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Taft, Roosevelt, and United States Steel

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THERE was no one cause of the political estrangement between President Taft and Theodore Roosevelt after the ex-President's return from Africa. However, given the political situation of 1910-1911, the initiation of a suit under the Sherman Antitrust Act against United States Steel in the fall of 1911, specifically naming Roosevelt, appears to have made TR's actions in 1912 inevitable. Taft and his followers were well aware of Roosevelt's feelings in this matter; they proceeded to file suit. The explanation lies in Taft's legalistic approach to trust-busting and in the failure of the President and his advisers to consider the possible political ramifications of their actions.

The outlines of the episode are quite familiar. During the week of October 6-13, 1907, the New York financial community was shaken to its very roots as many stocks sank to new lows. The brokerage house of Otto Heinze & Company failed, and the Knickerbocker Trust Company closed its doors after a run. After J. P. Morgan returned from a church meeting in Virginia, Secretary of the Treasury George Cortelyou traveled to New York to confer with Morgan and a group of financiers in an attempt to stop the panic. Cortelyou soon assured the bankers that the administration would help "in every possible and feasible way."[1]

On Sunday night, October 28, the situation was still very unstable even though Roosevelt's administration had pledged support. Frantic meetings took place in Morgan's Madison Avenue home, much of the discussion centering on the Tennessee

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[1] As it turned out, the Secretary eventually placed himself almost entirely in the hands of the bankers. Much government money went to shore up shaky brokerage houses instead of supporting banks. Cortelyou later testified that he had not differentiated "the stock market from the community generally," and admitted that he assumed that "considerable of the money" had been used to ease the pressure on the stock market. *The Outlook*, XCVII (August 19, 1911), 866; John A. Garraty, *Right Hand Man* (New York, 1960), 196-216; Henry F. Pringle, *Theodore Roosevelt* (New York, 1956 ed.), 306-310.

Coal and Iron Company. (This company was beginning to emerge as a potentially powerful competitor to the United States Steel Corporation.) The stock of the Tennessee corporation had been pledged against loans by many brokerage offices. One large firm, Moore & Schley, had $5,000,000 of this stock as collateral and the house, it was claimed, might fall the next day when the market opened. The bankers asserted that if this took place the whole economic situation would be thrown into chaos. It was suggested that purchase of the stock of the Tennessee company by United States Steel would confirm the value of the TCI securities, thus saving Moore & Schley, and the market, from collapse.

Judge Elbert Gary of United States Steel called the White House and made an appointment with President Roosevelt for early Monday morning. He and Henry Frick took a special train to Washington, interrupted the President at breakfast, and explained the situation. They told Roosevelt that a "certain business firm" — not a brokerage house — would fail if help were not given it. Acquisition by USS of the Tennessee Coal and Iron Company could save the market, and the country, from disaster. The steel men assured the President that their corporation did not really want to purchase TCI for $45,000,000, because it would not help USS, but that it would buy the securities to save the stock market.[2]

The obvious purpose of this rushed meeting with Roosevelt was to ask his permission to make the purchase. His assent would certainly imply that United States Steel would not be prosecuted under the Sherman Antitrust Act for the acquisition, although this was not expressly stated. Roosevelt later explained that Frick and Gary

> asserted that they did not wish to . . . [purchase TCI], if I stated that it ought not to be done. I answered that, while of course I could not advise them to take the action proposed, I felt it no public duty of mine to interpose any objections.[3]

The meaning was clear. The purchase was consummated and the market was "saved."

Here the matter rested for four years. Then, in November 1911, Attorney General Wickersham's Department of Justice filed

[2]Pringle, *Roosevelt*, 310; Roosevelt to Charles J. Bonaparte, November 4, 1907, National Archives, Record Group 60, Department of Justice file 60-138-0, sec. 1. Hereafter cited as DJ file; John Garraty, "A Lion in the Street," *American Heritage*, VIII (June 1957), 99-100; Frederick L. Allen, *The Great Pierpont Morgan* (New York, 1949), 259-266; Vincent P. Carosso, *Investment Banking in America* (Cambridge, Mass., 1970), 130.

[3]Roosevelt to Bonaparte, November 4, 1907, DJ file 60-138-0, sec. 1.

a suit under the Sherman Act accusing US Steel of creating and attempting to create a monopoly. One of the allegations was the corporation's purchase of Tennessee Coal and Iron Company. A torrent of Rooseveltian billingsgate followed, and before long the growing political estrangement between TR and Taft was beyond all hope of reconciliation. Knowing as he did the Colonel's feelings about the episode, Taft's acquiescence with the naming of his predecessor in the indictment seemed an act of political hara-kiri.

The initiation of the suit had a rather curious background. Roosevelt's attorneys general had instituted antitrust suits against many major corporations, including American Tobacco and Standard Oil. But in spite of many complaints against USS, some detailing specific violations of the Sherman Law, the Department of Justice under Roosevelt had not even investigated the corporation. To be sure, the Commerce and Labor Department's Bureau of Corporations had studied the steel industry,[4] and Attorney General Charles Bonaparte had promised to take action if his Department received specific information that USS had violated the law. But he also reported that "no such information has been furnished regarding the United States Steel Corporation, nor has any specific charge or complaint against the said corporation been presented to the Department from any source whatever."[5]

This statement, to put it as generously as it can be put, was an evasion.[6] Bonaparte's attorneys had neither evaluated nor been instructed to evaluate the numerous complaints against USS. Yet Bonaparte had blandly advised the President that there existed no sufficient ground for legal proceedings against US Steel, "and that the situation had been in no way changed by its acquisition of the Tennessee Coal and Iron Company."[7]

As the Taft administration prepared to assume office, pressure for action mounted. In January 1909 the Senate requested from the Bureau of Corporations all documents in its possession pertaining to USS and Tennessee Coal and Iron.[8] In May 1909 the House asked Taft's new Attorney General, George Wickersham, to inform it if the Department of Justice was taking any steps to annul the contract of purchase of TCI by US Steel. (The Attorney General said that his department was not contemplating

[4] Bonaparte to William Fetzer, February 19, 1908, DJ file 60-138-0, sec. 1.

[5] Bonaparte to Clarence D. Clark, January 20, 1909, DJ file 60-138-0, sec. 1.

[6] DJ file 60-138-0, secs. 1-2.

[7] Roosevelt, January 1909, in US Senate, 60th Cong., 2nd sess., Rept. 1110, Pt. 2.

[8] Attorney General to Commissioner of Corporations, January 22, 1909, DJ file 60-138-0, sec. 1.

any such action.)[9] And in June of the following year the Department refused to respond to a House request for facts it possessed about whether or not the steel corporation had violated the Sherman Act.[10] By this time Wickersham and the President decided to postpone any decision about prosecuting USS until after the pending suits against American Tobacco and Standard Oil had been decided by the Supreme Court.[11]

Prosecution of United States Steel, if it were to be undertaken, would be one of the most important and difficult cases instituted during the Taft administration. Nevertheless, Attorney General Wickersham concluded that he should have little, if anything, to do with the prosecution. He had been very involved in preparing the appeals and in personally presenting the oral arguments before the Supreme Court in the tobacco and oil cases. He decided that circumstances in this instance were different. As a private attorney he had been retained by the steel corporation, and he felt this disqualified him from acting as government counsel should it be decided to prosecute.[12] The President assigned Solicitor General Lloyd Bowers to take over all material and to direct the preliminary investigations and proceedings. His successor, F. W. Lehmann, assumed responsibility after Bower's death.[13] Herbert Knox Smith, the Commissioner of Corporations, was ordered to furnish all information that his Bureau had collected concerning US Steel.[14]

Essentially Wickersham's department dealt with the case against United States Steel as it did the other actions taken under the Sherman Act. Although a decision to prosecute had been postponed, Wickersham, unlike Bonaparte, encouraged his correspondents to supply evidence, "documentary or otherwise," concerning possible violations of the antitrust law by USS,[15] and he ordered his lawyers to investigate complaints.[16] By March of 1911 information from all sources was being collated.[17] A full

[9] Attorney General to Speaker of the House of Representatives, May 18, 1909, DJ file 60-138-0, sec. 1.

[10] Lloyd Bowers to the Speaker, June 23, 1910, DJ file 60-138-0, sec. 1.

[11] George Wickersham to Samuel Gompers, March 28, 1910, DJ file 60-138-0, sec. 1; William H. Taft to Wickersham, March 8, 1911, Taft Papers, Library of Congress, Series 8, Presidential Letterbook, XXIV, 113. Hereafter cited as TP, Ser. 8, PLB.

[12] Taft to Wickersham, June 23, 1910, TP, Ser. 8, PLB, XVI, 488.

[13] *Ibid.*, Taft to F. W. Lehmann, January 22, 1911, TP; Ser. 6, casefile 4230.

[14] Taft to Wickersham, March 8, 1911, TP, Ser. 6, casefile 4230.

[15] Wickersham to Gompers, January 15, 1910, DJ file 60-138-0, sec. 1.

[16] Edwin Grosvenor to J. A. Fowler, June 24, 1911, DJ file 60-138-0, sec. 3.

[17] Taft to Wickersham, March 8, 1911, TP, Ser. 8, PLB, XXIV, 113.

scale investigation was well under way by May of that year.[18]

Perkins, Frick, Gary and other leaders of the steel company had always maintained close and friendly relations with Roosevelt's Attorneys General, and they attempted to continue amicable communication with Wickersham.[19] Friendship prevailed in the early months of the administration, and the steel men felt they faced no threat from the government. Gary explained this to Frick in October 1910.

> As a matter of fact, it seems to me that the attitude and disposition of the present Administration cannot be complained of; . . . it shows clearly a disposition on the part of the law department to avoid unnecessary litigation or publicity and to bring about better conditions without creating distrust in the public mind.[20]

Henry Frick felt that Wickersham had given assurance that no prosecution would be forthcoming.[21] In the early summer of 1911, however, Perkins and Gary began to receive "fairly reliable" information that the government was contemplating court action.[22]

In July George Perkins went to see the Attorney General in an attempt to revive the gentleman's agreement of Roosevelt days. Perkins said that if Wickersham were to find any practices which "in his judgment should be corrected, we would meet him half way in an effort to [correct them] by agreement rather than through a suit."[23] The steel corporation tried to pacify the Department by informing it of proposed plans and purchases. Wickersham used this information as part of the investigation but generally refused to comment on this unsolicited data.[24] In

[18] Henry Wise to Wickersham, May 26, 1911, Wise to Lehmann, May 25, 1911, Assistant Attorney General to Wise, May 31, 1911, DJ file 60-138-0, sec. 3.

[19] Wickersham to E. H. Gary, November 11, 1909, DJ file 146108, sec. 1.

[20] E. H. Gary to H. C. Frick, October 8, 1910, TP, Ser. 6, casefile 87.

[21] George B. Harvey, *Henry Clay Frick* (New York, 1928), 310-311.

[22] Perkins to Gary, July 19, 1911, in Garraty, *The Right Hand Man*, 247; Ida M. Tarbell, *The Life of Elbert H. Gary* (New York, 1925), 234.

[23] Robert H. Wiebe, *Businessmen and Reform* (Chicago, 1968), 83; William Harbaugh, *The Life and Times of Theodore Roosevelt* (New York, 1963, rev. ed.), 381.

[24] Gary to Wickersham, October 17, 1911, DJ file 60-138-0, sec. 3. At one point Gary wrote to Wickersham describing a proposed meeting of international iron and steel producers. The Attorney General replied that "such a meeting, properly conducted as I assume it will be, should, it seems to me, be the occasion of a valuable exchange of information and views between those engaged in the same industry in respective countries." After this rather cryptic response, Wickersham then requested the Secretary of State to procure "as complete a statement as possible of what transpired at the conference . . . regarding some concord of agreement respecting international commerce in these matters." Wickersham to Gary, June 17, 1911, Wickersham to Secretary of State, July 14, 1911, DJ file 60-138-0, sec. 3.

a last attempt to stave off prosecution, Gary wrote to the Attorney General explaining exactly what the steel company desired.

> If you and Mr. Lehmann should, after careful investigation, decide our Corporation is in any respect tainted with illegality, I should like to be informed of your conclusion and given an opportunity to go over the matter with you. It is possible I might find you were mistaken with regard to some of the facts, in which case I should like an opportunity to correct your misunderstanding; or possibly you might be able to convince me I am mistaken in some respects, and in that event I would like to have an opportunity to consider what ought to be done.
>
> I believe even the bringing of a suit for dissolution against our Corporation would result in incalculable injury to the best interests of the country.[25]

It appears that the Attorney General did not respond to this rather arrogant letter.

In July 1911, Secretary of Commerce and Labor Charles Nagel reported that a department study of the steel industry concluded that competition was being restrained by United States Steel.[26] Earlier that year the Democratic party found itself in control of Congress for the first time since 1895 and, as if by instinctive reflex, immediately proceeded to organize congressional committees to uncover wrong doing on the part of the Republican administration. Representative August O. Stanley (Dem., Ky.) chaired one such group; his purpose was to discover if the purchase of Tennessee Coal and Iron Company by US Steel had been in violation of the Sherman Act. The Department of Justice had begun its investigation by this time, but the testimony before the House committee forced it to move more quickly than it normally would have.[27]

The final decision to file suit against USS was made in mid-summer after the Supreme Court had upheld convictions against both American Tobacco and Standard Oil. With the President's approval Wickersham decided to hire ex-Secretary of War Jacob Dickinson as a special assistant to take charge of the government's case.[28] Wickersham's "Strictly Confidential" letter

[25] Gary to Wickersham, October 2, 1911, DJ file 60-138-0, sec. 3.

[26] Charles Nagel to Taft, July 1, 1911, TP, Ser. 6, casefile 2052; *The Outlook*, XCVII (July 15, 1911), 559.

[27] V. N. Roadstrum to Frank Cole, June 5, 1911, Henry Wise to Wickersham, June 15, 1911, DJ file 60-138-0, sec. 3.

[28] This was not unusual; it was rather common practice at this time to hire non-government lawyers for such work. The choice of Dickinson was ironic. In April of 1911 he had resigned as Secretary of War citing "personal affairs" in his letter of resignation. This was not the real truth, however, as Dickinson noted in pencil on the back of his copy of his letter to Taft. Here he explained that as a

requesting Dickinson to accept the post was sent on August 20, 1911. The Attorney General noted that the preliminary work was practically done and that he wanted to file the suit before the Stanley Committee resumed its hearings.[29] On September 7 Wickersham outlined the proposed strategy for the President: Dickinson had agreed to take the case; an attempt was being made to complete the necessary work in secret; the petition was to be filed on a Saturday after the stock market had closed to prevent speculation;[30] Wickersham believed the corporation would voluntarily offer a plan of dissolution following the principle laid down in the oil and tobacco cases, but he felt it necessary to file the petition to put the government's position on record. He said, "The information already obtained is almost sufficient for the purposes of such a petition as I indicate, or, at all events, that with a very little additional investigation the case . . . will be complete. I should like to know if this course meets with your approval." The President approved.[31] Following normal procedures, the Department hoped that the threat of prosecution would convince the corporation to dissolve.

Since antitrust prosecutions could have major effects on the stock market, the Department was usually very cryptic about its intentions. Attorneys were ordered not to make advance announcements, instructions were sent secretly, often in code. In this case, the Attorney General maintained unusual security provisions, even within some levels of his own department. On September 15 Wickersham sent Dickinson his commission, handwritten, "so as not to make a record in the Department. I suggest that you send to me [in New Hampshire] your oath of office — which I will keep to file with the copy of the appointment after the petition is filed."[32]

Dickinson immediately set to work but was not able to draw

Democrat he had been appointed by Taft to attract Southern support. He said that he saw a contest brewing between Taft and Roosevelt — both of whom he considered good friends — and he thought his situation would become impossible if he remained in Taft's cabinet, so he used the excuse of business problems to resign. Dickinson notation on Dickinson to Taft, April 28, 1911, Jacob M. Dickinson Papers, Tennessee State Library and Archives, Nashville, Tennessee, Box 30.

[29] Wickersham to Dickinson, August 20, 1911, Dickinson Papers, Box 28.

[30] Wickersham himself was later accused of doing just this. "Of course I do not believe the very current rumor that Wickersham sold the Market short the day before the suit was announced, but the bringing of so important suit, as one of the papers expressed it, 'like a bolt from the blue,' would naturally give rise to such a suspicion." Franklin Murphy to C. D. Hilles, November 2, 1911, TP, Ser. 6, casefile 2052.

[31] Wickersham to Taft, September 7, 1911, R. Forster to Wickersham, September 8, 1911, TP, Ser. 6, casefile 4230.

[32] Wickersham to Dickinson, September 15, 1911, Dickinson Papers, Box 28.

the petition as rapidly as the Attorney General desired. He was determined that the bill of indictment should not miss any point of evidence brought out by the congressional investigation. Wickersham had not read the testimony given before the Stanley committee, but he was pleased that "it was as full of meat" as Dickinson was finding it.[33] Wickersham agreed with Dickinson's contention that the government should not make any allegations against the steel corporation that it was not prepared to prove, and he continued to stress the need for silence in the matter: "I think we should follow the example of B'rer Rabbit *and* the Tar Baby — say nothin' an' lay low."[34]

Dickinson wrote out the petition against the corporation — in his own hand — and Wickersham reviewed it. There was no copy, again for security reasons.[35] Wickersham carefully went over the document, making numerous changes and suggestions on the text itself. In addition to these comments, he sent seven typed pages of other corrections.[36] As Dickinson later saw it, it was a single count in the final petition that caused the political difficulties. This charge maintained that

> Without fully disclosing all the facts in regard to the Tennessee stock, its ownership, the amount of money estimated as necessary to relieve Moore & Schley, and the arrangements that had already been made to relieve the Trust Company of America, they [Gary and Frick] represented to the President that the only thing that would prevent a vicious spread of the panic was for the corporation to acquire the stock of the Tennessee Company. . . .

Dickinson's petition then related the truth of the matter, as the government viewed it, and continued:

> The President was not made fully acquainted with the state of affairs in New York relevant to the transaction as they existed. If he had been fully advised to the transaction he would have known that a desire to stop the panic was not the sole moving cause, but that there was also the desire and purpose to acquire the control of a company that had recently assumed a position of potential competition of great significance. The President, taken as he was partially into confidence, and moved by his appreciation of the gravity of the situation and the necessity for applying what was represented to him to be the only known

[33] Wickersham to Dickinson, September 27, 1911, October 1, 1911, Dickinson Papers, Box 28.

[34] *Ibid.*

[35] Wickersham to Dickinson, October 1, 1911, Dickinson Papers, Box 28, Dickinson to Taft, September 21, 1925, TP, Ser. 3, Box 585.

[36] Wickersham to Dickinson, October 1, 1911, Dickinson Papers, Box 28.

remedy, stated that he did not feel it to be his duty to prevent the transaction.[87]

Dickinson explained that he believed Roosevelt had been deceived and that had Gary and Frick told him the truth he would not have acted as he did. The attorney said he was a warm friend and admirer of TR when he wrote this allegation, that he had been "inspired by the friendliest motives," and that he wrote the charge in such a way as to put Roosevelt's decision in the most favorable light possible. Dickinson felt that an impartial reading of the charge clearly showed that it was the writer's desire to put the action of the President "upon the most defensible grounds. There was nothing said about him that reflected upon his integrity, patriotism, or judgment. What was said was based entirely upon his having been misled by a failure to put the whole matter before him."[88]

The Nashville lawyer felt that when TR saw the episode and the facts within the true context of the situation he would realize that Gary and Frick had been less than honest with him and that the onus of the blame would rest on the steel corporation and not on the ex-President. It is difficult to see how Dickinson could have convinced himself that this would be TR's reaction. On many previous occasions Roosevelt had thunderously proclaimed his virtue and wisdom in making this decision.

On August 5, before Wickersham had even asked Dickinson to take over the case, TR had testified before the Stanley committee. On the nineteenth, the day before Dickinson was offered the job, Roosevelt published an article on the matter in *The Outlook* explaining his position and reprinting his statement before the committee. The lead editorial in the same issue was outspoken in its defense of the President. "President Roosevelt's action in that moment of public danger is no more to be judged by considering whether it would have been proper under ordinary conditions of business tranquility and popular confidence than was Abraham Lincoln's action in suspending the habeas corpus act in time of war to be judged by considering whether it would be a proper procedure in the humdrum times of peace." Both actions, the magazine contended, had to be judged in relation to the degree of the emergency that required them. Both acts were extraordinary and both were justified in the light of the conditions that made them necessary.[89]

[87] This was the original allegation in the petition. Dickinson to Taft, September 21, 1925, TP, Ser. 3, Box 585.

[88] *Ibid.*

[89] *The Outlook*, XCVIII (August 19, 1911), 849.

Dickinson had carefully gone over all the material brought out by the Stanley committee, so he knew that TR's own defense was just as forthright as the magazine's had been. In his article Roosevelt admitted that he felt that it was not necessary for him "to search the hidden domain of motive." "What was the predominant motive was of no consequence. My concern was that the action should be taken and the situation saved in the interests of the people of the United States." The decision he made was the only possible way to stop the spread of the panic. "I dealt with facts as they were, not with facts as they might or might not afterwards become."[40]

Roosevelt restated the story as told in his well publicized letter to Attorney General Bonaparte. Frick and Gary told him that a certain business firm would fail if not helped. "Among its assets are a majority of the securities of the Tennessee Coal Company. Application has been urgently made to the Steel Corporation to purchase this stock as the only means of avoiding a failure." Gary and Frick then explained to the President that it was the policy of USS not to acquire more than 60% of steel property in the country, and by doing some quick figuring Roosevelt determined — how he did not explain — that acquisition of TCI would only increase US Steel's ownership of steel properties by 2%. The President further asserted that it was "a matter of general knowledge and belief" that the securities of TCI had no market value.[41]

Roosevelt reaffirmed his belief that the action was the only way to stop the panic, that the results "were beneficial from every standpoint," and that it was necessary for him to approve the transaction.

> If I were on a sail-boat, I should not ordinarily meddle with any of the gear; but if a sudden squall struck us, and the main sheet jammed, so that the boat threatened to capsize, I would unhesitatingly cut the main sheet, even though I were sure that the owner, no matter how grateful to me at the moment for having saved his life, would a few weeks later, when he had forgotten his danger and his fear, decide to sue me for the value of the cut rope.[42]

The thrust of Dickinson's charge—that Frick and Gary had not given Roosevelt all the facts — was true. But it is difficult, in the face of Roosevelt's defense of his decision, to understand how Dickinson and Wickersham could have expected him to admit that he had been wrong. This is difficult for any politician,

[40] *Ibid.*, 865-866.
[41] *Ibid.*, 867-868.
[42] *Ibid.*, 868.

probably impossible for a politician named Theodore Roosevelt.

President Taft did not see a copy of the final bill before it was submitted to the court on October 26, 1911. He was in Chicago when the petition was filed and was quite surprised to learn that TR had been specifically mentioned in the bill of particulars. Dickinson, also in Chicago, visited the President at the Blackstone and Taft asked him why Roosevelt's name had been "lugged" in.[43] Dickinson read that section of the petition to Taft, explained that it had been written by a "friendly hand," that it was a vindication of Roosevelt, "no matter what view he might take of it." The President was satisfied with the explanation and wanted the matter pressed vigorously.[44] Wickersham and his subordinates were certain that Dickinson's petition presented a strong case for the government, and he assured the President: "that every fact in it is a matter of easy proof. . . . [Dickinson] went over all the evidence . . . and not only was it clear that the Government had a case, but that it was a very strong case; and, on reading the petition, it seems to me to make a very clear case under the statute."[45]

But no matter how friendly, reasonable or just the accusation was, it would have the same effect on Roosevelt. Wickersham did not write the petition, but the responsibility for it was his. In going over the bill with Dickinson he did not suggest eliminating this charge. The Attorney General's responsibility was compounded by the fact that as early as 1910 he recognized that to "single out this one transaction for attack now would be an open declaration of war."[46]

Three possibilities remain for the decision to leave the charge in the petition. The first, and most convincing, is that as a good lawyer Wickersham was determined to use every bit of available evidence to strengthen the case. Secondly, although there is no supporting evidence, it is possible that Dickinson may have convinced him that the phraseology of the specific charge, and the fact that it was only one of many wider ranging charges, made certain that Roosevelt could not possibly consider it a personal matter. The third possibility – again no evidence supports it – is that Wickersham's antagonism towards Roosevelt, which had reached monumental proportions by this time, may have led him

[43] Memorandum by C. D. Hilles, January 25, 1912, TP, Ser. 6, casefile 4230. See footnote 47.

[44] Dickinson to Wickersham, October 31, 1911, DJ file 60-138-0, sec. 3.

[45] Wickersham to Taft, October 26, 1911, TP, Ser. 6, casefile 2052; H. E. Colton to Dickinson, December 14, 1911, DJ file 60-138-0, sec. 4.

[46] Wickersham to C. D. Norton, October 8, 1910, TP, Ser. 6, casefile 261.

to decide unilaterally to declare political war on the Colonel. If so, it was decidedly a strategic mistake.

Taft had certainly not seen the bill of particulars written by Dickinson and approved by Wickersham before it was filed in court.[47] George Mowry, in *The Era of Theodore Roosevelt,* concludes that "Taft was either an incredibly dull student of human reactions or that he intentionally avoided looking at the steel documents."[48] Although Taft was often a poor politician, Mowry's charge is still not completely justifiable. He attempts to show that Taft was particularly interested in this suit because he had written to his brother about it and had gone over the case with Solicitor General Lehmann. (This was after Bower's death.) This does not prove the point as he had written many similar letters and had had similar discussions about other cases in which he was not particularly active. Mowry finds it curious that Taft did not ask to see the bill of particulars before it was filed. Taft's confidence in the legal ability of his attorney general had not made it necessary for him to review in detail the ninety odd other antitrust cases filed.[49] Taft later recalled that his knowledge of the case was largely communicated to him by Wickersham on the train between Boston and Albany.[50] Wickersham had apparently not mentioned the charge concerning Roosevelt and the President apparently did not bring the matter up. There is no evidence to show that Taft was actively interested in this prosecution up to a point, after which he "intentionally avoided looking at the steel documents."

It is impossible to deny that Taft was a "dull student of human reactions," for often he was. Mowry has pointed out that shortly before the initiation of the suit Roosevelt had been vigorously defending his virtue in the matter and that Taft must have known this. So he must have, and so must have subordinates Wickersham and Dickinson. But, in a very real sense, all three men were lawyers, determined to use every bit of evidence to prove their case. It was a mistake to bring in Roosevelt's name. In spite of his rationalizations Dickinson should not have put it in, Wickersham should have taken it out, and Taft should have read the bill first. Secrecy, up to a point, was required in any prosecution.

[47] Taft to George B. Edwards, December 3, 1911, TP, Ser. 8, PLB, XXXI, 179; Dickinson to Taft, September 21, 1925, TP, Ser. 3, Box 585; Dickinson to Wickersham, October 31, 1911, DJ file 60-138-0, sec. 3; Taft to Dickinson, September 29, 1925, Dickinson Papers, Box 26; Memorandum by C. D. Hilles, January 23, 1912, TP, Ser. 6, casefile 4230.

[48] George Mowry, *The Era of Theodore Roosevelt* (New York, 1962), 290.

[49] Homer Cummings and Carl McFarland, *Federal Justice* (New York, 1937), 338; Harbaugh, *Life and Times,* 379.

[50] Taft to Dickinson, September 29, 1925, Dickinson Papers, Box 26.

Wickersham's unusual insistence in this case however is to be faulted as it prevented the President's more politically astute advisors from pointing out the potential dangers of this action. Elihu Root's observations about Wickersham apply to all three men. It was handled like any other case, this was the real mistake, and it must be shared by all three men. So, as Root said,

> it was a sin of omission rather than of commission, which mitigates it. Wickersham handled it as he would have handled any case in his office without considering the political relations between Taft and Roosevelt. T.R. was so mad it dethroned his judgment.[51]

Roosevelt's judgment may not have been dethroned, but it certainly was quite harsh.

By the middle of 1910 both Taft and Roosevelt had become more and more suspicious of each other.[52] Politics being what they are, it is difficult to see what would have been the result of this growing estrangement if there had been no steel trust case. William Allen White's assessment that "temperamentally the two men could not be reconciled once a quarrel had started,"[53] may be correct, but the initiation of the suit against United States Steel, specifically naming Roosevelt, ended all possibility of an accommodation. TR felt that Taft and Wickersham had forced his hand.

> Taft was a member of my cabinet when I took that action. We went over it in full and in detail, not only at one but at two or three meetings.[54] He was enthusiastic in his praise of what was done. It ill becomes him either by himself or through another afterwards to act as he is now acting. I am sorry to say that I think you are right, and that both he and Wickersham are playing small, mean and foolish politics in the matter.[55]

The fact that Taft was certainly innocent of playing politics, small, mean or otherwise, in this matter, nor the fact that TR knew that Taft had not approved the bill personally, made not a whit of difference to the ex-President.

[51] Philip Jessup interview with Elihu Root, September 30, 1930, Philip Jessup Papers, Library of Congress, Box 242.

[52] Taft to Horace Taft, September 16, 1910, TP, Ser. 7, casefile 7; Roosevelt to Elihu Root, October 21, 1910, Elihu Root Papers, Library of Congress, Box 163.

[53] William Allen White, *The Autobiography of William Allen White* (New York, 1946), 445.

[54] Although elsewhere Roosevelt was more honest about Taft's role in the original decision-making process: "I did not consult him about it . . . ." Roosevelt to E. P. Wheeler, October 30, 1911 Elting E. Morison, ed., *The Letters of Theodore Roosevelt* (8 vols.; Cambridge, 1945), VII, 429-430.

[55] Roosevelt to James Garfield, October 31, 1911, Morison, *Letters,* VII, 430-431.

> I suppose that Mr. Taft did not know of Mr. Wickersham's action. Of course my own conception of the President is that he is responsible for every action of importance that his subordinates take, that is, for every action sufficiently important to make it a part of the administration's policy.[56]

Roosevelt was not at all hesitant about expressing his objections in public. In November he lashed back at Taft in *The Outlook*. The charge that he had been misled, that the facts were not accurately or truthfully given him was "not correct." "I believed at the time that the facts in the case were as represented to me . . . and my further knowledge has convinced me that this was true."

> I was not misled. The representatives of the Steel Corporation told me the truth as to what the effect of the action at that time would be, and any statement that I was misled or that the representatives of the Steel Corporation did not thus tell me the truth as to the facts of the case is itself not in accordance with the truth. . . . I reaffirm everything . . . not only as to what occurred, but also as to my belief in the wisdom and propriety of my action — indeed, the action not merely was wise and proper, but it would have been a calamity from every standpoint had I failed to take it.[57]

The facts told a different story. Testimony at the trial and before the Stanley committee showed that Moore & Schley did not hold a majority of TCI stocks as part of its assets, as the President had been told — in fact their holdings were 50,933 shares short of a majority. When Frick and Gary spoke with the President no disclosures were made as to the extent of the property holdings of TCI or of its emergence as a potential competitor to USS. The Tennessee properties were quite vast and relatively undeveloped. TR testified that his attention had been directed to steel production, and that he did not know that TCI was the largest owner of commercial iron ore in the United States, with the exception of US Steel. John Moody, the financial expert, felt that the $45,000,000 paid for TCI made it "the best bargain the Steel Corporation or any other concern or individual ever made in the purchase of a piece of property." He estimated the ore owned by TCI alone had a potential value of "hardly less than $1,000,000,000." Even Judge Gary later admitted that a valuation of $200,000,000 or even two or three times that much "is not very much too high." (The annual report of United States Steel for 1911 expressed great satisfaction with the acquisition.) TR did not know that TCI was paying dividends at the time of

[56] Roosevelt to Wheeler, October 30, 1911, *ibid.*, 429-430.

[57] Theodore Roosevelt, "The Trust, The People and The Square Deal," *The Outlook*, XCIX (November 18, 1911), 650.

the purchase, and that some $8,000,000 was then being spent on development. He was not told that shortly before the Washington meeting USS had offered 90¢ cash value on the TCI stock that Roosevelt characterized as worthless. Gary and Frick had also overlooked a few other salient facts: shortly before the purchase the steel corporation had loaned $1,000,000 on the Tennessee stock, the Harriman railroad interests had just placed an order for 157,000 tons of rails from TCI, and the corporation was in the process of constructing a steel rail mill.[58]

There is no question that Moore & Schley was in difficulty in 1907. Schley, the surviving partner, testified however that a loan of five or six million dollars would have enabled his concern to survive, and Gary later admitted that a loan of bonds would probably have saved the house. Schley denied that the sale of TCI stock was necessary to shore up his business, he denied telling any member of the steel corporation that his firm would fail if help were not forthcoming, although he did admit to Perkins that he did not know what he would do if the sale did not go through. At no point during the negotiations between Schley and representatives of USS did the steel corporation ever mention that it was acting to save the house; the only point discussed was the price that was to be paid for the TCI stock.[59]

Elihu Root's comment was straight to the point. Of course, he said, United States Steel would not have bought the TCI stock if it had not believed it would benefit the company. "To show that Roosevelt was fooled you must show that either they lied or there was no emergency; or that Moore and Schley had no money or other means."[60] It is clear that the government's petition was technically correct — Roosevelt had been wrong. He had been fooled, or misled, on colossal proportions.

The initiation of this suit was not "the" cause of the break between Taft and Roosevelt, but it does seem safe to assume that with the filing of the government's petition all hope for reconciliation was gone. The bitterness between the two old friends reached an extreme degree. From this point on Roosevelt bent his prodigious energies to the attempt to wrest the 1912 nomination from Taft. After his defeat by the President's

[58] Dickinson to Taft, September 21, 1925, TP, Ser. 3, Box 585. Dickinson's summary here is based on testimony given in the trial. Pringle, *Roosevelt,* 312-313; Jacob Dickinson, "Grant B. Schley," June 7, 1912, DJ file 60-138-0, Enclosures, witness file. This pre-trial memorandum, prepared for use in questioning Schley at the trial, is based on testimony previously given before the Stanley Committee.

[59] Dickinson, "Grant B. Schley"; Pringle, *Roosevelt,* 312-313; *The New York Times,* August 3, 1911.

[60] Philip Jessup interview with Elihu Root, September 13, 1932, Jessup Papers, Box 244.

"steamroller" in the convention, Roosevelt bolted, formed a third party and virtually assured a Democratic victory in 1912. In the returns, the incumbent Taft scored a poor third. Roosevelt and Taft were not reconciled until 1918.

One final element of irony remains. On March 1, 1920, nine years after the suit was originally filed, nine years after the Taft-Roosevelt split, eight years after Taft's defeat in his second bid for the Presidency, four years after the death of the Progressive Party, one year after World War I ended, one year after Roosevelt's death, the Supreme Court of the United States, by a vote of four to three, found United States Steel not guilty of violating the Sherman Act.[61]

[61] Mark Sullivan, *Our Times* (5 vols.; New York, 1926-1933), IV, 46.