certain Statistical Studies to be Undertaken by the Federal Judicial Center."* In that paper I reviewed the history of the statistical system in the Administrative Office beginning in 1939 and how it was developed and what the Administrative Office does and what the shortcomings were in our ability to utilize statistical information that was gathered.

There is also a section in that paper on the value of statistical studies and this, to me, is very important, because it's not understood. People usually think of statistics in terms of business accounts or something like that. These statistics that are kept on these court operations are something quite different from that and are the best and most reliable means of finding out what's really going on in the court system.

The paper also included discussion of some of the additional studies that might be undertaken with respect to the current court problems. But that's all stated in there ["A Proposal for Certain Statistical Studies to be Undertaken by the Federal Judicial Center"] and I have really very little to add to it. It expresses my ideas as best I can.

I submitted this to Judge Murrah because he told me--I believe that this was right after he became director of the Judicial Center--and he told me that he wanted to offer this, something along this

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*In The Bancroft Library.

Olney: line, as a program and to give the members of the board--you see, the [Federal Judicial] Center is governed by a board--a background in what the judicial statistics were and could be. So that is why I wrote it. But what use was ever made of it, I don't know, if any. I know it was read by the staff, but beyond that, I don't know. Anyway, it's my notion of it.

Stein: We'll include that as an appendix to the interview. Let's then move along to the relations between the Administrative Office and Congress.

Olney: Before we drop the statistical thing, there is one matter I might mention that has to do with our statistics on the use of probation. The records that are kept in the Administrative Office, of course, show in criminal cases what the sentence was and whether or not probation was granted, and then it was always of great interest to know, in the cases where probation was granted, what happened to the probationer. Did he end up by having violated his probation? Did he serve it successfully? After his probation was terminated did he commit any more offenses or whatnot? Of course, questions like that bear directly on whether or not probation is an effective means of correction and rehabilitation in the penal system.

Our statistics indicated that probation was pretty effective in proper cases, and it was thought that with an increase in the number of probation officers, so that the case loads would be smaller, there would be better results. But to find this out you had to keep track of the cases.

Well, when we were thinking along those lines and about that far, we suddenly discovered that the information that we were getting about people on probation was wholly unreliable. The reason for it was that men are put on probation in District A where they were convicted, but they more often than not will be serving their probation in District B or C, which may be on the other side of the country. When that happens their cases are transferred. But if there was a violation that is picked up by the FBI, the violation was reported not to the court where the man was convicted originally, but to the probation office where he was under supervision, so that if there was a violation it was never connected with the original case on file.

So, looking at the results of what was shown by the files in the district where the convictions took place, there were these many cases that had been handled outside that weren't being reported on at all. We discovered that there had been many, many probation cases that we had reported as successful, when the man was, as a matter of fact, incarcerated in a state prison for some new offense that he had committed and the new conviction had not gotten into our records.

Olney: Naturally, I wanted to clear that up and get our statistics so that they did reflect truly what was happening. The way to do that, an easy way to do it, was to have the FBI send an extra carbon copy every time they picked up a violator, or had a record of a violation, to the Administrative Office in Washington, just a few blocks away. We needed a copy of that same sheet so we had a record of the man and the violation for statistical purposes. They didn't have to make any special report or special record--just add another copy and send it to us of what they were sending out into the field.

We took it up with the FBI and they declined to provide it for us, because they said that it would cost them extra money and they didn't want to spend the money doing our work for us. Well, it would only cost them, as I say, an extra carbon copy. This is a good illustration of how high-handed the Bureau was at that period.

But we solved the problem by pointing out that they could save money by simply sending a copy to us and then we would send the notices to the proper districts and the proper probation officers in the field. By offering to do that, we got agreement that they would send the arrest sheets to us. So from then on we began to get reliable statistics on probation.

But the net effect of it was to establish that the federal probation system was not working nearly as well as we had thought it was. It had very, very serious weaknesses and that resulted in further experimentation. We conducted a test out here in San Francisco where probationers were taken at random so that we had three or four different groups, and one group was given the maximum supervision that anybody ever recommended. We had another group that was supervised by probation officers who were especially selected because of what was regarded as their outstanding abilities. Then we had another group which was supervised by the regular run-of-the-mill probation officer. We had another group which had the absolute minimum of supervision. In fact, they would have had no supervision at all if we'd dared run the experiment, but you didn't dare do that. But the supervision consisted of no more than requiring the man to check in by telephone once a month. Of course, he was perfectly free to come in, if he had any problem of any kind, but that was it.

Interestingly enough, we found that that last group had the best record. The high-powered probation officers didn't do any better than the run-of-the-mill ones. The group with the worst record was the group that was heavily supervised. Apparently this business of having somebody riding herd on a man all the time just drives him nutty.

Olney: That's the kind of thing you can do and learn with statistics if you use them rightly and study them and then follow out on what they suggest. The figures themselves don't tell you anything. They suggest where to go and look and what to do to test things, and then you have to do it. But you need a man who knows statistics to be able to tell you what they do suggest, and we were always short, and they still are short, on capable people.

Stein: Is that true of the Federal Judicial Center?

Olney: I really don't know. I don't know enough about it and haven't been close enough to it. I know they've got some very good men in there, but I don't think the Center has been independent enough. I don't think it's had its independence, and the reason is because every director they've had has been a judge.

It's like in any large corporation having the research and development section always headed by one of the corporate directors. He's interested in the machinery of the corporation and making it function as an institution, and the judges are interested in the courts. They're not interested primarily, just incidentally, in trying to find out the facts of the thing, so that every time there's a special need for personnel or something to be done, the Center people are called on to fill in on this and that, and then there's always the problem: the Administrative Office has to do the mechanical work of getting out the payroll, getting the information on the court cases, getting it onto the IBM cards, into the machines, getting the material reduced into statistical, usable form. That takes many man-hours to do and a lot of work.

The Administrative Office also has to get out payrolls and handle all the supplies and things of that kind. Those are pressing needs, too. Well, there's always a tendency for the statistical work to be shoved into the background to take care of these more immediate interests that affect the judges directly. Then in the statistical division itself there's a tendency to be even more concerned with that--with the supply business and those things--than they are with getting the material out for the Center. So I daresay they've had a lot of problems, but I hope with a new director who is not a judge that maybe some of this will work itself out.

The Budget and Congressional Relations

Stein: Is there anything more we should say about statistics before we go on to Congress?

Olney: No, I think not.

Stein: I noticed, in reading one of the reports of the man who was the first director of the Administrative Office of the Courts--

Olney: Henry Chandler?

Stein: Yes, Henry Chandler. He wrote a report in one of the books that you gave me in which he talked about his initial experience with Congress and the dilemma he felt that it put him in. He had been told, as you had, that the proper procedure was to pad the budget so that Congress would have something to whittle away and he did not like that procedure and he tended to try not to pad his budget. It seemed to me that that was one of the central difficulties that you had, was it not?

Olney: No, that really wasn't. Mr. Chandler did not believe in padding the budget and neither did I. However, I don't know, but in his case, I imagine, since he was the first director, and he was quite new, he probably took a much greater personal part in the preparation of the budget than I ever did. When I came in there, there was a business administration division which was accustomed to preparing the budget every year. They had experienced personnel in it and they would prepare the budget without any specific instructions from me.

Shortly after I became director, my head administrative man left and John Airhart, who had been my administrative man in the Department of Justice, came with me. John was not a lawyer. He was an administrator and a very good one. He prepared our budget over in the Justice Department, so he took immediate charge of the budget in the Administrative Office. This didn't mean that there was much change from the amounts that Mr. Chandler had presented. It was about the same kind of budget.

Curiously, we were presenting our budget to the very same subcommittee of the House Appropriations Committee that I had been concerned with in the Department of Justice, with John Rooney as chairman and then Congressman [Frank T.] Bow of Ohio as the senior Republican member. He was chairman during a brief period when there was a Republican Congress. But these were the very same people that we were dealing with. They were very parsimonious with the whole court system. The budget for the whole judiciary was a line budget. I think I discussed that before.

Stein: We didn't get that on tape. Perhaps you could just review that briefly.

Olney: There are two kinds of budgets: a line budget and a lump-sum budget. In a line budget one puts down--itemizes--what the money is wanted for: so much for this purpose, so much for that, so much for travel, so much for whatnot. A lump-sum budget is an amount that is allocated to accomplish a particular purpose, as a rule, to cover a whole operation. But it doesn't attempt to break it down into the details of how the money is to be spent.

One system is as good as the other. If you have impartial, sensible people to present it to, there's no reason for not giving them details on how you propose to use the money, but the danger (and it was certainly realized with this subcommittee that we had) with a line budget is that the committee will examine the budget and then decide that they'll only allow you so much for this project, and that here's another project that they favor, so they'll give you twice what you asked for. They end up by making the decisions of what you're going to do and try to run the organization.

That's exactly what this budget committee did. There were some things for which they wouldn't give us any money at all and we thought we needed it. One of them was enough money to pay salaries for competent statisticians to make full use of our statistics. During the entire time I was there, there was never one year that we didn't make that request and plead with them. We explained why we needed it and what we wanted it for and all the rest. During that time, we never got one nickel for an extra statistician.

It was due to that that we eventually lost the best statistician in the country on criminal statistics, who was Ronald Beattie, who had given up a very fine job in California and come to take this on because of the possibilities that there were for developing a statistical system which would be a real tool for getting facts on how the judicial system was working. But he had to do all the work himself--even some of the punch card work he did personally--and you can't keep that up indefinitely.

With some of the items Mr. Chandler used to have great difficulty, because he would give them an estimate of what he felt was needed for a given purpose and they would give him less than he had asked for. Well, his estimate would prove to be correct and that would mean that they ran out of money and couldn't operate effectively.

That didn't happen with John Airhart. It's not correct to say that he padded the budget, but in making up his figures he knew that he should make an allowance for amounts that they were going to cut.

Olney: The committee members, like Rooney, had no hesitancy in telling Judge Campbell and telling me, "We're not here to appropriate; we're here to cut. You've got to give us something to cut." John, as an experienced bureaucrat, was aware of that. But that didn't mean that we got everything that we wanted or that we had money enough on which to function.

There was a time when for many years the travel expenses of federal employees and officers were extremely low. Prices had gone way, way up and the amounts allowed for travel expense just didn't come anywhere near close to making it. After a lot of years of that, they suddenly upped it higher than it needed to be. With the kind of travel that our judges had and others, the Judicial Conference was satisfied that they didn't need to use the maximum. So the Conference passed a resolution requesting the judges to stay within a lesser figure than the maximum. (I don't remember what it was, but they gave the figure.) We thought that that was a good measure of economy. We ought to be trying to save money and we thought it would be very acceptable to the Appropriations Committee.

But it turned out quite the other way, and instead of being patted on the back for trying to save some money, the subcommittee said, "Well, if the federal judges can get along on that, why, we'll just change the maximum for them." So they cut it down to that figure and left everybody else up. The prices did go up, of course, and our people were getting squeezed when the rest of them weren't and, of course, the judges knew perfectly well who were responsible for that [laughter] and it didn't add to my popularity at all.

Stein: Here you were trying to save the taxpayer a dollar!

Olney: The treatment of the Supreme Court was even worse than the treatment of the rest of the judiciary. The Supreme Court has its own budget which they present to the same subcommittee. They had a lot of trouble with pigeons that were roosting on the buildings and dirtying the place up, especially the capitol. The Congress appropriated a considerable sum to pigeon-proof the capitol and nothing to pigeon-proof the Supreme Court building. So all the pigeons came over and roosted on the Supreme Court building. They asked to be pigeon-proofed too and all they got were snide remarks that the Court was for the birds and things of that kind and no relief. It got to be really disgraceful, all these mounds of pigeon dung all over the place.

Then the Supreme Court had all these big empty halls in the building which they thought could well be utilized by putting in display cases with things of interest: briefs written in longhand

Olney: by Abe Lincoln and some of John Marshall's memorabilia and things of that kind. So they asked for the small amount that was necessary for display cases which would have benefited the public, but they were not given. They were turned down every year. They kept turning them down.

On the matter of automobiles, the Supreme Court justices had no automobiles at all. But many of the other government agencies had automobiles and drivers; nearly everybody did. Members of the Congress had automobiles and drivers at government expense. But the justices needed them really more than almost anybody else.

I can remember Justice [Stanley F.] Reed, for example; he used to drive his own car and he was an absolute menace on the highway or anywhere else. I don't think he ever had been a very good driver. But he was inclined to be absentminded. He'd be thinking about his cases and things of this kind, and it's just very fortunate that he didn't kill himself or kill somebody else.

But there was no consideration given to any of the members of the Court. The chief justice [Earl Warren] was finally awarded a car, but that was on a very peculiar freak. He hadn't been in Washington very long and he was invited to the White House for a formal White House dinner. Mrs. Warren was away, so he had had his secretary phone for a limousine from one of these limousine services and tell them to have a limousine at such and such an hour for the chief justice. He got ready and went down just in time to make the dinner, only to find that the limousine they had sent him had a great big airport sign on it. It was an airport limousine. So there was nothing to do but to show up at the White House in an airport limousine.

This was noticed and joked about. Sal Andretta, who was the administrative officer in the Department of Justice, always claimed that he was the one who stirred it up. Anyhow, it resulted in an arrangement for a car and a driver for the chief justice, but not for any of the other justices. They needed it just as much and the need would be made apparent to the Budget Committee every time by the Supreme Court, but they got nothing.

Stein: Did that situation change at all during your tenure in Washington?

Olney: It did not change at all. John Rooney was there a long time. It didn't change until he died and that was after I left.

The Federal Judicial Center

Stein: Let's move on to the Judicial Center. The papers that you loaned me last week, particularly the essay called "The Federal Judicial Center," tell the story very well.*

Olney: Yes, I think it does. I think it explains what it's about, and then there's this report of the special committee.** Then, of course, there are the hearings, the congressional hearings, that were on it, too.

Stein: Yes, that was one thing I wanted to ask you about. I noticed that you testified at that hearing and wonder how you felt about your reception there, in comparison or contrast to the budget subcommittee.

Olney: Oh, I was very well received there, very sympathetically treated. Sure, I had no complaints. Oh, my goodness, I don't want to leave you with the impression that I was always badly treated by the Congress. I certainly was not. I never had any problems at all with the judiciary committees or with any of the Senate committees.

In fact, with the Senate Appropriations Committee, the first chairman was the original senator from Arizona, a very eminent man, Senator Carl Hayden. He was succeeded by Lyndon Johnson. Both of those Senators told the chief justice and they told me that they felt the judicial branch was not getting a fair shake from the appropriations committees of the Congress and that we should ask for more money and that we should make our case as strong as we could before the House subcommittees and before the Senate committee, and then when it went to conference they would put up a fight for it.

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*"The Federal Judicial Center," in The Bancroft Library.

**Report of the Special Committee on Continuing Education, Research, Training and Administration, in the Warren Olney III papers, The Bancroft Library.

Olney: We did that, followed that course. The only trouble with it was that whether they put up a fight or not, I never knew, but they never won any. It always came out of the House unchanged. But we were always treated with great courtesy and so was the Supreme Court.

Stein: I noticed that the board of the Federal Judicial Center was to be made up of two circuit judges and three district judges, and I wondered if there was any significance in those numbers.

Olney: Yes. In the first place, we didn't want to have too large a board and besides there would be ex officio the chief justice and the director of the Administrative Office. So there would be seven in all. Most of the problems with which the Federal Judicial Center would be concerned would be the problems of the district courts and we thought that not only should the district judges be represented, but it probably would be better if there were three of them as against two from the courts of appeal. So that's the way it was done.

Now, there was a great deal of discussion in the hearings as to whether there should be some lay members on that board. Senator [Millard] Tydings, who was the chairman of the Senate Subcommittee on Improvements in Judicial Machinery, felt there should be some lay members. The reason was that he didn't think that judges would do anything about judges' problems and the injection of some outside influence would be a good thing.

I very strongly opposed that, not because I thought his idea was without merit. I think that it did have merit. But I was sure that we couldn't possibly get that legislation passed if it was going to be opposed by the federal judges in any great number, and I was quite sure that it would be opposed by most of them if there were going to be nonjudges put on that board. They wouldn't want a lot of outsiders trying to come and tell them how to solve their problems. And I couldn't persuade Senator Tydings to change his view. But his view wasn't accepted, and it went through.

The bill that was passed was not the same as the bill which was proposed by the Judicial Conference committee. There were some substantial changes made in language and other things. One of the things that I had in there was--perhaps I shouldn't speak that way, but it was indeed my idea. In the original bill there was a provision that the board could accept grants from nongovernmental sources. That was because of the sad experience we had with line budgets and the Rooney committee, and I knew that if the board could accept outside grants we could get the money for a lot of the projects that ought to have been conducted. The Ford Foundation put up a lot of money to the Brookings Institute to run at our request--we stirred it up--a survey on the bankruptcy system.

Olney: Well, we hoped to have that in. It was taken out and perhaps it was a good thing. As long as we ended up with a lump-sum budget it was a good thing, because you can get into complications if you start taking money from foundations and things, certainly if you get dependent on it in any way.

Stein: You mentioned Senator Tydings and last time you told me something about him, and I've forgotten now exactly what the story was, but it had to do with either him or his father and his relative unpopularity in Congress. He was going to carry the legislation--was that it?

Olney: Senator Tydings's father had been a Democratic Senator from Maryland and he had been defeated in an election by then-Senator [J. Glenn] Beall, a Republican. Senator Joseph McCarthy of Wisconsin had injected himself into that campaign--and how! He campaigned all over Maryland for Beall, and one of the things that happened in that campaign was the circulation of an alleged photograph of Senator Tydings and Earl Browder, the chairman of the Communist party, together. It turned out that the photograph was a fake, and a very crude fake at that, and there were similar tactics used in that election. There was a lot of election material circulated that failed to disclose who the originators were. In some cases nothing was indicated and in other cases it was false information. There were prosecutions and convictions of some of those people.

[telephone interruption]

These prosecutions--the election and the prosecutions--were instituted before I got into the Justice Department, but there was still a hangover. There were insistent demands made of me when I headed the criminal division to try to carry the investigation and prosecution up so that it included Joe McCarthy. The only trouble with it was there wasn't any evidence. [laughter] You couldn't prove it. They all believed it and, in fact, I believed it myself, but--

Stein: You didn't have a smoking gun.

Olney: No, we had no smoking gun, and I was quite unpopular in Democratic circles because I wouldn't prosecute McCarthy on that or on charges that he had misused funds that he'd raised supposedly to fight the communists and he'd been using them on the commodity market. Well, the trouble with that was that the people who'd given him the money said they were delighted that he had the money and that if he wanted to use it on the market, it was all right with them. You can't make a prosecution on that.

Olney: Then Joe Tydings came along, the son, and he ran against Beall and defeated him. He came in with Kennedy, in that election [1960]. He was put on the subcommittee of the Senate Judiciary Committee that was called the Subcommittee on Improvements in Judicial Machinery. Olin Johnston of South Carolina was chairman, but he died, and that put Joe in line and he became chairman of that subcommittee.

When that happened, he got in touch with Judge John Biggs to talk with us about what the problems of the judiciary were and what was needed in the way of improved judicial machinery. We had a lunch with him in which we took him at face value. He seemed a young Senator who wanted to be helpful to the judiciary in every way. We talked with him with perfect frankness, and I told him what our problems were and what was being done and the ideas that we had as to what could be done.

He took all these and ran with the ball, giving no credit to the judiciary, but quite the contrary, making it look as though these things had all originated with him and that the stupid judges had just been sitting there twiddling their thumbs on it.

Well, that was our experience with him, and other people had the same kind of experience. So there were many people in his own party and many people who should have been friendly to him who came to dislike him because he wouldn't play on the team. But he was very well intentioned on this, but this is the thing that made him a little unpopular.

Stein: Yes, I'm remembering now what the rest of the story was. It had to do with the introduction of the legislation, that you didn't want it to appear as though it had come out of his hat and that it was kept top secret until you were ready to release your own version.

Olney: That's right. It was because of this experience that we had with him that when it came to the proposal of the Federal Judicial Center, we did not disclose that to him at all and did our best to keep that from happening, so that it did not come as his proposal. He had alienated enough other people by that time so that we were not too sure that his sponsorship would be the right sponsorship for it.

Stein: The kiss of death.

Olney: Yes. Well, that's what the politics of this sort of situation is.

Stein: Is there anything more we need to say about the Judicial Center?

Olney: No, I think not.

Stein: If I or you think of additional questions or comments we can always write them in.

Olney: I guess this about covers it, doesn't it?

Stein: I think this about does it. Thank you.

Transcribers: Gloria Dolan, Sarah Salvante, Marilyn Ham, Michelle Stafford
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INTERVIEW GUIDE -- Warren Olney III

APPENDICES

Sierra Club Bulletin
December, 1969

SIERRA CLUB BEGINNINGS

By Ethel Olney Easton

In 1889 or '90 my father, Warren Olney, began meeting John Muir at William Keith's studio which was located above the California Market in downtown San Francisco.

Keith was a well-known landscape and portrait painter and an active lover of the outdoors. He was an intimate friend of Muir and had accompanied him on outings in the Sierra and elsewhere. My father had come to California from Iowa in 1868 because of the climate and the mountains, as well as to practice law. He had tramped and camped over hundreds of miles in the California back country and had known Keith for many years but had never met Muir, who was not then by any means as widely known to the general public as he later became.

Coming to San Francisco from Martinez (not far north of Oakland, where he had a fruit ranch) Muir would often visit Keith's studio. On receiving word from Keith, my father would walk over from his office in the nearby First National Bank Building, 101 Sansome Street, and the three would talk about the outdoors.

The creation of Yosemite National Park in 1890 and of the Federal Forest Reserve System in the following year must have given impetus to these conversations. There was increasing concern over the future of "the Sierras," as we usually called them, and over encroachment of "civilization" and of private interests on wild places.

After their talks the three would often go downstairs for lunch in the California Market restaurant, the market then extending from Pine to California streets at the site of the new fifty-three story Bank of America Building.

Others soon joined the conversations and lunches. I remember my father saying that the meetings were growing too large for Keith's rather small and cluttered studio and were being held in my father's law office. Among those included in the group were probably Professors Joseph LeConte, J. H. Senger, William Dallam Armes, Cornelius Beach Bradley, and John C. Branner of the University of California and Stanford faculties, and David Starr Jordan, President of Stanford, all then or later friends of my father. At about this time I recall both Muir and Jordan coming to our house on 29th Street in Oakland.

Muir certainly played a leading role in the meetings. I remember my father's speaking of this.

Keith evidently provided a sympathetic context and atmosphere. He was a genial man of great personal charm and wide acquaintance. He had painted his favorite view (perhaps it was Muir's too) of Mt. Tamalpais from the west. It was a watercolor which my father had purchased and which is now in my home. Keith had painted as a gift the portrait of my father that is now at Mills College.

My father's particular contribution to the conservation meetings was his practical, legal, business and political knowledge. He had been a Bay Area resident for nearly twenty-five years. He would soon consent to run for mayor of Oakland but only on condition he receive both Democratic and Republican nominations, which he did. In addition to law, business, and politics, he was in touch with administration and faculties at California, Stanford, and Mills and could thus help create a broad and practical base for an effective organization.

All those working for what became the Sierra Club shared a common love and concern for California's natural beauty. My father and Muir had a small additional bond in that they had arrived in California the same year.

The articles of incorporation of the Sierra Club were drawn up by my father and signed in his office on June 4, 1892. Muir was named president and my father first vice-president. Keith was a charter member, as was my brother Warren Olney, Jr.

Unfortunately the Olney law office records were almost completely destroyed in the earthquake and fire of 1906, including most of those that pertained to the Sierra Club. From such as remain it is clear that the new organization faced immediate problems.

On November 13, 1893, my father was writing Muir:

Bailey [Charles A. Bailey] and Robinson [Charles D. Robinson] have been in to talk about the depredations in Yosemite Valley. Robinson as usual is very much excited. It looks very much as if the Sierra Club would be drawn into the contest one way or the other. That is to say, inaction on our part may be taken as evidence that there is no substantial foundation for the complaint made against the Commissioners. If the Commissioners are a one-tenth part as bad as their accusers say, the Club ought to take action against them. The travel to the Yosemite Valley is no doubt closed for the season, therefore it would be a good time to go up there to examine and report what foundation

there is for the statements that the Valley is being barbarously treated as far as its flora is concerned. Suppose you and Bailey and some one else say McAllister [Elliott McAllister] from the Club go. What should be done is to make a careful examination and make out a statement as to the result of that examination. The action of the Club based upon such an examination by its President and Directors would carry great weight with the people.

Yours truly,

Warren Olney

The letter refers to a controversy arising over the management of Yosemite Valley by a board of commissioners appointed by the state of California. The Valley, as distinguished from the area immediately surrounding, was then a state-controlled enclave within Yosemite National Park.

Here is a letter from my father to Muir, referring specifically to the region bordering Lake Tahoe on the west. My father had a particular affection for this region. In it he had had an experience which constituted a basic commitment to conservation and the mountains. In 1876, the year I was born, he was returning by train from business in Reno and stopped off to see Lake Tahoe. He took the steamer, then the only means of traveling around the lake, and got off at Tallac. Making his way alone up the gorge of Glen Alpine, he came to a spot where he could scale the steep walls and climb on toward the top of Mt. Tallac. From the summit he saw the whole vast panorama of the Sierras north and south, and the lake spread out around him. From such experiences as this came his commitment to the Sierra Club and the cause of conservation.

"Your favor received," he writes Muir. "The only trouble about our forest reservation is the delimitation of it. I have a letter from Senator Perkins saying that there is no money with which to make proper surveys. When President Jordan was in Washington he did what he could in the way of establishing boundaries. He found the Secretary of the Interior and the Commissioner of the Land Office in hearty accord with our scheme. By the way, guess I will send you a copy of his letter.

Senator White has interested himself very much in the matter and I wrote him a letter the other day, of which I send you a copy, so you may understand what is being done in the premises. He has acknowledged the receipt of this letter, but has not said anything about his views in regard to turning the care of forests over to the War Department. Think that when the reservation is made it will be of the whole country from Yosemite Park to the R.R.

Last Saturday with one of my daughters went to top of Diablo and from there over to the Northwest to Moses' Rock. The trip was not less than sixteen miles. The girl stood it better than I. Unless you visit with me at the ranch soon there will not be good cooking accommodations as I am contemplating making a change.

William Keith

What can we do to help fix the boundaries of the proposed reservation?

Twelve days later, Muir was writing my father, this time apparently about the state of California ceding control of Yosemite Valley to the federal government, or so Holway R. Jones identifies the letter in his excellent book, *John Muir and the Sierra Club, The Battle for Yosemite.* My copy of the letter is typewritten and is labeled "Rough draft." It is dated at Martinez, January 18, 1897.

My dear Olney:

I think with you that a resolution like the one you offered the other day should be thoroughly studied and discussed before final action is taken and a close approximation made to unanimity, if possible. Still I don't see that one or two objectors should have the right to kill all the action of the Club in this or any other matter rightly belonging to it. Prof. Davidson's objection is also held by Prof. LeConte, or was, but how they can consistently sing praise to the Federal government in the management of the National parks, and at the same time regard the same management of Yosemite as degrading to the State, I can't see. For my part, I'm proud of California and prouder of

Warren Olney, Sr.

Uncle Sam, for the U.S. is all of California and more. And as to our Secretary's objection, it seemed to me merely political, and if the Sierra Club is to be run by politicians, the sooner mountaineers get out of it the better. Fortunately the matter is not of first importance, but now it has been raised I shall insist on getting it squarely before the Club. I had given up the question as a bad job, but so many of our members have urged it lately I now regard its discussion as a duty of the Club.

Ever yours,
John Muir

Meanwhile my father's personal friendship with Muir had ripened. The following letter catches the spirit of their relationship.

My dear Muir:

. . . Please remember me to Mrs. Muir and say to her we expect a visit from her as soon as the health of your daughter will permit. Wilkinson and I have about decided to spend the Fourth of July week at a place called Fouts Springs in Colusa County, under Snow Mountain. Said to be good fishing. Come and go along. There is an interesting mountain country almost in sight from your house that I have never heard you speak. I believe it is Stony Creek, heading in Snow Mountain that is the hiding place of the trout we are to catch. Come! We leave here on Saturday morning the 30th. By rail to Colusa Junction, then by narrow gauge to Sites, then by Stage to the Springs.

Truly yours,
Warren Olney

Am under the impression that these mountains of the Coast Range, St. Johns, Snow, Sanhedrin, etc., are never entirely free from snow. How is that?

This is not the time to retrace the entire history of the Club during these years, even were I prepared to do so.

I should like to add, however, that in the unfortunate Hetch Hetchy controversy my father played a leading, and I believe a mistaken, role in dividing the Sierra Club, a division that led to his resignation and to temporary estrangement from some members of the club he had worked with, including Muir and Will Colby.

My father honestly believed that the Hetch Hetchy project—aimed at damming the Tuolumne River in a magnificent valley adjacent to Yosemite—was necessary to the Bay Area's water supply. As a longtime Bay Area resident he had experienced the years of water rationing which many old-timers still remember. Wells and windmills in back yards were common. As mayor of Oakland he had had to face "the water problem" and be responsible for its solution. He had battled the private interests then controlling the Bay Area's meager water supply. He had become convinced that a public source, and in particular the Hetch Hetchy source, was the best available solution to a problem which he had had long personal and painful experience with. He felt that since Yosemite Valley was assured, a compromise on Hetch Hetchy "in the public interest" was advisable.

He did not foresee the day when the Sierras would be so crowded, and unspoiled natural grandeur in such short supply, that Hetch Hetchy Valley would loom in retrospect as a bit of paradise lost. Besides—he had once fallen while fishing in Hetch Hetchy and cracked three ribs. Perhaps the painful experience marred his appreciation of the Valley's grandeur and beauty.

His resignation from the Club after nearly twenty years of pioneering service and close friendship became such a painful subject to him that the Hetch Hetchy project was never afterward a permissible topic of conversation in our household.

Ethel Olney Easton was born in San Francisco, grew up in Oakland, and was graduated from the University of California in 1897. She accompanied her father, Warren Olney, on numerous trips into the Sierra with John Muir, William Keith, Will Colby, and other leaders of the club's early days. She now lives in Santa Barbara.

THOMAS C. LYNCH
ATTORNEY GENERAL

CHARLES A. O'BRIEN
CHIEF DEPUTY ATTORNEY GENERAL

STATE OF CALIFORNIA

O. J. HAWK
DEPUTY DIREC

RONALD H. BE
CHIEF OF BURE

APPENDIX B

BUREAU OF CRIMINAL STATISTICS

Department of Justice

3301 C STREET

MAIL ADDRESS:
P. O. Box 158
SACRAMENTO

November 9, 1970

Mr. Warren Olney III
1950 San Antonio Avenue
Berkeley, California 94707

Dear Mr. Olney:

You have asked me to review the information that has been published relating to the time for the disposition of criminal cases during the period of 1931-32 in the superior courts of Alameda, San Francisco and Los Angeles counties and compare it with similar information that is available for these counties in recent years. The facts as to the situation in 1931-32 comes from the report I prepared analyzing data collected covering the disposition of felony cases in superior courts of the three counties mentioned during that fiscal year.

While the current data that we have in the Bureau of Criminal Statistics on the time taken to dispose of cases in superior courts, particularly for the past three complete calendar years, 1967, 1968 and 1969, are not quite in the same form as that compiled for 1931-32, the time intervals presently are shown as median days while in the earlier years the information was compiled on the average number of days. Yet, both sets of data are quite representative and fairly accurate in showing the actual time intervals in the handling of these cases in both periods of time and are comparable. Median intervals are generally slightly shorter than arithmetic averages as the median is the exact middle while averages are unduly influenced by cases with very high intervals.

In 1931-32, the available time from filing of the criminal charge to final disposition in Alameda superior courts was 34 days. We find, however, that in the three most recent years, the median time to dispose of criminal defendants in Alameda County courts approximated 60 days; almost twice as long.

Both Los Angeles County and San Francisco County had much higher intervals in 1931-32 than Alameda County, the average for Los Angeles County was 57 days and for San Francisco County, 67 days. The median time for these two countie in the years 1967-69 approximated about 67 days for Los Angeles County and 85 days for San Francisco County.

As the time intervals are computed from the filing of the charge to the point of sentence or final judgment, in recent years, because of the predominance of pre-sentence investigations for convicted defendants, relatively unknown

to any great extent 40 years ago, a longer time interval might be expected in all counties. Usually, a period of two to three weeks is allotted by the courts to the probation department for pre-sentence investigations which would possibly add anywhere from 14 to 21 days in those cases for which pre-sentence investigations are made.

There are variations in the time taken to dispose of cases from filing to the time of disposition. Defendants who plead guilty on arraignment are, of course, quickly disposed of. In 1931-32, the disposition time for this type of defendant was an average of 19 days in Alameda County, 28 in Los Angeles County and 35 in San Francisco County. In recent years, the median times for these types of of dispositions have been about 27 days for Alameda County, 35 days for Los Angeles County and 38 days for San Francisco County. In every instance, they are somewhat higher than they were years ago but the difference probably being accounted for by added time for pre-sentence investigation.

It has usually been found that the time interval for defendants who change their plea from not guilty to guilty is only slightly less than the time taken by those cases which go to trial. This suggests that where these pleas are negotiated the change of plea occurs very close to the end of the period of time when the defendant would have to appear for trial. In 1931-32, the total time intervals for disposition of this type of case was 43 days for Alameda County, 66 days for Los Angeles County and 72 days for San Francisco County.

For those cases which actually go to trial, in 1931-32, the average time in Alameda County was 45 days, Los Angeles County 73 days and in San Francisco County it was 78 days. In recent years, the median time for these trial cases has approximated about 102 days in Alameda County, 107 days in Los Angeles County and 120 days in San Francisco County.

From this basic information it is clear that in 1931-32 the processes of criminal justice in the superior courts of Alameda County was carried out much more rapidly than has been the case in the last few years for which we have data available. But while Alameda County, even in the years 1967-69, showed slightly less time elapsed than in Los Angeles and San Francisco counties; nevertheless, the time intervals in Alameda County are, in general, twice as long except for pleas on arraignment as in 1931-32. On the other hand, the other two counties which had much higher intervals in 1931-32 than Alameda County showed increases in time but not to the extent of doubling the intervals as occurred in Alameda County.

One other question we discussed was the general topic of delay in defendants getting to trial particularly jury trials. I think it is interesting to note that the disposition of cases by jury trials has not increased proportionately with the rise of the number of defendants who have to be disposed of. Actually, the number of defendants disposed of by jury trial in the superior courts of Alameda County for the years 1965 through 1969 were 182, 148, 173, 120, and 173, respectively. Whereas, in the early 1960's, approximately 10 percent of all defendants in the superior courts of Alameda County were disposed of by jury trial; in the last two years it has approximated 6 percent.

Los Angeles County, of course, has been reputed to have the greatest amount of congestion in their superior court. Jury trials in Los Angeles, howev show very little change so far as to the number of defendants actually tried. During the last five years, in Los Angeles County, the numbersof defendants dis- posed of by jury trial were 1,052, 1,010, 880, 861, and 937. Again, in the earl 1960's about 6 percent of all dispositions in Los Angeles County superior court defendants were by jury trial; in the last three years this percentage has been between 3 to 4 percent. In San Francisco County, during the five-year period 1965-69, jury trial defendants numbered 139, 122, 148, 102, and 71.

The problems of congestion, therefore, are not to be attributed to an increase in the number of defendants appearing before juries. The reasons for delay and crowded trial calendars are much more apt to be the result of conditio and postponement practices and inflexible calendars rather than the volume of ca to be tried.

Sincerely,

Ronald H. Beattie

Ronald H. Beattie
Chief of Bureau

RHB:jdm

Sources: A System of Criminal Judicial Statistics by R. H. Beattie, University of California Press 1936; 238 pp Chapter XIII Time Factor in the Disposition of Felony Cases in the California Superior Courts.

California Bureau of Criminal Statistics - Annual collection of data from superior courts, 1967, 1968, 1969.

BERKELEY GAZETTE

TUESDAY, SEPTEMBER 3, 1929

GETTING ACTION ON CRIME

Alameda County has become decidedly unhealthy territory for the criminal element, especially those of the violent type. This condition has been brought about through the speeding up of the machinery of prosecution. Under the capable management of District Attorney Earl Warren, there has been developed in this county what has come to be known as "twenty-four hour service." And by that is meant that, within twenty-four hours after a gunman is arrested and his identity established, he is indicted by the Grand Jury and immediately taken into the Superior Court for arraignment.

It has long been held that the delays incident to the trial of criminals are the basic causes of miscarriage of justice. Legal technicalities, crowded court dockets and procrastinating district attorneys all contribute to postponement of indictment and trial of offenders and make easier their escape from deserved punishment.

Not so, however, in Alameda County, especially since the establishment of Prosecutor Warren's "twenty-four hour service," a system that has worked admirably and has not failed to obtain early trial, conviction and execution in a single important case in the last two years.

Let us see how the new system has functioned. Two typical cases were the Oakland Bank murder in July, 1928, and the Bank of America robbery in this city in June, 1929. In the former case, Red O'Brien. Louis Lazarus and George Costello, all ex-convicts and jail escapes, murdered a teller of the West Oakland Branch of the Oakland Bank at noon July 26, 1928. They were immediately apprehended, and at eleven o'clock the following morning they were indicted by the Grand Jury and were brought into the Superior Court for arraignment, all in less than twenty-four hours from the time of the commission of the offense. The men were tried, convicted and sentenced to be hanged within thirty days.

In the Berkeley case, two ex-convicts, Lloyd E. Samsell and Ethan A. McNab, robbed the Dwight Way Branch of the Bank of America on the 14th of June, 1929. A few days later they were arrested in San Francisco and were indicted by the Grand Jury of this county the following day. They were promptly arraigned, tried and convicted of first degree robbery within less than thirty days.

On the 15th of August of this year, Charles Herbert and Lorraine Gordon robbed a bank in East Oakland, were apprehended and were indicted the next day. They also would have had an early trial but for the fact that the girl has a fractured spine and must be kept in the hospital in a cast for some time.

The same treatment was given Walker and Taggart, two bank robbers, who preyed on the banks of this region over a period of a year. They were promptly tried and convicted and are now in Folsom Prison.

The La Pierre gang that murdered Police Inspector Davis of Oakland, was disposed of in short order. Within thirty days La Pierre was sentenced to hang, his brother-in-law, Archambault was sentenced to life imprisonment and Mrs. La Pierre sentenced to prison for manslaughter.

Arthur L. Antoine, the hatchet murderer, was disposed of in record time, as were Gomez and Ryley, who murdered an old man in Livermore and were sentenced to hang in less than thirty days after the time of their offense.

The most recent case of this kind was that of Peter Rosso, who murdered his wife on the 3rd day of August, 1929 and on the 27th of the month was sentenced to San Quentin for his offense.

These are but the outstanding cases of the last two years. There are others, highwaymen, chain store robbers and lesser offenders on whom Prosecutor Warren has concentrated with the result that they were speedily tried and convicted.

A little more of this sort of effort among district attorneys throughout the country and the nation would experience a decided downward swing of the crime curve.

APPENDIX D

FORTNIGHT

THE NEWSMAGAZINE OF CALIFORNIA

WARREN OLNEY III

(See "Government & Politics")

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NOVEMBER 5, 1948
(Vol. 5 • No. 10)

(See Cover)

Olney Fights Back

OPEN warfare was getting more open this fortnight as Attorney General Fred Howser blustered through another round of "misunderstandings" with the Commission on Organized Crime. In the public press he vacillated up and down the scale of emotions with clumsy abandon. He made veiled hints that "sinister forces" were at work in California trying to undermine law enforcement (his most ironically accurate statement of the fortnight), groaned that the Crime Commission was pitching against him, hurriedly explained that he wanted to cooperate with the Commission, then dug into his law books for some way to upset the workings of the Commission.

The Answer? What he came up with was the declaration that Warren Olney, counsel for the Commission, was illegally employed. Leaning over backwards to explain that he was only announcing this opinion to fulfill his duties as Attorney General, Howser explained that a legislator had asked for the decision. Pushed in a press conference to name the date that the opinion was requested, Howser couldn't remember. "You know how it is, trying to remember dates," explained Howser. One reporter asked: "But, can't you give us an approximate time; you know, was it today or yesterday?" Howser flushed angrily.

Big Supports. After Howser's maneuver, Olney was quickly backed by Admiral William Standley, Commission chairman; Richard McGee, State Director of Corrections; and Governor Warren, who from his campaign train issued an unequivocal statement: "Mr. Olney has performed his duties fearlessly and in the public interest. His job is not yet completed. It must be completed." Then, in case Howser was still not aware of Warren's feelings on the matter, the Governor added that he would see that Olney's salary ($625 per month) was paid "even if I have to pay it out of my own pocket."

Howser hurriedly offered to appoint Olney as a deputy attorney general and keep him on the job—under the Attorney General's administration. "Under no circumstances," said Olney. Still on the job, he privately told the Commission members, "I don't chase that easy."

Loopholes. There was no doubt about the legality of the loophole Howser found. The Commission had to use the Attorney General's office rather than private counsel. But—with the Attorney General's office itself receiving the major attention from the Commission—this made an awkward situation. Yet, basically, Howser's move was only a small rock tossed in the road that the Commission was following. The Governor pointed out that the law made it clear the Commission could hire an outside lawyer "with the permission" of the Attorney General. That permission, however, was slow in coming.

Tom King

Olney: "a southpaw when needed"

Curve-Ball Lefty. Whether Fred Howser liked it or not, the net result of the interchange was to advance the 44-year-old attorney still further as a public figure. Warren Olney and the Commission have fought to keep their dealing with Howser aboveboard. But, when someone asks for it, Olney—nicknamed "Lefty" ever since he was old enough to play baseball—can throw a southpaw curve or so.

Past Doings. He has spent half his law career as a prosecutor. Right out of UC law school he spent two years as Assistant District Attorney of Contra Costa County.

In 1930 he began an association—which he has enjoyed "very, very much"—with Earl Warren. Says Olney: "He never puts any strings on people who work for him—just so you do your job." He helped handle criminal cases when Warren was DA of Alameda County until 1936. When Warren became Attorney General, Olney returned to his service again as Chief Criminal Deputy, handling among others the well-known action which broke the regime of Tony (Cornero) Stralla and his Southern California gambling ship, the *Lux*.

By Special Request. Olney stayed in the state office from 1939 to 1942, then left to serve with the Marines. He returned from active duty a captain (after serving as an air combat intelligence officer in Samoa, the Gilbert and Marshall Islands) and went into private law practice in partnership with Scott Elder. Last year, because it was Earl Warren asking him, he took the Crime Commission post.

Like his longtime mentor, Olney picks good men and treats them as partners. His office in LA is headed by John Hanson, who formerly spent 20 years as an FBI agent.

Olney never calls up a newspaper to pop off a loud statement. But when newsmen call him, he cooperates and doesn't duck a tough question if he can possibly give a straightforward answer.

Olney sits quietly behind a desk and talks in low tones, but his statements have a bite to them. British ancestry on the paternal side combined with some personal shyness give him a touch of reserve which gives way easily and unexpectedly to good-natured laughing. Scores of loyal friends, new and long-standing, find his personality disarming.

He was born in Oakland and grew up in Berkeley, where he was a serious student rather than an athlete at school. Yet a friend, remarking, "Lefty is one of those persons who never change," remembers well their teen-age experiments with smoking "after Sunday School." Although Olney was the scion of an old, respected and moderately well-to-do family, friends found him anything but snobbish.

Brother Knight. As a freshman at Pomona College (of which his mother is a trustee) and then at UC in Berkeley (class of '25) he was sociable and popular but not prominent, a member of Alpha Delta Phi—fraternity brother of the probable Governor-to-be, Goodwin Knight, who belonged at Stanford.

In the Attorney General's office and in the Marines he lopped that III off his name, and obviously hoped to be rid of the handle forever. But with three Warren Olneys in direct line of succession, all lawyers, he has had to keep it for self-identification. Mail and calls were always coming to him instead of his father's law offices across the street.

Grandfather Olney fought for the North in the Civil War, then came to California in 1865 and practiced law in the Bay Area. His son, Warren Olney, Jr., followed the family profession, became a senior partner in the SF law firm of McCutchen, Olney, Mannon and Greene—one of the largest on the Coast—and served in the State Supreme Court from 1919 to 1921. He died in 1939.

Warren Olney III worked in his father's office at three different times. But he never cottoned to the idea of being the favored son of a senior partner and always launched out on his own after a year or two.

Spike IV. His two ruling passions are probably law and his family. He married Elizabeth Bazata in 1926, one year out of college. They have three children. Elizabeth, just turned 21, was graduated from UC in three years and is now teaching the fifth grade at Concord. Margaret, 18, and Warren Olney IV (better known as Spike), 11, are still in school.

Above middle height, Olney keeps trim by swimming, tennis and mountaineering. Last summer, during one of the Commission's brief altercations with Howser, Olney was completely out of touch with the world, hiking along the high mountain John Muir Trail on the annual trek of

the Sierra Club. That club was founded in his grandfather's office, and both his grandfather and father were charter members of the organization, along with John Muir himself.

The Future? It will be characteristic of Olney to fight to complete the job. If—assuming the national election goes as indicated—a climax is not reached before Warren moves on to Washington, indications are that he will have the support of Warren's probable successor, Goodwin Knight. To date Knight has been caught in an awkward crossfire on the issue. Aware that the Commission is Earl Warren's baby, he has tried to maintain a policy of hands off and still not appear to be playing footsie with Howser. This has been difficult to do when Howser has tried repeatedly to intimate that Knight was siding with him as regards the Commission. Best guess is that—once Los Angeles attorney Goodwin Knight takes office—he will support the Crime Commission as ardently as Earl Warren.

But—unless there are legal tangles—there will be a climax before Knight steps in. Howser and associates have to explain the awkward matter of some wire recordings which have not yet been brought into the hearing. And, secondly, there is the embarrassing matter of some slot machines which had been mentioned in the Crime Commission's report but neglected by the newspapers. It indicated that—as Attorney General—Howser should know about the 324 slot machines in San Luis Obispo County (and 600-odd machines in San Bernardino County not mentioned), all taxed and recorded by the Federal Government. Why hadn't Howser closed them down? When the time came that he was forced to close them down, or explain, there would be a new series of involvements. It appeared that Attorney General Fred Howser was caught in a bit of a crossfire, too.

Acme

Admiral Standley: he backed him.

Acme

Fred Howser: he slapped him.

Let Me Do It

A BEAUTIFUL blue-eyed blonde named Ruth LeFever achieved the distinction aboard the Warren campaign train of founding a fraternity. A special and tender fraternity, but a fraternity even so.

Mrs. LeFever, whom the Governor called "Doc," was loaned to the campaign train by Merritt Hospital of Oakland to keep the Governor, his staff and family, and the press healthy on their 31-day junket through 32 states.

A number of them, including Governor Warren and Senator Knowland, became temporarily indisposed from colds, fatigue, "flu" and sore throats which required treatment consisting of injections of vitamin compound or penicillin. They had that united, fraternal feeling because the nurse jabbed her needle exactly where President Truman would like to boot his Republican opponents.

No Man for the Middle

IT MAY have escaped the people, but politicians have been watching. A few weeks ago a batch of resignations from the Democratic Central Committee in Sonoma County drew their attention to one of the oddest Congressional races in California: the scramble for the seat of Clarence F. Lea, retiring after 32 years.

Survivors of the primaries are Sterling J. Norgard (Dem. and IPP) of Ukiah, and Hubert B. Scudder (Rep.) of Sebastopol. Yet Roger Kent (Dem.) drew a total of 34,334 votes in the primaries, more than any other candidate.

The 42-year-old attorney, who practices in SF and lives in Kentfield (named for his family; his father was once a Congressman from the same district) was running his first political race. A Democrat cross-filed Republican, he topped Norgard by 620 and Scudder by 6,430 total votes, yet his strength was divided so that he didn't take either nomination.

Norgard, 34, a farmer, was even more politically unknown until a smooth rolling group representing labor, Wallace sentiment and undoubtedly the local Communist Party*, picked him as their man.

Democratic regulars were generally on the fence. In the final showdown it was more a matter of Kent's losing (by 917 votes) than Norgard's winning the Democratic nomination.

T-H and Strategy. One factor was the Taft-Hartley Act. Kent, a middle-of-the-road liberal, favored retaining certain portions. Norgard apparently won some labor strength by a blanket attack on the whole measure.

Norgard's other advantage was strategic. The first district, a geographical jigsaw, extends up the coast from Marin to the Oregon line and also embraces six counties from Mendocino across to the Sierra foothills. In that eastward bloc Butte County gave Norgard a margin of 1,586 Democratic votes, enough to clinch that nomination.

John P. Caldwell, president of the Butte County Newspaper Guild, led a last-minute, whirlwind campaign for Norgard in this district where neither he nor Kent was very well known. Caldwell said he was aided by a "committee composed of farmers, local business men, CIO, railroad and AFL unionists, the Grange and a few members of the Independent Progressive Party."

* The Daily People's World has supported Norgard in at least three editorials. He has advocated in his campaign that national defense be handled by the ROTC, CCC and the 14 million trained veterans, a piece of advice Wallace recently gave Congress. Neither fact proves Norgard personally a Communist: these and similar coincidences do tie him close to the current Party line.

Moulin

Sterling J. Norgard

SAN FRANCISCO EXAMINER

MONDAY, JANUARY 5, 1953

Ike Picks Warren Olney To Head War on Crime; $15,000 a Year Pos

GETS POST—Warren Olney III, of Berkeley, shown with his wife, Elizabeth, was appointed by President-elect Eisenhower as an assistant United States attorney general yesterday. Olney will head the criminal division, a $15,000 a year post. —San Francisco Examiner Photo.

Two Others Appointed

NEW YORK, Jan. 4.—(AP) — President-Elec Eisenhower today name three men to serve in $15 000-a-year jobs in the jus tice department under Her bert Brownell Jr., who wi be Attorney General in th new administration.

All Republicans, those Eise hower chose as Assistant Atto neys General are:

Warren Olney III, 48, o Berkeley, Calif., to head th criminal division, one of th most important positions i the department. Olney former ly was chief counsel of The California Special Study Com mission on organized crime.

Warren E. Burger, 45, o St. Paul, Minn., to be chief o the claims division, whic handles all civil suits an claims for and against th government. Burger has beer a practicing attorney sinc 1931.

J. Lee Rankin, 45, of Lin coln, Neb., who will be i charge of the executive ad judications division, which pre pares presidential proclama tions and executive orders i cases where legal advice is re quired. Rankin has been prac ticing law since 1930.

Olney to Inherit Many Big Justice Dept. Cases

Senate O.K. Needed——

The nominations of all three men will go to the Senate for confirmation after Eisenhower takes office January 20.

The President-elect announced earlier the selection of William P. Rogers, Washington attorney and former chief counsel of a Senate investigating committee, as deputy attorney general under Brownell.

Today's appointments were made by the general after conferences with Brownell.

They came just twenty-four hours after Eisenhower chose Detroit Banker Joseph M. Dodge as Federal budget director.

Checked Already——

Eisenhower's press secretary, James C. Hagerty, said the appointments of the three justice department men and Dodge were checked in advance with Republican senators from the States where the men live.

That was in line with the general understandings which Senator Robert A. Taft, of Ohio, the Senate majority leader, said he and GOP colleagues had reached at a conference last week with Eisenhower.

Taft said there had been complaints by Republicans in Congress about a lack of such consultation.

Olney supported Gov. Earl Warren of California for the GOP Presidential nomination.

Burger backed Harold E. Stassen at the convention until the former Governor of Minnesota released his delegates.

Rankin was a pre-convention Eisenhower supporter who led a campaign for write-in votes for the General in Nebraska's Presidential preference primary.

As head of the Justice Department's criminal division, Olney will inherit the many criminal action cases initiated during the last few months by the Truman administration's outgoing attorney general, James P. McGranery.

It will be up to the new administration to decide whether to push those cases.

They include a number of big income tax prosecutions and the indictment of Owen Lattimore, foreign affairs specialist, for perjury.

During the second world war, Olney served in the Pacific with the Fourth United States Marine air wing, with the rank of captain. At present he is a lieutenant colonel in the Marine Reserves.

Six years ago he was named chief counsel of the first crime study commission in California. He served until 1950 and was reappointed to the same position in October, 1951.

J. LEE RANKIN
New Assistant Attorney General

Olney, a native of Oakland, Calif., was assistant attorney general of the State from 1939 to 1942, in the days when Warren, now Governor, was Attorney General.

PROFESSOR OF LAW.

Olney is a professor of law and of criminology at the University of California.

Burger, who will head the claims division, is a member of a St. Paul law firm and has been a professor at St. Paul College of Law for the last ten years.

WARREN E. BURGER
Eisenhower Appointee
—Associated Press Wirephoto.

Rankin, Eisenhower's choice to head the executive adjudications divisions, received his law degree from the University of Nebraska in 1930 and has been practicing in Lincoln since that time.

Olney will succeed Charles B. Murray, chief of the criminal division in the present administration.

The claims division Burger takes over is headed now by Holmes Baldridge, who last year represented the government in the steel industry seizure case in which the Supreme Court held that President Truman had acted unconstitutionally.

As adjudications division chief, Rankin will succeed Joseph Duggan, who recently resigned.

The new round of appointments by Eisenhower came as he made ready to confer this week with an old friend, British Prime Minister Winston Churchill.

Churchill is scheduled to arrive in New York tomorrow, but may not see Eisenhower until Tuesday or Wednesday.

APPENDIX F

SATURDAY EVENING POST
March 19, 1955

How to be a Crime Buster

By SIDNEY SHALETT

As head of the Justice Department's Criminal Division, Warren Olney, III, touched off the FHA scandals, uncovered the Harry Dexter White papers. A Republican crusader who has not hesitated to prosecute a Republican congressman, Olney spells bad news to anyone breaking a Federal law.

WIDE WORLD

Attorney General Herbert Brownell with crime buster Olney. Among the criminals Olney must prosecute: smugglers, dope peddlers, draft dodgers, moonshiners, counterfeiters, pirates.

ONE spring morning, in the United States District Court in Washington, D.C., a conservatively dressed man with close-cropped graying hair and a mustache to match rose and addressed the black-robed judge. On his necktie he wore a clip which depicted the scales of justice, and on his face he wore a slightly pinched expression, aa if he were in the presence of something that smelled very bad.

When he identified himself as Warren Olney, III, it created a small stir, for it is not often that the Assistant Attorney General of the United States, in charge of the Criminal Division of the Department of Justice, comes into court personally to appear in an ordinary criminal prosecution.

The case before the court involved a former Government employee indicted on a charge of having falsely stated he never had been a member of the Communist Party. The matter had been aired publicly by Senator McCarthy, and the defendant, now a college professor, was vociferously insisting that the accusation was made in error because of a peculiar misunderstanding that occurred almost twenty years ago.

Mr. Olney got right down to the point. He told the court flatly that there had been "irregularities" in the method by which the Government had obtained the indictment. "In the interest of justice," he said, "I am bound to move that the present indictment be dismissed."

The court thereupon dismissed the case. Olney later tersely commented, "It was the most unpleasant experience of my career." In explaining his personal appearance, he said, "I wanted to make it plain where the responsibility rested."

But the Assistant Attorney General, a former California crime buster, who has an almost puritanical, hair-shirt sort of dedication to duty, did not stop there. He conducted a thorough investigation of the Department of Justice trial attorney who had been responsible for the affair. He learned that the man had acted on a conditional authorization carried over from the previous administration; that he had failed to meet one of the conditions by not permitting the defendant to testify in his own behalf; that he had alluded before the grand jury to nonexistent FBI informants, and that he had admitted he would rather indict the defendant on shaky evidence than attempt to explain the case to a Senate investigating committee—presumably Senator McCarthy's. When he had studied these and other facts, Olney, acting with the dispatch of a Marine Corps officer, which he was during World War II, promptly fired the Government lawyer.

Assistant Attorney General Olney holds down one of the most complex and all-embracing jobs in the Justice Department. (Continued on Page 110)

INTERNATIONAL

Ernest K. Bramblett, former Republican congressman from California, was an Olney target.

INTERNATIONAL

The late Harry Dexter White. Olney uncovered the buried FBI reports on White's Soviet links.

INTERNATIONAL

California lobbyist Arty ("I'm the governor of the Legislature") Samish was prosecuted by Olney.

HOW TO BE A CRIME BUSTER

(Continued from Page 25)

He is Uncle Sam's top lawyer in charge of enforcing Federal criminal laws. His division is organized into six sections, one administrative and the five others directly concerned with court work. Although autonomous, the ninety-four United States attorneys in the field—ninety-three of whom have been replaced since the Republican Administration took over—follow Olney's guidance in criminal matters. Olney is responsible, among other things, for prosecuting those who swindle the Government, those who use the mails to defraud, congressmen who take payroll kickbacks, violators of the Anti-Hog Cholera Act, gold hoarders, smugglers, dope peddlers, counterfeiters, those who willfully issue false weather reports, moonshiners, purveyors of fire water to Indians on reservations, civil-rights violators, draft dodgers, pirates, sea captains who make love on the high seas over-ardently to female passengers, gun runners, judges who appoint close relatives to bankruptcy receiverships, labor racketeers, alien criminals and subversives subject to deportation, those who fake citizenship papers or wrongfully impersonate foreign diplomats, Red Cross representatives or 4-H Club agents, malefactors of Army carrier pigeons, influence peddlers, kidnapers and anyone who imports the mongoose or certain other harmful animals into the United States. Even Olney has to look up some of these laws to see what they mean.

A prime example of how things got to moving around the Justice Department after Olney came in as Attorney General Herbert Brownell's Criminal Division chief is the case of Arthur H. (Arty) Samish, California's master lobbyist. For years the fantastic doings of Arty Samish had been notorious in the Golden State. Samish himself had boasted, "I'm the governor of the Legislature; to hell with the governor of

Justice of the United States Supreme Court, who gave Warren Olney his real start in public service, had admitted when governor of California that, in some matters, the boss lobbyist had more power than he. Sen. Estes Kefauver, when investigating links between organized crime and politics, probed deep into the operations and the underworld connections of Samish, whom he described as "a combination of Falstaff, Little Boy Blue and Machiavelli, crossed with an eel." The Kefauver committee brought out evidence in 1951 that, in effect, charged large-scale income-tax violations against Samish; yet no concrete action was taken by the Government.

When Olney moved in, he was well acquainted with the Samish story from his own experiences as counsel to California's Special Crime Study Commission. Although prosecution of Samish would be a matter for the Justice Department's Tax Division, Olney realized that the statute of limitations was about to lapse on the alleged tax-fraud acts for which Samish could be prosecuted. Rather than entrust the handling of the grand-jury presentation to a newly appointed United States attorney, unfamiliar with the complicated background, Olney flew to his home state and personally took charge. Samish was indicted and successfully prosecuted by the United States attorney and the Tax Division. The deflated lobbyist now is appealing a three-year jail sentence and $40,000 fine.

Though professional associates who know Olney well say he has a top-flight legal mind, it is obvious that he also has retained a strong instinct for detective work, carried over from his early days, when he used to go out and raid gambling ships off the California coast. This combination of Blackstone and Hawkshaw in the Assistant Attorney General spells bad news for some of the sharp characters who have been taking advantage of loopholes in various Federal laws. For instance, though he has received comparatively little publicity about it, Olney played a major part in touching off the sensational investigations of the Federal Housing Adminis-

It started when Olney was on the West Coast on business. Certain newspapermen, who used to tip him off on some of the smellier current developments in the California gang world, got hold of him and asked him why he wasn't doing something about the FHA home-loan-improvement racket. Olney began asking questions and discovered that crews of "bunko" artists—confidence men who were alumni of insurance rackets, "hot-oil" leases and other swindles—had gone into the home-loan racket and were covering the country like locusts. These racketeers would make deals with contractors and suppliers, then go out and "sell" homeowners a variety of unnecessary and exorbitantly priced improvements.

With obvious repugnance, Olney later described some of the variations of these frauds, which ran into the thousands, to the Senate Banking and Currency Committee. Sometimes, he detailed, the "bunko" artists would "con" the homeowner into believing his modest bungalow had been selected as a "model home," and, if he would merely put on a new roof, worth every bit of $270, for, say, only $850, he would get all kinds of cash bonuses, valuable prizes and free trips to Florida. Frequently, the householder would be bamboozled into signing two applications for an FHA-guaranteed loan; the confidence man would collect the money from the lending institution on both applications, then disappear, leaving the "sucker" to pay off both loans. They would sell all sorts of weird improvements, never intended to come under the provisions of the FHA home-improvement program, such as swimming pools, tennis courts, kennels, television antennae and barbecue pits. A favorite device of the racketeers was to trick the homeowner into signing his own name to some fraudulent statement; thus, the owner became an accessory to the fraud, which reduced the danger of squawks to the authorities.

As Olney pointed out, the weak point in combating these petty rackets was the fact that FHA itself was the agency for investigating and prosecuting law

plaints, only a scattering of cases was prosecuted. About the time the Assistant Attorney General began to dig into the matter, Albert M. Cole, the Eisenhower Administration's top housing official, also was uncovering the widespread irregularities. The matter was brought to the attention of the White House. The resignation of the FHA head appointed by the new Administration was accepted, and many lesser officials have been fired. Now the Justice Department has jurisdiction over enforcement, and a number of the "bunko" men have been sent to prison. Olney's division also is giving close scrutiny to the possibility of collusion or bribery in the field of wholesale windfalls reaped by apartment-house promoters through loose supervision of FHA loans.

In 1904, the year Warren Olney, III, was born in Oakland, California, his grandfather, the first Warren Olney, an attorney, was serving as mayor of the city. His father, Warren Olney, Jr., later was an associate judge of the California Supreme Court. Olney's son, youngest of his three children, is Warren Olney, IV. The boy, now seventeen, is known, however, as "Spike." Spike has not yet decided whether he will follow the three preceding Warren Olneys in the practice of law, but he shares one characteristic with them—a passion for the great outdoors. The Sierra Club, a West Coast organization devoted to preserving remaining patches of unspoiled wilderness against the inroads of reclamationists and sheep grazers, was organized in Great-Grandfather Olney's office, and all four generations of Warren Olneys have become members. Last summer, a little wearied by the marble halls and air-conditioned spaces of Washington, the Assistant Attorney General restored his spirits by journeying with Spike out to Dinosaur National Monument on the Utah-Colorado border to shoot the rapids of the Yampa River canyon in a rubber boat.

Olney married a childhood sweetheart, Elizabeth Bazata, the year before he was admitted to the bar in 1927. She shares his enthusiasm for hiking

ras. The Olneys have set something of a record by attending only three cocktail parties since coming to Washington—one for Chief Justice Warren, one for Brownell and the other given by a personal friend.

Instead of entering his father's large and lucrative law firm in San Francisco on graduation from the University of California, Olney took a job in the Contra Costa County district attorney's office "to housebreak myself of a congenital shyness." He began by prosecuting drunken drivers and petty housebreakers, and gradually worked his way up to murderers. After two years, when he felt he could address a jury without stammering, he resigned and entered his father's firm.

However, Olney had been inoculated with the excitement of criminal work, and the dignified corporate practice of his father's firm bored him. After another two years, he resigned to accept a post as a deputy to Earl Warren, then district attorney of Alameda County. Of his one-time deputy, the present Chief Justice says, "He is as much of a crusader, in his quiet way, as anyone I ever knew. He must have some real cause to serve. Time, effort and personal considerations, such as financial remuneration, mean nothing to him."

To please his father, Olney reluctantly left the district attorney's office after several years to rejoin the family law firm. Almost immediately after Judge Olney's death, however, he rejoined Warren, who had become Attorney General of California. The Attorney General at that time was engaged in a vigorous crusade to clean up the graft-ridden state. As head of Warren's Criminal Division, Olney entered joyously into the business of smashing a gambling-ship ring, run by racketeers who were so flagrant that they advertised on billboards. In addition to the illegality of the thing, the gambling ships made for an untidy community, as the rival racketeers used to set fire to one another's vessels, and bodies occasionally would be found floating in the bay.

The young crime buster organized a mass raid on four floating gambling palaces. He had reason to believe that many of the deputy sheriffs who would constitute his raiding squad were, to put it delicately, silent partners in the gambling syndicate. He took the precaution of hiring a hall and literally locking up his 400 deputies until time for the raid, so they would be unable to tip off the racketeers. In an armada of water taxis, Olney and his men went in under a fire-hose barrage laid down by the gambling ships. He personally boarded a vessel called the Tango, confiscated $60,000 in silver money, and stayed aboard her for four days, sleeping nights on a craps table, while Attorney General Warren ashore completed the legal steps necessary to put the operation out of business.

When World War II came along, Olney, although he was over draft age and had a wife and three children, was determined to get into the fighting. He chose the Marine Corps on the theory that this service offered "the least likelihood of my getting stuck as a military legal eagle." Just as he thought he had everything arranged to go to the Pacific as an aviation intelligence officer, he was transferred, to his utter horror, to Sacramento to perform certain nebulous duties in connection with Selective Service.

Eventually, he extricated himself from Sacramento and was assigned to a training camp, where he was told he would be stationed for at least three months before being shipped overseas. On reaching camp, he was promptly ordered aboard a troop transport and shipped out next day for American Samoa.

Olney hardly would admit to anyone in the Marine Corps that he ever had been a lawyer, hoping that he would be allowed to proceed unmolested as a combat intelligence officer, but every now and then his past caught up with him. Once, he was sleeping soundly in a hut near Pago Pago when he was shaken awake by a brisk colonel, who demanded that he defend a military policeman involved in court-martial proceedings on charges of cruelty to prisoners. After he got the defendant off—it seems that the MP had made the tactical mistake of refusing to allow a slightly dusky female acquaintance of a certain high-ranking officer to sit in the reserved section of the military theater—Olney finally learned how the colonel had discovered his legal background. The colonel knew a local harbor pilot who had been one of the water chauffeurs for the California gambling ships, and the pilot had "fingered" Olney to the colonel as an A-1 criminal "mouthpiece."

Olney was happiest in the service when he finally got to Kwajalein with Headquarters, 4th Marine Air Wing. There, both he and T. Coleman Andrews, now Commissioner of Internal Revenue, served simultaneously as intelligence officers under Capt. Jerry Greene, a Washington newspaperman.

"Olney was a good Joe and an able officer," recalls ex-Captain Greene, "but he had some of the damnedest habits of any marine I ever saw. When not working, he used to lie in his sack, reading some high-brow book on the history of medieval Europe.

"We marines, a hundred and thirty of us, were jammed into an area a hundred yards square, living on the beach in pyramidal tents, eating out of tin cans. Conditions on this blasted, forsaken hunk of sand were just about as primitive as anything you can imagine. I used to sit in misery, swabbing ointment on my heat rash, just dreaming about nice, efficient American plumbing that worked when you turned a handle. Not Olney. All he would talk about was how, when he got back to California, the first thing he wanted to do was to get his wife and kids and go on a camping trip!"

As a matter of fact, when Olney returned to the States, shortly before the end of the war, he did go camping with Mrs. Olney and two of his children, Margaret and Spike. They went to a place called Wawona, deep in Yosemite National Park.

After the war, Olney was doing nicely in private practice, when once again came the call from Earl Warren, now governor of California. The governor was unhappy over law-enforcement conditions in the state, and was setting up a Special Crime Study Commission. Olney virtually gave up his private practice to serve as counsel to the commission, which did valuable work in exposing machinations of the racing-wire services, gambling syndicates and crooked law-enforcement officers. A great deal of clean-up was accomplished. Olney then took a position as professor of law and criminology at the University of California, and was enjoying the quiet, cloistered campus life when he interrupted his career again, at Governor Warren's request, to become counsel to a second crime commission.

By this time, the Republican Administration was coming in, and Herbert Brownell, the Attorney General-designate, was looking for a tough, experienced man to head up the Criminal Division. Brownell's chief deputy, William P. Rogers, knew of Olney's work, and recommended that the post be offered him. Once again Olney uprooted himself to tackle a job of public service.

Though, in general, the new Criminal Division chief retained the competent career men inherited from the former Administration, he did a thorough job of weeding out holdovers whose records did not look good to him. In one of his first acts he gave notice that politics was "out." One of the cases pending from the previous Democratic Administration was a kickback charge against a Republican congressman from California, Ernest K. Bramblett, accused of padding his payroll. The Government attorneys handling this case submitted recommendations to Olney that the charges be dropped. Olney reviewed the files himself and decided that his fellow California Republican should be prosecuted. He fired the Democratic holdovers who wanted to be lenient, and had the case pushed to a successful

prosecution, which, as this was written, was pending on appeal before the Supreme Court. Soon after, he saw to it that Republicans accused of job-selling in the state of Georgia were indicted, and ordered full speed ahead in the case of a Republican accused of attempting to peddle influence with the new Administration at the bargain rate of 4 per cent.

As his two chief lieutenants, Olney brought in J. Walter Yeagley, a South Bend, Indiana, lawyer with extensive FBI experience, and Alan A. Lindsay, a young Californian who had worked with him on the crime commission. Yeagley did not know Olney, and his story of how the job was offered him is typical of how Olney operates. "He called me personally on the telephone," Yeagley relates. "After he offered me the job, he said bluntly, 'I've been checking up on you. Maybe, before deciding, you'll want to check up on me.'"

One section formerly under Olney—the Internal Security Section, charged with enforcing laws relating to subversion, including prosecution of communist leaders under the Smith Act and other acts of treason and espionage—became so big that it has been set up as a separate division of the Justice Department.

No empire-builder, Olney not only advocated the reduction of his division—almost an act of heresy in bureaucratic Washington—but gave his blessing for his chief aide, Yeagley, to transfer to the new division, where his FBI experience would be especially valuable. Since this separation, Olney has reorganized his division. As an economy and efficiency move, the former Trial Section has been disbanded. The attorneys who comprised it, all ace trouble-shooters, while still constituting a trial-staff pool, have been reassigned to other sections of the Criminal Division where they can perform additional duties between courtroom assignments. Olney also has set up a new Organized Crime and Racketeering Section to concentrate on some of the most complicated prosecutions of cases with nationwide links, including labor racketeering, FHA rackets, major governmental-corruption cases and such. Other legal work of the division is divided among the Civil Rights, General Crimes, Administrative Regulations, and Appeals and Research sections, which deal with everything from peonage and Ku Klux prosecutions to slot-machine violations, alien smuggling and moonshining.

One of Olney's earliest house-cleaning measures resulted in the famous Harry Dexter White controversy between Attorney General Brownell and former President Harry Truman. Olney had not been in office long before he realized, as he puts it, that the Criminal Division's files "were in one hell of a mess." Olney and his aides have asserted that, incredible as it seems, there was no hard-and-fast system under preceding administrations for making records of files and incoming documents. The result was chaos.

Shortly after taking office in January, 1953, Olney instructed his new Administrative Section chief, John C. Airhart, to straighten out the mess. It

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The one time modern man's home really feels like a castle is when the furnace goes out.

—PAUL MCELANEY.

★ ★ ★ ★ ★ ★ ★ ★ ★ ★

was like hacking at a huge glacial mass with an ice pick; Airhart began discovering that there were important files in practically every desk drawer and filing cabinet, with no records as to who had what, and why. Finally, Olney issued a tough memorandum: Every division employee had exactly two weeks to disgorge all the papers in his or her possession, or submit a written list of every item that was being retained.

After the memo came the deluge. "I've never seen anything like it!" says Airhart, who is still slightly stunned at the memory of it. "Files, papers, letters, whole boxes of them, came in by the thousands. Central Files, which occupies a whole floor of Justice, was swamped. We counted up to twenty-five thousand items, then stopped; at least fifty thousand additional items came in over the next six months—and we still haven't uncovered all the floating papers."

Among the items netted were: Some of the Tom Mooney pardon-petition papers, aged for more than twenty years; a Nazi storm trooper's passbook; various papers of long-deceased department attorneys; assorted bottles of aspirin and sedatives; umbrellas, coffeepots and moldy Christmas decorations, and a 1933 letter from J. Edgar Hoover concerning important kidnaping cases, which had never been answered by the Criminal Division. When he saw the latter, Assistant Attorney General Olney sat down and, with tongue in cheek, wrote an official communication to FBI Director Hoover, gravely apologizing for the delay in answering the letter. Hoover didn't reply, though.

There were two particular items among the approximately 75,000 recovered bits of jetsam which Olney definitely did not receive with tongue in cheek. These were copies of: (1) The November, 1945, "top-secret" letter from J. Edgar Hoover to the White House, containing a warning on the alleged pro-Soviet espionage activities of the late Harry Dexter White, former Assistant to the Secretary of the Treasury, and others then occupying key Government positions, and (2) the February, 1946, follow-up report from the FBI director to the White House, detailing specific links between Soviet agents and White and associates. There was no record in the Justice Department that these important reports ever had been received. Olney asserts that strenuous and continued efforts were exerted to find out who in the previous Justice Department administration was keeping, and possibly concealing, these papers, and why. Outside of tracing them to a mass of unrecorded material which came in from the old files of former occupants of the Deputy Attorney General's office, nothing has been established.

The sequel to the discovery of this bit of political plutonium was Attorney General Brownell's speech blasting the Truman Administration for appointing Harry Dexter White to an important new post after the FBI letter had been received. Former President Truman promptly blasted back, whereupon Brownell poured on fresh fuel by making public the previously top-secret letter and portions of the FBI report, and establishing that these documents had gone to Truman's military aide, the then Brig. Gen. Harry Vaughan.

The Attorney General was accused by Democrats of withholding the White bombshell to explode at a politically opportune moment. Through Olney's records, however, Brownell was able to show that the missing papers were not uncovered and evaluated until sometime between September eleventh, when the house-cleaning memo was issued, and November sixth, the date of the speech, which he contended was not an unreasonable delay.

Still another sequel—hitherto unpublicized—was Olney's personal eruption when another set of missing "spy" reports from the FBI was discovered in papers left behind by an abruptly separated Criminal Division attorney, who had no business with them. On the strength of this, Olney drafted and circulated a final ultimatum to division personnel, warning them that if

unauthorized and unlisted papers are found in their possession, they may consider themselves automatically fired.

The sharpest and most persistent criticism Olney has taken since becoming chief of the Criminal Division has been the contention that he has whitewashed or swept under the rug the assorted accusations against the controversial Sen. Joseph R. McCarthy, of Wisconsin. At the peak of this hassle, the issue was frequently aired by politicians and columnists, and the department received a lot of letters from the public about it—so many, in fact, that a polite form reply was drafted. Olney will sit down with an interviewer and discuss the matter. He goes down the list of the various accusations that have been forwarded to Justice, ranging from McCarthy's role in the 1950 Maryland elections, in which former Democratic Senator Tydings was defeated, to McCarthy's involved financial operations. One by one, he contends that the issues involved either do not constitute any violation of Federal statutes or that, if they did involve such violations and the facts could be proved, the statute of limitations had lapsed before the Republicans came into office.

As for McCarthy's income-tax returns, which, it has been disclosed, have undergone investigation and, as of recent date, still were being audited, Olney points out that it is the Internal Revenue Service which gives the go-ahead in such matters, and the Tax Division of the Justice Department which prosecutes them.

After his first two years in office, the crusader from California has remained a rather aloof and mysterious figure to many of the men who work under him. He conducts his business largely through his assistants and section chiefs, and many of the attorneys in the Criminal Division's lower echelons have never met him. They know, however, that they are working under a man who means business about running a tight shop; who has vigorously pushed deportation and denaturalization charges against the most unsavory gangsters in the country; who has prosecuted war profiteers and labor racketeers alike, and who has put his division's resources at the disposal of its companion Tax Division in pressing income-tax-fraud cases against both recognized hoodlums and so-called "respectable" citizens.

He also has breathed some fire into prosecution of civil-rights cases. A. B. Caldwell, chief of the Civil Rights Section, can tell you that Olney does not mind prosecuting a case, even if the Government is almost certain to lose it, if he thinks a moral principle is involved. Olney himself asserts, "The responsibility of a public prosecutor goes far beyond the winning or losing of cases."

The Assistant Attorney General does not confine his interests to the mere trying of cases. He gave his vigorous backing to the bill introduced by Senator Williams of Delaware, and passed by the last Congress, authorizing the Justice Department to investigate, through the FBI, any cases of corruption involving Internal Revenue agents. Previously, the Internal Revenue Service investigated its own scandals, which, as in the case of the FHA, Olney felt was undesirable. Details of implementing the new bill were being worked out by the two departments, as this was written.

He also is working quietly to focus attention on the need for maintaining high standards of mental and physical competence on the Federal bench. Along with other top Justice officials, he is concerned by the reluctance of some elderly Federal judges to step down from their lifetime appointments, even though they may do so at full pay after fifteen years of service and after they have reached the age of seventy. Not including Supreme Court justices, nearly 20 per cent of the Federal judges today have been on the bench from twenty to over thirty years, and range in age from about seventy to more than eighty years.

The familiar pained expression comes over Olney's face when he receives reports of one Federal judge who has become so feeble he literally has to be lifted onto the bench, and of another who disposed of a guilty plea in a criminal case by fining the defendant fifty cents and offering to pay the fine himself. It is a serious matter for anyone who appears before the bench to voice any implied criticism, however reasonable, of the men who sit upon it, but Assistant Attorney General Olney forthrightly declares, "Our most respected generals and admirals are required to take periodic examinations to determine their mental and physical capacities. Why not apply similar standards to our judges, who exercise the most sweeping rights over our sacred liberties?" THE END

APPENDIX G

TO: JUDGE MURRAH

FROM: ELDRIDGE

SUBJECT: SPEEDY TRIAL PROJECT

Consideration has been given to the operational aspects of this project during the two-day meeting with Olney and Beattie, and in subsequent staff discussions and conversations between the Director and Mr. Olney. A rough outline of operational procedure has been formulated along the following lines:

1. Select districts according to agreed upon criteria.
   a. Some criteria are outlined in my earlier memorandum of the preliminary discussion; e.g., volume of criminal caseload, mix of criminal caseload, and current delay
   b. Mr. Olney suggested in his conversations with the Director that we select districts with good procedure. This raises some questions; we don't want to choose districts that are already using the procedures to be advanced by the project or we will prove nothing. More about this later.
2. Establish a committee with general oversight responsibilities. This committee would, inter alia:
   a. Participate in developing the package of procedures and techniques to be advanced by the project.
   b. Participate in the selection of target districts
   c. Work with the Attorney General to elicit the support of the Department of Justice

d. Work with the United States Attorney to assure the suppprt and cooperation of his office.

e. Meet with the chief judge of each target court,and with such of his judges as the chief may slect, ~~these~~ to assure support and cooperation of the court and to determine what kinds of support the project may need to offer each court in the light of its own special needs.

f. Meet with the defense bar to apprise them of the plan, its objectives and methods.

g. Meet with the media, either as a part of other meetings or separately,to discuss the objectives of the project and its methods.

[The meetings in e., f., and g. should involve personnel of the Justice Department and the highest ranking members of the judiciary possible.]

3. Alert enforeement and supporting agencies to develop plans for their participation and support.

a. Police units must understand that cases must not be brought until they are well enough prepared to proceed rapidly to trial.

b. Probation personnel must lay plans for accellerated presentence investigation. This could include beginning investigations before confiction with the aim of laying a presentence report before the court within five days of conviction. This will also means scheduling the beginning of supervision to coincide with accellerated disposition

APPENDIX H

Mills College

To all to whom these Letters shall come Greeting

The Trustees of the College by the authority vested in them and on the recommendation of the Faculty have conferred upon

Warren Olney III

Servant of this state and of the nation, enquirer into public ills and builder of public weal, bearer of a name long honored on this campus, the degree of

Doctor of Laws Honoris Causa

with all the Rights, Privileges and Honors thereunto appertaining

Given at Mills College in the State of California on the sixth day of June, in the Year of Our Lord One Thousand Nine Hundred and Fifty-four.

President of the College

President of the Board of Trustees

INDEX -- Warren Olney III

Amelia R. Fry

Graduated from the University of Oklahoma, B.A. in psychology and English, M.A. in educational psychology and English, University of Illinois; additional work, University of Chicago, California State University at Hayward.

Instructor, freshman English at University of Illinois and at Hiram College. Reporter, suburban daily newspaper, 1966-67.

Interviewer, Regional Oral History Office, 1959--; conducted interview series on University history, woman suffrage, the history of conservation and forestry, public administration and politics. Director, Earl Warren Era Oral History Project, documenting governmental/political history of California 1925-1953; director, Goodwin Knight-Edmund G. Brown Era Project.

Author of articles in professional and popular journals; instructor, summer Oral History Institute, University of Vermont, 1975, 1976, and oral history workshops for Oral History Association and historical agencies; consultant to other oral history projects; oral history editor, Journal of Library History, 1969-1974; secretary, the Oral History Association, 1970-1973.

Miriam Feingold Stein

B.A., Swarthmore College, 1963, with major in history

M.A., University of Wisconsin-Madison, 1966, in American history; research assistant - Civil War and Reconstruction.

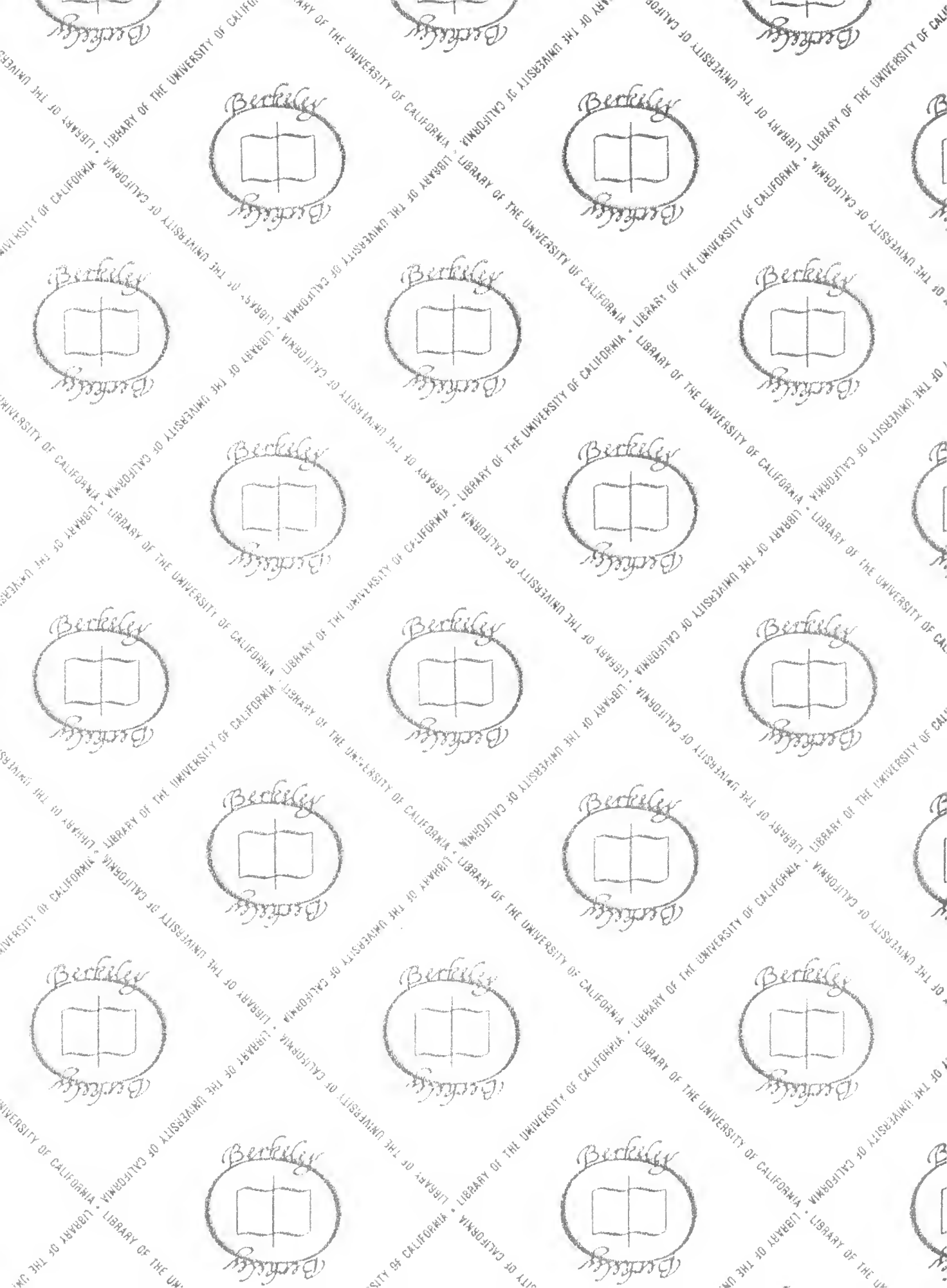
Ph.D., University of Wisconsin-Madison, 1976, in American history, with minor field in criminology. Dissertation, based in part on oral history material, entitled "The King-Ramsay-Conner Case: Labor, Radicalism, and the Law in California, 1936-1941."

Field services and oral history for the State Historical Society of Wisconsin, 1966-1967.

Instructor: American history, women's history, and oral history at Bay Area colleges, 1970 to present.

Leader: workshops on oral history, using oral history as teaching tool, 1973 to present.

Interviewer-editor for Regional Oral History Office, 1969 to present, specializing in law enforcement and corrections, labor history, and local political history.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